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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY
DOCKET NO. 008737-2015

SAVAGE MILLS ENTERPRISES, L.L.C.	:
Plaintiff,	:
v.	:
BOROUGH OF LITTLE SILVER,	:
Defendant.	:

Approved for Publication
In the New Jersey
Tax Court Reports

Decided: June 21, 2016

Roger J. Foss for plaintiff
(Foss, San Filippo & Milne, L.L.C., attorney).

Joseph A. Clark for defendant
(Dilworth Paxson, L.P., attorney).

SUNDAR, J.T.C.

This is the court's decision of the parties' respective summary judgment motions. The defendant ("Borough") seeks to dismiss the above captioned complaint on grounds this court lacks subject-matter jurisdiction because plaintiff, a for-profit entity, is contractually obligated to pay local property taxes on the above referenced property ("Subject"), and thus cannot seek a partial exemption for the same. Plaintiff argues that the Subject is entitled to a partial exemption for the portion being used by its 99-year ground lease tenant, which is an undisputed tax-exempt entity, and which owns and uses the building on that land for undisputed charitable purposes. Plaintiff maintains that the exemption should be granted regardless of who is the claimant, and further, that

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its contractual obligation to pay taxes on property owned or used by the non-profit tenant is of no moment in connection with claims for a statutorily available exemption.

The court finds that plaintiff, as fee owner of the Subject, has standing to challenge the amount and methodology underlying the Subject's assessment, which can include a claim for exemption. However, this standing does not equate to a grant of the exemption sought because exemption statutes are strictly construed, thus, require full compliance with the statutorily imposed qualifications for an exemption. Since plaintiff fails to meet the statutory qualifications for an exemption, and further since the plain language of the statute affords a partial exemption only when the landlord (lessor) is the non-profit entity and the tenant is the for-profit entity, plaintiff cannot obtain the benefit of the partial exemption.

The Borough's summary judgment motion is denied in part as to plaintiff's standing to claim the exemption, and granted in part that plaintiff cannot be granted a partial exemption. The matter will be set for trial as to plaintiff's allegation that the Subject's assessment is erroneous.

FACTS

The following are the undisputed facts based on undisputed documents attached in support of each party's summary judgment motion. The Women's Exchange of Monmouth County ("Exchange") was registered as a New Jersey non-profit corporation in 1949. It was created to foster and encourage creativity and workmanship of Monmouth County residents, provide a venue for sale of their creations and works of art, and donate revenues in excess of the Exchange's operational costs/expenses and reserves to local non-profit organizations. The Exchange is run by a Board of Trustees comprised of volunteer members who appoint officers for the day-to-day operations. Upon dissolution, the Exchange's assets are distributable to charity.

In February 1956, the Exchange purchased the Subject (also known as 32 Church Street). There was only one building on the Lot.

In April 1966, the Exchange filed an Initial Statement with the Borough's assessor seeking an exemption from local property taxes for the Subject.[1] The application explained the entity's purpose as being "to maintain and operate a store" where clothing, "handiwork," and the like "made by persons needing financial assistance are sold for the consignors." The application stated that the Subject was actually and exclusively used as a "store for the sale of merchandise," and that the "consigned goods are sold at a fixed percentage of profit above the price fixed by the consignors which covers operating expenses but does not result in any net profit." The exemption was sought pursuant to N.J.S.A. 54:4-3.6, and specifically due to a County Board judgment of November 9, 1956 granting the Exchange this statutory exemption.

Thereafter, the Subject was on the Borough's list of tax exempt properties. This was also the Subject's status for tax year 1984.

In 1985, Talbots, Inc., a for-profit foreign corporation, purchased the Subject (and adjacent Lot 6 from unrelated parties).[2] It agreed to build a new smaller building (hereinafter "Building 2") to be used by the Exchange exclusively as a retail store. By a separate recorded Bill of Sale dated June 1985, Talbots granted all ownership rights of Building 2 to the Exchange. Talbots also entered into a 99-year ground lease agreement with the Exchange whereby it leased the land on which Building 2 was to be erected at $1 per year, with an option to renew for another 99-year period at $1 per year.[3] Talbots was to replace the building formerly used by the Exchange with another building for its own use (hereinafter "Building 1").

