IN THE COMMONWEALTH COURT OF PENNSYLVANIA

State College Baseball Club, Appellant	:	
v.	:	No. 402 C.D. 2010
	:	Argued: December 6, 2010
Centre County Board of Assessment Appeals	:	

BEFORE: **HONORABLE BONNIE BRIGANCE LEADBETTER,** President Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER **FILED: February 17, 2011**

Appellant, State College Baseball Club (the Club), appeals from the order of the Court of Common Pleas of Centre County (common pleas), which denied the Club's appeal of the decision of the Centre County Board of Assessment Appeals (Board). We reverse.

The Club is a non-profit corporation pursuant section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3), which owns real property located in Potter Township, Centre County. In addition, the Club is classified as an institution of purely public charity by the Pennsylvania Department of Revenue and is exempt from Pennsylvania sales and use tax. The property at issue is a lighted baseball complex used for recreation by the public free of charge. The

baseball complex is maintained through donations from users, private donations, volunteer labor and government grants. All money generated by the complex and received from donations is used to maintain the facilities, pay utilities and insurance and service the Club's $700,000 debt. The Club does not employ anyone and all members of the board of directors are also unpaid. Brent Pasquinelli, board president, testified that the Club runs an annual deficit of between $50,000 and $70,000. Pasquinelli also testified that the complex is open to the public for use free of charge. Further, the complex has hosted the Pennsylvania Interscholastic Athletic Association (PIAA) playoffs and State College High and Penns Valley High have both played at the facility. In addition to the Club, there are eight baseball and softball fields not located on public property in the general vicinity. The Club is the only entity that does not charge for use of its fields. The complex is currently listed for sale for $845,000 and is described as "an income producing baseball facility."

The Board assessed the value of the property at $880,000 and determined that the applicable taxes were as follows: $1,625 for Centre County tax, $387 for Potter Township tax and $9,394 for school district tax. The total annual tax assessment is $11,397. The Club filed a timely petition for review with the court of common pleas. Common pleas held a de novo hearing at which Mr. Pasquinelli testified on behalf of the Club and Mark Kellerman, chief assessor of Centre County, testified on behalf of the Board.

Common pleas affirmed the Board's assessment, holding that pursuant to *Hospital Utilization Project v. Commonwealth*, 507 Pa. 1, 487 A.2d 1306 (1985), the Club failed to satisfy the fourth of the five criteria (relief of government burden) necessary to qualify as a purely public charity under Article

VIII, § 2 of the Pennsylvania Constitution. Opinion of December 2, 2009. The Club moved for post-trial relief asserting that common pleas erred for three reasons: First, that common pleas' determination that the Club did not relieve the government of some of its burden was not supported by substantial evidence. Second, that common pleas abused its discretion in failing to properly consider the provisions of the Institutions of Purely Public Charity Act (Charity Act),[1] specifically the rebuttable presumption provided for in Section 6(a) of the Charity Act, 10 P.S. § 376(a). Finally, that common pleas erred in its legal conclusion that there must be a constitutional or statutory duty to provide the service in order for a charity to establish it has relieved the government of its burden. Common pleas denied the Club's motion for post-trial relief, holding that the Club had failed to provide any evidence to demonstrate that the public's use of the complex reduced the use of publicly owned fields. Opinion of February 24, 2010 at 2. In addition, common pleas determined that the Board had overcome the rebuttable presumption provided for in the Charity Act. *Id*. Finally, common pleas stated that it had held that the court must determine whether an institution bears a substantial burden that would otherwise fall to the government. *Id*. at 2-3. This appeal followed.

The Club challenges common pleas' decision on two bases. First, the Club asserts that common pleas erred in finding that it did not relieve the government of some of its burden. Second, the Club argues that it is entitled to the rebuttable presumption provided for in Section 6(a) of the Charity Act.

An entity seeking a real estate tax exemption bears a heavy burden and must first prove that it is a "purely public charity" pursuant to Article VIII, § 2

[1] Act of November 26, 1997, P.L. 571, *as amended*, 10 P.S. §§ 371-385.

of the Pennsylvania Constitution. *Community Options Inc. v. Bd. of Prop. Assessment, Appeals and Reviews*, 571 Pa. 672, 676-77, 813 A.2d 680, 683 (2002); *Lock Haven Univ. Found. v. Clinton County Bd. of Assessment Appeals and Revision of Taxes*, 920 A.2d 207, 210 (Pa. Cmwlth. 2007). In *Hospital Utilization Project*, the Supreme Court of Pennsylvania set forth a five part test (the *HUP* test) for determining whether an entity qualifies as a purely public charity under the Pennsylvania Constitution. An entity qualifies as a purely public charity if it:

> (a) Advances a charitable purpose;
> (b) Donates or renders gratuitously a substantial portion of its services;
> (c) Benefits a substantial and indefinite class of persons who are legitimate subjects of charity;
> (d) Relieves the government of some of its burden; and
> (e) Operates entirely free from private profit motive.

Hosp. Utilization Project, 507 Pa. at 21-22, 487 A.2d at 1317.

