

Antoniello v Niblack

2025 NY Slip Op 31835(U)

May 9, 2025

Supreme Court, Kings County

Docket Number: Index No. 507185/2024

Judge: Richard J. Montelione

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 99, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the . . . day of . . . 2025.

MAY 09 2025

P R E S E N T:

HON. RICHARD J. MONTELIONE,
Justice.
-----X

FRANK ANTONIELLO,
Petitioner,

For a Judgment under Article 78 of the Civil Practice Law and Rules

-against-

Index No.: 507185/2024

PRESTON NIBLACK, in his capacity as THE COMMISSIONER OF FINANCE OF THE CITY OF NEW YORK, and CITY OF NEW YORK,

AMENDED DECISION + ORDER (corrects legal citations)

Defendants.
-----X

The following e-filed papers read herein:

NYSCEF Nos.:

Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed	_____	1-20
Opposing Affidavits (Affirmations)	_____	25-35
Affidavits/ Affirmations in Reply	_____	37-42
Other Papers: <u>Various correspondence</u>	_____	43-45

Upon the foregoing papers in this CPLR article 78 proceeding, the application by petitioner, Frank Antoniello, for a judgment vacating and reversing the determination of the Department of Finance (Department), dated November 9, 2023, that denied his request

[*1]

to change a certain property's Building Class from V1 to either Building Class V0 or Building Class G0.¹

Background

Petitioner owns two adjacent parcels of real property in Brooklyn, New York (NYSCEF Doc No. 1 at ¶ 7; NYSCEF Doc No. 4; NYSCEF Doc No. 5 at 2). The first parcel, Block: 6540, Lot: 48 (BBL3-6540-48) (the property), which does not have a street address, was assessed by the Department as vacant land but petitioner asserts that it is improved by a garage in the rear of the property (NYSCEF Doc No. 1 at ¶ 7). The second parcel, 415 Avenue M (BBL3-6540-47), is improved with a one-family home (NYSCEF Doc No. 1 at ¶ 7). The property was in Zoning District R6A, which is a residential zone, and it had a commercial overlay of C1-4 (NYSCEF Doc No. 6 at 3, 32; NYSCEF Doc No. 7 at 3, 24; NYSCEF Doc No. 9 at 5; NYSCEF Doc No. 10 at 2).

While RPTL § 1802 places New York City properties into one of four tax classes, only Tax Class One and Tax Class Four are relevant herein. Pursuant to 1802, subsection 1 (d), Tax Class one includes, among other types:

“[A]ll vacant land located within a special assessing unit which is a city (i) other than such land in the borough of Manhattan, provided that any such vacant land which is *not* zoned residential must be situated immediately adjacent to property improved with a residential structure ... be owned by the same owner as such immediately adjacent residential property immediately prior to and since January 1, 1989, and have a total area not exceeding 10,000 square feet...”

¹ The difference between the a V0 or G0 classification hinges on how the Department treats the garage that is situated on the property.

Meanwhile, Tax Class Four includes “all other real property which is not designated as class one, class two, or class three.”

Relevant here, the Department classified the property as Building Class V1 (Zoned Commercial or Manhattan Residential) and Tax Class 4 commercial property from Fiscal Year (FY) 2018 through FY 2024 (NYSCEF Doc No. 1 at ¶ 11; NYSCEF Doc No. 6 at 7, 30). Previously, from FY 2014 through FY 2015, the Department had classified the property as Building Class V2 (Vacant Land) and Tax Class 1 (NYSCEF Doc No. 1 at ¶ 12; NYSCEF Doc No. 6 at 2).

Petitioner, believing that the Department incorrectly classified his property as Tax Class Four, submitted a request to correct the property’s description to Tax Class One (NYSCEF Doc No. 19 at 2-3). Petitioner explained that the property was vacant land and that he owned the adjacent residential property, i.e., the one family home (NYSCEF Doc No. 19 at 3). The Department did not change the property’s classification, writing that “the parcel is a vacant lot and appropriately valued” (NYSCEF Doc No. 20 at 2). Petitioner now seeks relief under article 78 to correct this alleged error.