[1] For some reason, the Statement noted the Subject's identification as Lot 6, Block 6.
[2] The sale price was not provided to the court.
[3] For consideration purposes, the value of the portion of land on which Building 2 would be erected was $98,000.

In addition to assuming certain expenses and costs for the Building 2 (and common areas), Talbots also undertook to pay for "all existing and future taxes, assessments . . . assessed, charged, or imposed, upon" Building 2 and the portion of the leased land (hereinafter the "Tax Payment Clause"). Future sale of the property by Talbots was subject to the 99-year lease and the Exchange's ownership of Building 2. However, if the Exchange decided to vacate Building 2 or discontinue its operations, then Talbots could purchase that building and the ground lease at a mutually negotiated price. If the Exchange received a third-party offer for purchase and/or lease of Building 2 plus the leased land, Talbots could match the offer within 7 days. "Any action or judicial proceeding involving" the lease was to be venued in the Monmouth County courts.

At some point the two lots 5 and 6 merged and became Lot 5. The Subject thus comprises an area of about 38,700 square feet, improved by Building 1 (about 7,610 square feet) and Building 2 (about 2,210 square feet). The buildings, though separate, are adjacent to each other, and share a driveway, the parking lot, lawn and pedestrian walkways.

In April of 2001, Talbots sold the entire Subject to plaintiff for $910,000.[4] The sale deed noted that the transfer of ownership was "subject to" the 99-year lease with the Exchange. Thus, plaintiff assumed the lease obligations, including the requirements of the Tax Payment Clause, and Building 2 continues to be owned and occupied by the Exchange with the land portion being leased to it by plaintiff at $1 per year. Building 1 is occupied by Byford & Mills, whose sole stockholder is also plaintiff's principal.

Since its purchase, plaintiff has paid local property taxes on the Subject. For the first time in October 2014, it applied for partial tax exemption on grounds a portion of the Subject was

[4] Plaintiff had to enforce the sale in the Superior Court due to the Exchange's alleged resistance in this regard. The pleadings indicate that plaintiff's principal wanted her retail business, Byford & Mills, move to a larger building; was aware of the lease obligations; and plaintiff was created so the Subject's owner would be a corporate entity.

owned, occupied and used by the Exchange. The Borough's assessor denied the partial exemption claim because the Exchange was not "legally responsible for the" taxes imposed on the Subject, and because there was "insufficient proof" that the Subject was used for "a tax exempt purpose." The assessor's letter stated that plaintiff could appeal the denial to the Monmouth County Board of Taxation ("County Board") by January 15, 2015.

Plaintiff timely appealed the decision to the County Board, challenging the 2015 assessment of $1,512,000 (allocated $1,064,600 to land and $447,400 to improvements), as well as the denial of the partial exemption claim. The County Board issued a judgment using Code 2B, affirming the assessment since its presumptive correctness was not overcome. Presumably, the affirmance implied a denial of the partial exemption as no other judgment code was indicated.

Plaintiff then filed a complaint in this court alleging two counts, one that the assessment exceeded the Subject's true value, and second, the Subject was entitled to a partial exemption.

ANALYSIS

In the instant motion, the Borough does not dispute that the Exchange is a non-profit entity, owns Building 2, and actually uses it for entirely charitable purposes (the actual use being an undisputed material fact since the Borough agrees that the Exchange standing alone, would be entitled to tax exemption as it had been in the past).

A. Does the Court Have Subject Matter Jurisdiction?

The Borough argues that this case is an interpretation of the Tax Payment Clause, therefore, as a contractual issue it should be tried before the Superior Court, the agreed-to venue in the lease.