After an entity has satisfied the constitutional criteria, it must then prove it satisfies the statutory qualifications established by the Charity Act. *Community Options Inc.*, 571 Pa. at 680-81, 813 A.2d at 685; *Lock Haven Univ. Found.*, 920 A.2d at 912. Section 5(a) of the Act, 10 P.S. § 375(a), provides that an entity must meet the criteria set forth in subsections (b), (c), (d), (e) and (f) to qualify for a statutory tax exemption. The language of the five subsections tracks the language of the five prongs of the *HUP* test.

The Club asserts that it relieves some of the government's burden by allowing the public to use its facilities free of charge. In determining whether an entity seeking a statutory exemption for taxation is a "purely public charity," the test is whether the institution bears a substantial burden that would otherwise fall to

the government. *Community Options, Inc.* The Club relies upon *In re Sewickley Valley YMCA Decision of Board of Property Assessment*, 774 A.2d 1 (Pa. Cmwlth. 2001). In *In re Sewickley*, this court held that a YMCA relieved some of the government's burden because it gratuitously allowed school districts to use its swimming pool and athletic fields, therefore, relieving the school districts of their burden to provide the necessary facilities for their extra-curricular activities. 774 A.2d at 12.

In this case, common pleas concluded that the government had no obligation to provide adults and teens with the opportunity and facilities to play fast pitch baseball. Opinion of December 2, 2009 at 5. By constructing its complex, the Club has provided Centre County baseball players with a greater variety of playing fields at no cost to the players. Mr. Pasquinelli testified that the complex was created because there was a need for additional baseball playing fields beyond the publicly owned fields in the county. He also testified that that State College High and Penns Valley High have played at the complex and the Club has hosted the PIAA playoffs. Although the government has no obligation to provide adults and teens with baseball facilities, it is a common occurrence for the general public and amateur sports teams to make use of municipal facilities. Consequently, municipalities routinely maintain and remediate municipal playing fields damaged by the general public's use. The existence and use of the Club's complex relieves the local government of some its burdens in maintaining and repairing existing municipal playing fields by reducing stress on the fields, if not the need to add additional fields. We conclude that common pleas erred in finding that the Club failed to relieve the government of some of its burden.

The criteria of the Charity Act test are nearly identical to the elements of the *HUP* test.[2] Common pleas relied upon *Associate YM-YWHA of Greater New York/Camp Poyntelle v. County of Wayne*, 613 A.2d 125 (Pa. Cmwlth. 1992) for the proposition that the government has no obligation to provide social, recreational, or educational activities. Opinion of February 24, 2010 at 2.

Pursuant to Section 5(f)(4) of the Charity Act, an institution may satisfy the relief of government burden factor of the Charity Act test if it

> [p]rovides a service to the public which directly or indirectly reduces dependence on government programs or relieves or lessens the burden borne by government for the advancement of social, moral, educational or physical objectives.

As noted above, the existence and use of the Club's complex lessens the wear and tear on municipal fields and, accordingly relieves local government of some of its burden in maintaining playing fields. Further, the complex provides an arena for residents to socialize and exercise, obviating any need for the government to expand existing facilities. Thus, the Club satisfies all the elements of both the *HUP* test and the Charity Act test and is exempt from real estate taxation as an institution of purely public charity.[3]

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[2] Sections 5(b) – (g) of the Charity Act provide that an institution shall be considered an institution of purely public charity where the institution: (1) advances a charitable purpose; (2) operates entirely free from private profit motive; (3) donates or renders gratuitously a substantial portion of its services; (4) benefits a substantial and indefinite class of persons who are legitimate subjects of charity; (5) relieves the government of some of its burden.

[3] The Club also argues that it is entitled to the rebuttable presumption provided for by section 6 of the Charity Act. Section 6(a)(1) provides in relevant part:

> (a) PRESUMPTION DETERMINATION. -- An institution of purely public charity possessing a valid exemption from the tax imposed by Article II of the act of March 4, 1971 (P.L. 6, No. 2),

(Footnote continued on next page…)

For all the foregoing reasons, we reverse.

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President Judge

(continued…)

> known as the Tax Reform Code of 1971, shall be entitled to assert a rebuttable presumption regarding that institution's compliance with the criteria set forth in section 5 as follows:
>
> (1) An institution of purely public charity that has annual program service revenue less than $ 10,000,000 shall be entitled to assert the presumption if the institution possesses a valid exemption under section 204(10) of the Tax Reform Code of 1971.

If an institution is entitled to the rebuttable presumption that it satisfies the statutory requirements of the Charity Act, the burden shifts to the political subdivision challenging the institution to prove by a preponderance of the evidence that it does not comply with requirements of Section 5 of the Charity Act, 10 P.S. § 375 (essentially a restatement of the HUP test factors). However, a court cannot consider whether an institution is entitled to the rebuttable presumption until the court has determined that the institution satisfies the *HUP* test. *See Nat'l Church Residence of Mercer County v. Mercer County Bd. of Assessment Appeals*, 925 A.2d 220, 231 n. 24 (Pa. Cmwlth. 2007). Despite finding that the Club failed to satisfy all the elements of the *HUP* test, common pleas considered the Club's assertion that it was entitled to the Charity Act's rebuttable presumption and found that the Board had overcome the presumption. Because we have found that the Club has met its burden under both the HUP test and the Charity Act, the burden shifting provision is of no moment.