Discussion

Petitioner asserts that the Department erroneously classified the property as Building Class V1 (NYSCEF Doc No. 1 at ¶ 9). Instead, the property should have been classified as Building Class V0 or G0 (NYSCEF Doc No. 1 at ¶ 9). Petitioner calls the Department’s alleged misclassification “nothing more than an ‘error in description’ ” (NYSCEF Doc No. 3 at 13). The commissioner of finance has the authority to correct such an error of description. Specifically, “[t]he commissioner of finance may correct any

assessment or tax which is erroneous due to a clerical error or to an error of description contained in the several books of annual record of assessed valuations, or in the assessments-rolls” (Administrative Code of the City of New York § 11-206).

However, respondents contend that petitioner is not alleging a mere error in description. They contend that petitioner is seeking a reclassification of the property (NYSCEF Doc No. 35 at 18). Such a remedy, respondents assert, cannot come via an article 78 proceeding; rather only an article 7 proceeding can afford petitioner such relief (NYSCEF Doc No. 35 at 12-20).

Propriety of Challenging via an Article 78 Proceeding

Whether petitioner properly brought this case via an article 78 proceeding presents a threshold issue the Court must first address. Respondents direct the Court to multiple First Department decisions (NYSCEF Doc No. 35 at 7-9), including *Matter of 3061-63 Third Ave. LLC v Soliman* (223 AD3d 548 [1st Dept 2024]). Relevant here, *3061-63 Third Ave. LLC* held that a petitioner alleging a misclassification of property cannot use an article 78 proceeding to do so (*see e.g. id.* at 549-550). Per the First Department, a misclassification did not constitute an error of description; thus, a petitioner would need to proceed via an article 7 proceeding (*see id.* at 550; *Matter of 9 Orchard Partners, LLC v New York City Dept. of Fin.*, 204 AD3d 527, 528 [1st Dept 2022] [“because the central question is one of valuation of the subject property, petitioner’s challenge must be brought in an article 7 proceeding”]).

However, the Second Department—to which this Court is bound—has repeatedly come to a different conclusion and explicitly declined to adopt the holding of *3061-63*

Third Ave. LLC (see e.g. *1425 Fulton Dev., LLC v Soliman*, 235 AD3d 965, 966 [2d Dept 2025]; *1389 BBB, L.P. v Commissioner of Fin. of City of New York*, 235 AD3d 962, 964 [2d Dept 2025]; *136-21 Hillside Ave., LLC v Niblack*, 235 AD3d 961, 962 [2d Dept 2025]; *Block 3738 Constr. Corp. v Niblack*, 234 AD3d 955, 957 [2d Dept 2025]).² These cases held that a petitioner contesting a property's building classification constitutes an error of description, and a petitioner may bring an article 78 proceeding to correct the error (see *Block 3738 Constr. Corp.*, 234 AD3d at 957). Accordingly, the Court concludes that petitioner properly brought this action via an article 78 proceeding as he challenges a misclassification pursuant to Administrative Code § 11-206 (see e.g. *id.*; *Matter of Better World Real Estate Group v New York City Dept. of Fin.*, 122 AD3d 27, 36 [2d Dept 2014]).

The Department's Determination

Turning toward the Department determination at issue, the Court must sustain the Department's determination so long as the determination was not arbitrary and capricious (see *Matter of Block 3738 Constr. Corp.*, 234 AD3d at 957). "An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts" (*id.* at 958 [internal quotation marks omitted]). The Court will sustain the Department's determination, even if the Court would have come to a contrary conclusion, so long as there a sound basis in the decision (see *id.*).