The court disagrees. The instant matter is not a contractual dispute. Parties to the lease are not disputing breach of any clause in the same. There is no allegation that plaintiff has failed to pay a portion of the taxes on the Subject on grounds the property is tax exempt. Rather, plaintiff

is seeking a statutory exemption for a portion of the Subject that is owned and used by a non-profit entity for charitable purposes. Whether plaintiff can do so and whether it is entitled to an exemption, are issues to be decided by examining the tax exemption statute, specifically N.J.S.A. 54:4-3.6, and precedent in this regard. Such an examination and decision does not involve re-writing or reforming the 99-year lease provisions, and lies squarely within this court's subject-matter jurisdiction. See e.g. Jamouneau v. Division of Tax Appeals, 2 N.J. 325, 329 (1949) (in evaluating a third-party taxpayer challenge to an exemption provided for property owned by the City of Newark and leased to a private entity, the court examined the lease provisions stating "[w]hile the lease is not before us for review as to its validity or for interpretation as to the rights or obligations of the parties inter sese, it is an exhibit in the case and is evidential of the intent of the parties and of the status of the property with respect to taxability").

The Borough's reliance on McMahon v. City of Newark, 195 N.J. 526 (2008) is misplaced. There, the City was a party to a contract with a real estate developer, whereby the latter would make payments-in-lieu-of-taxes ("PILOT") to the former, and receive property tax exemption. The venue clause required that any breach or disputes relative to the contract would be litigated in the Superior Court or by arbitration. When the City revoked the exemption and imposed assessments, the plaintiff filed a complaint in the Superior Court, which transferred it to the Tax Court but after the limitations period for a tax appeal had expired. The Court agreed with the plaintiff that it was challenging "the City's unilateral determination" of a contractual breach by plaintiff, which then "wrongfully trigger[ed]" the termination of "contractually agreed upon tax abatement." Id. at 544. The Court concluded that the transfer of the litigation from the Superior Court to the Tax Court was improper since the essential issue was a breach of contract over which a Tax Court has no jurisdiction.

There is no such issue here. Nor are the facts even remotely similar. The Borough's sole reliance upon the Tax Payment Clause as a basis for its denial of a statutory tax exemption does not convert the issue to one of contract breach/dispute involving contract law. Indeed, plaintiff concedes that it is obligated to pay local property taxes on the entire Subject pursuant to the Tax Payment Clause should this court deny its claim for partial exemption.

More importantly, in McMahon the Court noted that if the complaint had involved a challenge to the assessments (quantum or methodology), it would belong to matters "subject to the established tax appeal process," id. at 543-44, which would include a petition to a County Board of Taxation, and an appeal thereafter from the County Board's decision to the Tax Court. The court agrees with plaintiff that its claim for a statutorily available partial tax exemption is appropriately addressed by the Tax Court in the context of the Borough's assessor's denial of the same, and the County Board's implicit affirmance of the denial, both these actions being an undeniable part of the tax appeal process.[5]

B. Can Plaintiff Claim a Partial Exemption?

This issue is two-fold: first, whether plaintiff has standing to make a claim for the exemption, and second, whether plaintiff is entitled to a grant of a partial exemption, and thus, not obligated to pay taxes on a portion of the Subject.

1. Standing

There is no question that an owner can challenge the local property assessment on his, her, or its property. N.J.S.A. 54:3-21 (any "taxpayer feeling aggrieved by the assessed valuation of the taxpayer's property" can appeal the same) (emphasis added). "The sole owner of a property in fee

[5] The Borough's arguments that it is a third-party beneficiary to the contract between plaintiff and the Exchange, and plaintiff's refutation of the same are not addressed since the court is not interpreting the lease agreement.

simple who pays the entirety of the property taxes is clearly an aggrieved taxpayer pursuant to the statute." Prime Accounting Dept. v. Township of Carney's Point, 212 N.J. 493, 506 (2013).

