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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: PART 15

Index Number : 210132/1994

TRUMP PARC

vs

TAX COMMISSION

Sequence Number : 001

VACATE NOTE OF ISSUE/READINESS

INDEX NO. _____

MOTION DATE 9/15/2006

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion

FILED
DEC 13 2006
NEW YORK
COUNTY CLERK'S OFFICE

IS DECIDED

IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 12/13/2006

WALTER B. TOLUB J.S.C.

Check one: ☐ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 15

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In the Matter of the Application of

TRUMP PARC CONDOMINIUM

Petitioners,

-against-

THE TAX COMMISSION OF THE CITY OF NEW YORK, ET. AL.,

Respondents.

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Index No. 210132/94
Mtn Seq. 001

WALTER B. TOLUB, J.:

Petitioner, Trump Parc Condominium, is the owner of a building located at 106 Central Park South ("the building" or "the property"). Once the site of the Barbizon Plaza Hotel, the building was converted into a condominium in the mid-1980's and is presently comprised of 344 residential units, 76 storage units, and four commercial units.[1] The property's residential units were nearly fully occupied by 1992, with the remaining three units sold in 1995 and 2000 (Affirmation in Opposition ¶6). Petitioner asserts that the property never operated as a residential rental building (Id.) For purposes of taxation, the residential portions of the building, including the storage units, are designated as Block 1011, Lots 4004-4423.

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[1] The court recognizes that both petitioner and respondents have provided two different numbers with respect to the number of condominium residential units. Inasmuch as the actual number bears no effect on this decision, for simplicity, the court has chosen to use the numbers offered by petitioner.

Petitioner commenced proceedings pursuant to Article 7 of the Real Property Tax law for review of the assessments levied by respondents on the residential and storage units of the property for tax years 1994/1995 through 2005/2006.[2] On April 28, 2000, petitioner filed a Request for Judicial Intervention and Note of Issue for the petition related to the 1994/1995 tax year. On July 21 and 24, 2006, respondents filed Requests for Judicial Intervention and Notes of issue for the remaining years under review.

One month after filing the RJIs and Notes of Issue for the remaining years under review, respondents filed the instant application seeking, pursuant to 22 NYCRR 202.60(e) and CPLR 408, to have this court vacate all of the aforementioned Notes of Issue, including the Note of Issue filed by petitioner in 2000. The application further seeks an order directing petitioner to disclose (1)rent rolls for unsold apartments, including income information and a description of the apartments and number of rooms per apartment; (2) information regarding the level of combined annual income realized by the owners/tenants of each residential unit for each year to allow the City's expert to determine which, if any, of the units would have been eligible for rent deregulation and in which years; and (3) income and expense information for the

[2]The index numbers of these petitions are as follows: 210132/94, 210002/95, 210784/96, 211898/97, 210163/98, 210058/99, 210526/00, 209017/01, 211401/02, 203417/03, 203664/04, 200846/05.

property's commercial units.[3] Lastly, respondents seek an order dismissing any and all of the petitions filed pursuant to CPLR 3126 for which petitioner fails to provide discovery.

Discussion

The valuation of condominium properties is largely governed by Real Property Tax Law §581 and Real Property Law §339-y. Both of these provisions direct that a condominium "must be valued for assessment purposes as if it were a rental property" (Matter of East Medical Center, L.P. v. Assessor of Town of Manlius, 16 AD3d 1119, 1121 [4th Dept. 2005]; Matter of Greentree At Lynbrook Condominium No. 1 v. Board of Assessors of the Village of Lynbrook, et al., 81 NY2d 1036 [1993]). Since condominiums are generally not rent producing properties, RPTL §581 [1][a], asserting a preference for the income capitalization approach to valuation, directs that the value of the unit be fixed "at a sum not exceeding the assessment which would be placed upon such parcel were it not owned or leased on [...] a condominium basis (RPTL §581 [1][a] (emphasis added); see also, Matter of River House - Bronxville v. Hoffman, 100 AD2d 970, 973 [1984]). However, "[i]n no event shall the aggregate of the assessment of the units plus their common interests exceed the total valuation of the property were the

[3] Respondents claim that this formation was previously sought in correspondence dated January 13, 2003, April 4, 2003, December 13, 2005, February 10, 2006, June 21, 2006 and June 22, 2006.

property assessed as a parcel" (RPL §339-y [1][b]).