Again, for a vacant property outside of Manhattan that is not zoned residential to be considered Tax Class One, the property "must be situated immediately adjacent to property

² In fairness to respondents, the Second Department issued these decisions after respondents submitted their opposition papers.

improved with a residential structure,[...which includes a one-family home, and] be owned by the same owner as such immediately adjacent residential property immediately prior to and since January 1, 1989, and have a total area not exceeding 10,000 square feet” (RPTL § 1802 [1] [d]; see *Matter of Shore Dev. Partners*, 82 AD3d at 990). The property here fits that description. The property is in Brooklyn, i.e., not in Manhattan, and it has a commercial overlay (NYSCEF Doc No. 5 at 2). Moreover, the property is directly adjacent to the one-family home (NYSCEF Doc No. 5 at 2; NYSCEF Doc No. 8 at 4). Lastly, the deed confirms that petitioner owns both properties (NYSCEF Doc No. 4 at 2). Case law has repeatedly held that a property should be Tax Class One when these conditions are met (see e.g. *Matter of 1425 Fulton Dev.*, 235 AD3d at 966; *Matter of Adimoolam v Niblack*, 235 AD3d 972, 974 [2d Dept 2025]; *Matter of Block 3738 Constr. Corp.*, 234 AD3d at 958; *Matter of Shore Dev. Partners*, 82 AD3d at 990-991). Accordingly, the Court conclude that it was arbitrary and capricious for the Department to place the property in Tax Class Four.

Respondents’ arguments are not persuasive. In their opposition, respondents contend that because the property is located within a commercial overlay, the property must be considered “not zoned residential,” which would place it in Tax Class Four (NYSCEF Doc No. 35 at 21). This is a misstatement of law. As the Second Department recently explained: “[V]acant land that is zoned residential and located within New York City but outside of the borough of Manhattan is properly classified as tax class one, regardless of a commercial overlay” (*Matter of Adimoolam v Niblack*, 235 AD3d 972 [2d Dept 2025]). Additionally, respondents asserted, during oral argument, that the property should not be

Tax Class One because petitioner did not own the property “prior to and since January 1, 1989” (RPTL § 1802 [1] [d]). Without commenting on the merits of this argument, the Court will not consider this point as respondents failed to properly raise it in their papers (*see e.g. Postiglione v Sacks & Sacks, LLP*, 233 AD3d 719, 721 [2d Dept 2024]; *Opalinski v City of New York*, 164 AD3d 1354, 1355 [2d Dept 2018]; *Peycke v Newport Media Acquisition II, Inc.*, 40 AD3d 722, 722-723 [2d Dept 2007]; *Cohen v Romanoff*, 27 Misc 3d 1208[A], 2010 NY Slip Op 50627[U], *12 [Sup Ct, Kings County 2010]). Respondents had an opportunity to raise this argument in their opposition papers but failed to do so.

Conclusion

Accordingly, it is hereby

ORDERED that the instant article 78 petition is granted and the determination of the Department of Finance dated November 9, 2023 is vacated; and it is further

ORDERED the Department of Finance shall classify the property located at Block: 6540, Lot: 48, BBL3-6540-48, with an appropriate building classification within the Tax Class One designation for FY 2018 – FY 2024, and ensure that such reclassification is reflected within 19 RCNY § 53 *et seq*, NYC Administrative Code § 11-206, and RPTL § 1802 (3); and it is further

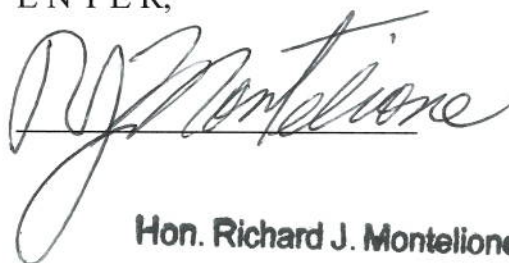
ORDERED that the Department of Finance shall recalculate the proper assessed value for FY 2018 – FY 2024, refunding or crediting the additional tax that petitioner paid; and it is further

ORDERED that the petitioner’s counsel is directed to electronically serve a copy of this decision and order with notice of entry on respondents’ counsel and to electronically file an affidavit of service thereof with the Kings County Clerk.

The court, having considered the parties’ remaining contentions, if any, finds them unavailing. All relief not expressly granted herein has been considered, and denied.

The foregoing constitutes the decision and order of the court.

ENTER,



Hon. Richard J. Montelione

KINGS COUNTY CLERK
FILED
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