A property deemed exempt, or granted an exemption, is first assessed at its true value (land, building/s and improvement/s), and thereafter, included in a list as tax-exempt. N.J.S.A. 54:4-23; 54:4-27; N.J.A.C. 18:12-3.1(b)(2). As of the valuation date, the assessor must "determine not only taxable value, but also taxable status." State by Comm'r of Transp. v. Township of Pohatcong, 9 N.J. Tax 528, 540 n.4 (Tax 1988) (citations omitted). Thus, and because of this confluence, N.J.S.A. 54:3-21(a)(1) provides a remedy against not only the regular assessment placed by the assessor due to denial of a claimed tax exemption, but also against the assessor's decision or omission to account for the property's taxable status. Consequently, a property owner can, as an aggrieved taxpayer, challenge both the assessment and the denial of the exemption. See e.g. Jabert Operating Corp. v. City of Newark, 16 N.J. Super. 505, 508-509 (App. Div. 1951) (reversing the lower tribunals' decisions that a property owner did not have standing to claim an exemption because it was not a non-profit entity as required by N.J.S.A. 54:4-3.6, and holding that the owner, "when appealing the assessment to the county board of taxation on the ground that the property was exempt" is an "aggrieved" taxpayer under N.J.S.A. 54:3-21). Cf. University Cottage Club of Princeton v. Borough of Princeton, 26 N.J. Tax 185, 189-190 (Tax 2011) (plaintiff filed complaints under N.J.S.A. 54:3-21 challenging the denial of an exemption, but the complaints could not be amended to include an untimely claim that the valuation exceeded true value since each claim was different and required different proofs).

Here, plaintiff is the fee owner of the Subject which comprises of a single lot. Simply by virtue of its fee ownership, plaintiff has standing to appeal the Subject's assessment, and claim an exemption. It would be difficult to conclude to the contrary given our precedent that a tenant has

standing, as an aggrieved taxpayer, not only to challenge the assessment of property owned by the landlord, see Village Supermarkets, Inc. v. Township of West Orange, 106 N.J. 628 (1987), but to also claim property tax exemption due to the owner's tax exempt status and/or public use. See Hayes Homes Urban Renewal Corp. v. City of Newark, 20 N.J. Tax 528, 532-33 (Tax), aff'd, 21 N.J. Tax 273 (App. Div. 2003) (rejecting a challenge to the for-profit developer plaintiff's standing to claim an exemption, and granting the exemption).[6] Similarly, in Renaissance Plaza Associates, Ltd. Partnership v. City of Atlantic City, 18 N.J. Tax 342, 352-53, 361-62 (Tax 1998), the court rejected a challenge that the for-profit lessee/developer plaintiff had no standing to claim a tax exemption because of a 99-year ground lease under which the lessee could "to contest the 'amount or validity' of any assessment through the tax appeal process." Although the for-profit ground lessee owned the improvements, and was deemed an equitable owner of the land due to the lengthy lease period, the court ruled that "[b]ased on ownership, the property is not exempt from local property taxation," which thus "conclude[d] the exemption issue adversely to the" plaintiff lessee.

The Exchange's lack of appeal or claim for a partial exemption does not require a conclusion that plaintiff, as fee owner of the Subject, is foreclosed from filing the same. The above precedent does not limit a landlord's statutory right to an appeal, which is "primary" and independent of a tenant's appeal rights. See e.g. Target Corp. v. Township of Toms River, 27 N.J. Tax 19, 25-26 (Tax 2012). See also Village Supermarkets, supra, 106 N.J. at 633 (noting that an

[6] The court also noted that there was no need no need to implead the tax-exempt property owner as a "necessary party" since its inclusion "would do nothing to insure the payment of the taxes," the latter being the underlying intent of including and noticing a landlord in a tenant's appeal." 20 N.J. Tax at 533. This logic would apply to the Borough's argument that a claim for, and grant of, a partial exemption cannot be entertained by this court unless and until the Exchange is impleaded as a necessary party.

ice-cream vendor in a mall, even if it has a "tax payment or tax surcharge clause in its lease," likely has no interest, or even "an independent right to prosecute a tax appeal in its own name.").[7]

2. Grant of Exemption and Reduction of Taxes on the Subject

The above conclusion, however, does not require a consequent grant of an exemption for a portion of the Subject. Standing to claim an exemption does not equate to a right to, or a grant of, the same. Rather, entitlement to an exemption is solely dependent upon full compliance with the exemption statute's requirements. See University Cottage Club, supra, 26 N.J. Tax at 190 ("[a]n exemption claim requires proof that all of the requirements of the particular statute permitting exemption have been met."). N.J.S.A. 54:4-3.6 grants tax exemption to a building which is "owned" by an entity that is organized "exclusively" for certain purposes, including for the moral and mental improvement of men, women and children, provided that building is actually used for the tax-exempt purpose, and not for profit. Clearly plaintiff does not meet any of these requisites.