Both parties concede that RPTL §581 and RPL §339-y govern the assessment of the subject property. However, relying on Matter of Greentree At Lynbrook Condominium No. 1 v. Board of Assessors of the Village of Lynbrook, et al., (81 NY2d 1036 [1993]), respondents further assert that petitioner's property should be assessed as though it were subject to the laws of rent stabilization. As such, respondents claim that they are entitled to additional financial discovery from the residential and commercial owners and tenants of each condominium unit. This court disagrees.

As a preliminary matter, since it appears that the commercial assessments were not challenged, there is no valid reason supporting respondents' contention that they are entitled to additional financial information from the commercial tenants. Respondents already possess the information which generated the calculation of the commercial assessments. Any further calculations, if necessary, can be generated from the same information which is already in their possession.

Respondent is also not entitled to any financial records from the residential condominium owners and tenants. Although the Court of Appeals concluded that it was appropriate in Matter of Greentree to assess that condominium property as if it were rent stabilized, the Court did so only because all of the rental buildings in the Village of Lynbrook with at least six units were subject to rent

stabilization:

> All rental apartment buildings in the Village of Lynbrook with at least six units are subject to rent regulation under the ETPA. Thus, it follows that if the condominium status of the subject properties is to be disregarded, the properties are required to be assessed as if they are rent stabilized" (Matter of Greentree, 81 NY2d 1036 at 1039.)

Respondent's reliance on Matter of Greentree is therefore misplaced. The same logic expressed by the Court of Appeals in Matter of Greentree is simply not applicable to the New York City housing market which has rent-stabilized, deregulated, and unregulated residential rental apartments. Indeed, petitioner has conceded that none of its units are subject to rent stabilization and therefore, petitioner cannot claim that the rents in the building would be lower than rents attainable in the unregulated market.

Moreover, even if it were considered appropriate to assess petitioner's property in a manner consistent with assessing rent stabilized properties, respondents' application for additional discovery would still be denied. Much like the respondents in 1111 Park Avenue Realty Corp. v. The Tax Commissioner of the City of New York, et al., (Index No. 201871/93 (DeGrasse, J.), the sought after discovery in the instant application is identical to that which would be sought in a deregulation proceeding[4] and, as noted by

[4] Pursuant to New York City Administrative Code, if the combined threshold income of the apartment occupants exceeds the

Justice DeGrasse in his recent decision involving similar discovery demands:

> The relief respondents seek would morph discovery into a burdensome quasi administrative proceeding. It would also be unnecessary for purposes of a proper assessment.

(1111 Park Avenue Realty Corp., Decision Dated July 21, 2006, p. 3 [DeGrasse, J.).

This court is inclined to agree. There are other appropriate ways in which to determine the value of a condominium property without subjecting the individual owners to a burdensome, time consuming and unwarranted invasion of privacy. Indeed, it is very difficult to escape the conclusion that the sole purpose of this excercise is to harass the owners and tenants of condiminium units with a view towards dissuading them from challenging tax assessments.

Accordingly, respondents' motion to vacate the Notes of Issue in this matter and for an order directing additional discovery replete with conditional dismissal orders, is denied.

Counsel for the parties are directed to appear in IA Part 15, Room 335, 60 Centre Street, New York, New York, at 9:30 a.m. on January 29, 2007 at which time this court will set a deadline for the

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statutory maximum (currently $175,000 and pre-1998, $250,000) for each of the two years preceding an owner's petition, and the legal regulated rent of the apartment is at least $2000 per month, the apartment is eligible for deregulation (see, New York City Administrative Code §§ 26-504.3, 26-403.1, 26-504.2)

[* 8]

exchange of appraisals and a trial date for this matter.

This memorandum opinion constitutes the decision and order of the Court.

Dated: 12/13/06

HON. WALTER B. TOLUB, J.S.C.