

TAX CERTIORARI

The Use of Summary Judgment



Motions for summary judgment – once a rarely used tool to determine valuation in tax certiorari cases – have recently become a more utilized device to resolve appropriate cases by both property owners and assessors.

Tax certiorari cases are either “excessive” or “unequal” assessment cases. Excessive assessment means that an assessor is assessing at 100 percent of full value and

the property at issue is assessed at more than its full value. Unequal assessment refers to a property that is assessed at “a higher proportionate valuation” than other real property on the same roll. See section 701(8) of the Real Property Tax Law. Virtually all tax certiorari cases on Long Island and other nearby suburban areas are unequal assessment cases since only a few smaller towns assess at 100 percent of market value.

The two elements to be proved in an unequal assessment case are the ratio at which property is assessed and valuation. Ratio is typically proved by the latest state equalization rate promulgated by the New York State Office of Real Property Services. Value in a trial is proved by filing a trial appraisal and having the appraiser testify as to value.

The summary judgment motion can short-circuit the valuation process where there is a recent sale of the property. This is important in tax certiorari cases because cases often take years to resolve. At the very least, making a summary judgment motion may encourage the parties to sit down and settle a case sooner than would otherwise be the case.

A basic principle of real property tax assessment law is that: “the purchase price set in the course of an arm’s length transaction of recent vintage, if not explained away as abnormal in any fashion, is evidence of the ‘highest rank’ to determine the true value of the property at that time.” *Plaza Hotel Associates v. Wellington Assoc.*, 37N.Y.2d 273, 777, 372 N.Y.S.2d 35 (1975); *Matter of Woolworth Co. v. Tax Comm.*, 20 N.Y.2d 561, 565, 285 N.Y.S.2d 35 (1975).

Key aspects of this principle include “of recent vintage” and “at that time.” A purchase is valid proof of value when it is reasonably close in time to the tax status or valuation date for a particular assessment. For instance, valuation dates for the 2005 assessments for Nassau County and the towns in Suffolk County are Jan. 1, 2005.

The next key aspect is “an arm’s length transaction.” Clearly, only a sale between unrelated parties will suffice.

The last and most difficult aspect is “If not otherwise explained away.” A myriad of situations exist to “explain away” a sale. These include, among other things, purchasing a property with above or below market leases, with abnormal financing, or to complete an assemblage. Other examples are sale-leaseback transactions, sales to existing tenants, distress sales, or sales that include a significant amount of the going concern value of a business such as the sale of a hotel.

Practically speaking, once a sale is proffered as proof of valuation, the burden shifts to the other side to raise triable issues as to its appropriateness as proof of value.

The assessor obtained summary judgment dismissing a proceeding in *Reckson Operating Partnership v. Assessor of the Town of*

Greenburgh, 289 A.D.2d 248, 734 N.Y.S.2d 478 (2d Dep’t 2001), because the equalized assessment was less than a recent purchase price.

The Appellate Division, Second Department, held:

The property valuation by a tax assessor is presumptively valid, and in challenging the assessment, a petitioner must come forward with substantial evidence to the contrary. ... The Supreme Court properly granted the respondents’ motion for summary judgment, since they established that the recent sale price of the property was the best evidence of value of the property in question. ... In opposition, the appellant failed to raise a triable issue of fact.

In *Matter of 325 Highland LLC v. Assessor of the City of Mt. Vernon*, 5M.2d 3rd 1018, N.Y.S.2d (Sup Ct Westchester Co. 2004), the property owner moved for summary judgment to fix the 2002 assessment at the January 2002 purchase price multiplied by the 2002 state equalization rate. The court granted summary judgment after it applied the *Plaza Hotel Associates* test, first finding that: “The sale was determined to be an arm’s length transaction by the State of New York Office of Real Property Services. The Respondents have not disputed that the sale was at arm’s length.”

The court next determined “abnormality,” holding that: “In *Plaza Hotel Associates*, the Court of Appeals provided some guidance as to when an arm’s length transaction might be explained away as abnormal [“despite the seemingly complicated terms of the agreements, however, we do not share the belief that the complexities were so unusual as to take the case outside the scope of the general rule”].

The Court of Appeals stated further that “it is not a function of the courts to insure the profitability of business transactions, nor do they have the power to remedy a failure of the parties to foresee far-ranging changes in the economy.”

The motion before the court involved the efforts of the buyer to resell the property for a proposed change of use, a circumstance which the city alleged made the original sale an “abnormality.” The court disregarded this allegation and the subsequent efforts to resell the property for different uses, some of which required municipal approvals, holding that: Whatever its future use may be [condominium units or rooms for ‘healthy seniors’] the law is clear that ‘value is determined by assessing the condition of the property according to its state on the taxable status date, without regard to future potentialities or possibilities, and may not be assessed on the basis of some use contemplated in the future’ [*Adirondack Mountain Reserve v. Board of Assessors of Town of North Hudson*, 99 A.D.2d 600, 601, 471 N.Y.S.2d 703 (3rd Dept 1984), affd 64 N.Y.2d 727, 475 N.E.2d 115, 485 N.Y.S.2d 744(1984)].

Significantly, the court applied the final state equalization rate as determined by Office of Real Property Services without any further proof.

Motions for summary judgment are or could be used in tax certiorari cases for other purposes, such as properly calculating transitional assessments in special assessing units, i.e. in New York City and Nassau County, or to “carry forward” reduced assessments in moratorium years following a court ordered reduction, or to grant and properly calculate partial exemptions such as RPTL485-b business improvement exemptions.

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