Plaintiff is also not entitled to the grant of a partial exemption. N.J.S.A. 54:4-3.6 provides that "if any portion of a building used for" a charitable purpose "is leased to profit-making organizations," then the exemption is limited to "only" the non-leased portion. This provision is a continuation of the initial grant of exemption, thus, continues to require fulfillment of the other conditions noted above, which plaintiff does not meet.

More importantly, the plain language of the statute grants partial exemption where the lessor (landlord) is the tax-exempt entity and the lessee/tenant is a for-profit lessor, not the converse.

[7] That plaintiff paid taxes on the Subject for several years does not estop it from attempting to seek partial exemption based on a statutory allowance for the same, since an assessment for property must be set each year, thus, each tax year gives rise to an independent cause of action. N.J.S.A. 54:4-23; City of Ventnor City v. Interdenominational Foreign Missionary Soc., 13 N.J. Tax 445, 452-453 (Tax 1993), aff'd, 15 N.J. Tax 160 (App. Div. 1994). Cf. Boys Club of Clifton, Inc. v. Township of Jefferson, 72 N.J. 389, 405 (1977) (owner is not entitled to an automatic exemption, and thus, not excused from filing an appeal, even if an exemption had been granted for a prior year).

This ensures entities engaged in the moral and mental improvement of the general public would not lose the exemption solely because they lease a portion of the property to a for-profit tenant (or because a portion was not used for tax-exempt purposes). See Assembly Commerce and Industry Committee, Statement to Assembly Bill No. 2246, (Oct. 18, 1984) (proposed law granting partial exemption "would permit an association or corporation . . . organized exclusively for the moral and mental improvement of men, women and children, to retain a tax exemption on its property if a portion of the property is leased to a profit-making enterprise . . . . This bill gives this type of association the same type of exemption now available to colleges, academies or seminaries."). The thrust of the partial exemption was to remove the "exclusive use" requirement of N.J.S.A. 54:4-3.6. See Roman Catholic Archdiocese of Newark v. City of East Orange, 17 N.J. Tax 298, 318-319 (Tax 1998), aff'd, 18 N.J. Tax 649 (App. Div. 2000). It was not to extend a partial exemption to for-profit lessors.

Plaintiff argues that is immaterial who claims the exemption since in Center for Molecular Med. and Immunology v. Township of Belleville, 357 N.J. Super. 41 (App. Div. 2003), the court granted the exemption to a non-profit lessee under a 99-year lease by deeming the lessee to be an equitable owner. It points out that here also the Exchange is a lessee under a 99-year renewable lease, owns Building 2, and that the Borough has conceded that the Exchange, standing alone, would be entitled to a tax exemption.

Two responses address this argument. First, the Appellate Division's ruling cannot be seen as over-riding the plain language of the partial exemption provisions which apply only where the tax-exempt entity's property was being leased to a taxable entity. Further, the ruling did not expand the grant of a partial exemption under N.J.S.A. 54:4-3.6 to a for-profit landlord. This is apparent from (1) its holding that "[t]he most obvious purpose of Section 3.6's requirement that

the nonprofit entity own the property for it to be exempt is to prevent individuals or entities involved in business from avoiding real estate taxes by leasing their property for customary periods to entities which would otherwise qualify for the exemption." 357 N.J. Super. at 53-54; and (2) its caveat that its "infer[ence]" of equitable ownership in cases of a 99-year lessee was "at least where the owner remains a public entity." Id. at 54 (emphasis added). See also City of Trenton v. Trenton Dist. Energy Co., 21 N.J. Tax 244, 249-50 (Tax 2004) (Center for Molecular, held that "[a] long term lease of land [is] sufficient to confer ownership of property on a ground lessee for purposes of" N.J.S.A. 54:4-3.6 "provided that the ground lessor is a public entity") (emphasis added). Thus, the holding is applicable where the fee owner is also tax-exempt.