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O R D E R

AND NOW, this 17th day of February 2011, the order of Court of Common Pleas of Centre County is hereby **REVERSED**.

BONNIE BRIGANCE LEADBETTER,
President Judge

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HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Judge

OPINION NOT REPORTED

DISSENTING OPINION
BY JUDGE McCULLOUGH FILED: February 17, 2011

I respectfully dissent because I believe that the Court of Common Pleas of Centre County (trial court) did not err in denying the appeal of the State College Baseball Club (Club) from the decision of the Centre County Board of Assessment Appeals (Board), concluding that the property at issue owned by the Club, and upon which the Club operated a lighted baseball complex, was not tax exempt as a purely public charity.

The majority opinion aptly sets forth the criteria enunciated by our Supreme Court in Hospital Utilization Project v. Commonwealth of Pennsylvania, 507 Pa. 1, 487 A.2d 1306 (1985) (hereafter HUP), and later expanded by the General Assembly under section 5 of the Institutions of Purely Public Charity Act

(Charity Act), Act of November 26, 1997, P.L. 508, as amended, 10 P.S. §375, necessary to qualify for a tax exemption as a purely public charity. The issue raised in this case is whether the Club satisfied the fourth criterion of the HUP test requiring that the entity relieve the government of some of its burden. As the majority notes, in analyzing this criterion under HUP, the test is whether the institution bears a substantial burden that would otherwise fall to the government. Community Options v. Board of Property Assessment, 571 Pa. 672, 813 A.2d 680 (2002). Section 5(f)(4) of the Charity Act further provides that the government burden criterion may be satisfied if the institution:

> Provides a service to the public which directly or indirectly reduces dependence on government programs or relieves or lessens the burden borne by government for the advancement of social, moral, educational or physical objectives.

10 P.S. §375(f)(4).

First, to the extent that the Club and the majority rely on this Court 's decision in Appeal of Sewickley Valley YMCA of the Decision of the Board of Property Assessment, 774 A.2d 1 (Pa. Cmwlth. 2001), I believe that such reliance is misplaced because the facts of that matter are distinguishable from those presented here. In Appeal of Sewickley Valley YMCA, we held that the YMCA, by gratuitously allowing school districts to use their swimming pool and activity fields, relieved the school districts of their burden to provide the facilities necessary for their school-related, extra-curricular activities.[1] In that case, the school districts had a clear burden that was being relieved by the students' regular,

[1] Specifically, the school districts utilized the YMCA's swimming pools for practice and tournaments and utilized the YMCA's activity fields for lacrosse and soccer practice and tournaments. Additionally, the school districts utilized the YMCA's locker areas and showers.

on-going use of the YMCA's facilities. In fact, the school districts used the facilities in lieu of their own property.

In the present case, while the Club apparently made the complex available to local high schools and the Pennsylvania Interscholastic Athletic Association (PIAA), the evidence of record reveals that, at most, the complex was used infrequently by these entities. Indeed, the testimony of Brent Pasquinelli, president of the Club's board of directors, establishes only that the complex had hosted the PIAA playoffs and that two local high school teams had played there. I do not believe that merely providing a field in and of itself necessarily relieves the government of a burden. Further, as the trial court noted, the mere existence of publicly owned baseball and softball fields does not establish that the government has historically assumed, offered, or funded the services provided by the Club. (Trial court op. at 2.) Even the majority acknowledges that the government has no obligation to provide adults and teens with baseball facilities.

The majority speculates, without any evidentiary support in the record, that the existence and use of the Club's complex and facilities would relieve the government of its burden of maintaining and repairing existing municipal playing fields by reducing the stress on such fields that results from use by the general public and by eliminating the need to add additional municipal fields.[2] I respectfully contend that such speculation is insufficient to satisfy the government burden criterion under HUP or the Charity Act. Likewise, the fact that the Club does not charge the public for use of the field is insufficient to meet this criterion.

[2] I note that the record indicates that there are eight other non-municipal baseball and softball fields in the general vicinity.

Accordingly, I would affirm the order of the trial court.[3]

PATRICIA A. McCULLOUGH, Judge

[3] Because I would conclude that the Club failed to satisfy the criteria under HUP, I would further conclude that the Club is not entitled to the rebuttable presumption afforded by section 6 of the Charity Act, 10 P.S. §376. National Church Residences of Mercer County v. Mercer County Board of Assessment Appeals, 925 A.2d 220 (Pa. Cmwlth. 2007), appeal denied, 596 Pa. 720, 944 A.2d 759 (2008) (institution must meet the requirements of HUP before it can seek the rebuttable presumption under section 6 of the Charity Act).