Second, the effect of a tax exemption is non-imposition of taxes upon, and non-payment of taxes by, a tax-exempt entity (if it meets all of the statutory requirements for an exemption). This result flows from the policy reasons underlying the grant of an exemption, namely, as "a quid pro quo for an essentially public service rendered to this State and its citizens . . . ." City of Plainfield v. Goodwill Home & Missions, Inc., 4 N.J. Tax 537, 540 (Tax 1982) (citing and quoting Kimberley School v. Township of Montclair, 137 N.J.L. 402, 405-06 (1948)). This quid pro quo is a "symbiotic relationship between the State and the exempt organization [where] the latter is relieved from the burden of taxation because it is practically performing a public work which the State would otherwise have to perform." Brunson v. Rutherford Lodge Number 547 etc., 128 N.J. Super. 66, 85-86 (Law Div. 1974). The deemed consideration is a necessary corollary to the exemption because "without the performance of some service essentially public which relieves the state pro tanto from the necessity of performance, the exemption becomes essentially [an impermissible] gift of public funds." Grace & Peace Fellowship Church, Inc. v. Township of Cranford, 4 N.J.

Tax 391, 399 (Tax 1982). Thus, a tax exemption relieves the non-profit from the burden of paying taxes because it is incurring costs that the State would otherwise be expending.

Here, the Borough neither imposed tax upon, nor sought to collect tax from, the Exchange. However, the Borough should not be barred from assessing taxes on the Subject and collecting the taxes from plaintiff even if the Exchange owns and occupies a portion of the same. This is because another effect or consequence of a tax exemption is that the burden of the taxes on an exempt property is borne by other taxpayers, which here is plaintiff. As explained in Whipple v. Township of Teaneck, 135 N.J.L. 345, 347-348 (E. & A. 1947):

> Exemption, as applied to taxation, is freedom from the burden of enforced contribution to the expenses and maintenance of government . . . . Tax exemption in its ordinary form frees the property from its pro rata contribution of taxes because no levy is made; . . . . In ordinary tax exemption, no levy of the tax is made against the property, but the amount of municipal tax lost falls upon the remaining taxpayers of the municipality, the amount of county tax lost is spread over all the taxpayers of the county and the amount of state tax lost, over all the taxpayers of the state; so that the impact on the remaining taxpayers of the municipality is always less than the total amount of tax levied.

See also Spoerl v. Township of Pennsauken, 14 N.J. 186, 194 (1954) ("courts have frequently expressed apprehension of the result following from the exemption of particular property, which always increases the assessment of benefits against others").

By agreeing to the terms of the Tax Payment Clause, plaintiff taxpayer has assumed the entire burden of the taxes on the portion of the Subject owned and occupied by the Exchange. For whatever business reasons, plaintiff's successor agreed to such burden. Plaintiff also agreed to be bound by the same for whatever business reasons of its own.

In sum, plaintiff has the standing to claim a partial exemption for a portion of the Subject as part of its challenge to the valuation of the Subject for tax year 2015. However, plaintiff is not entitled to a partial exemption because it does not meet the requirements of the tax exemption

statute. The above conclusion does not foreclose plaintiff from prosecuting its challenge to the valuation of the Subject based on its claim that the value does not reflect the Subject's true value.

CONCLUSION

For the foregoing reasons, the Borough's summary judgment motion is denied in part, and plaintiff's cross-motion is granted in part as to plaintiff's standing to claim the exemption. The Borough's motion is granted in part, and plaintiff's cross-motion is denied in part as to plaintiff's entitlement to, and grant of, a partial exemption. The matter will be set for trial as to plaintiff's allegation that the assessment exceeds the Subject's true value.