

**NOT DESIGNATED FOR PUBLICATION**

**VOA WILLOWS  
AFFORDABLE HOUSING  
CORPORATION, INC.**

\*

**NO. 2000-CA-2715**

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**COURT OF APPEAL**

**VERSUS**

\*

**FOURTH CIRCUIT**

**MARINA M. KAHN,  
DIRECTOR OF FINANCE,  
CITY OF NEW ORLEANS,  
DEPARTMENT OF FINANCE**

\*

**STATE OF LOUISIANA**

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**\* \* \* \* \***

**CONSOLIDATED WITH:**

**CONSOLIDATED WITH:**

**VOA/NEW ORLEANS  
AFFORDABLE HOUSING  
CORPORATION,  
INC./WINDRUN  
APARTMENTS**

**NO. 2000-CA-2716**

**VERSUS**

**MARINA M. KAHN,  
DIRECTOR OF FINANCE,  
CITY OF NEW ORLEANS,  
DEPARTMENT OF FINANCE**

**CONSOLIDATED WITH:**

**VOA NEW ORLEANS  
TOWERS AFFORDABLE  
HOUSING CORPORATION**

**VERSUS**

**MARINA M. KAHN,  
DIRECTOR OF FINANCE,  
CITY OF NEW ORLEANS,  
DEPARTMENT OF FINANCE**

**CONSOLIDATED WITH:**

**NO. 2000-CA-2717**

**CONSOLIDATED WITH:**

**VOA/NEW ORLEANS  
AFFORDABLE HOUSING  
CORP. II/ LAKEWIND EAST  
APARTMENTS**

**VERSUS**

**MARINA M. KAHN,  
DIRECTOR OF FINANCE,  
CITY OF NEW ORLEANS,  
DEPARTMENT OF FINANCE**

**CONSOLIDATED WITH:**

**NO. 2000-CA-2718**

**CONSOLIDATED WITH:**

**VOA NEW ORLEANS  
TOWERS AFFORDABLE  
HOUSING CORPORATION  
(NEW ORLEANS TOWERS)**

**VERSUS**

**THOMAS L. ARNOLD,  
ASSESSOR, FIFTH  
MUNICIPAL DISTRICT**

**CONSOLIDATED WITH:**

**VOA NEW ORLEANS  
AFFORDABLE HOUSING  
CORPORATION II (WINDRUN  
APARTMENTS) AND VOA  
NEW ORLEANS  
AFFORDABLE HOUSING  
CORPORATION (LAKEWIND  
EAST) AND VOA WILLOWS  
AFFORDABLE HOUSING  
CORPORATION (THE  
WILLOWS)**

**VERSUS**

**ERROL G. WILLIAMS,  
ASSESSOR, THIRD  
MUNICIPAL DISTRICT**

**CONSOLIDATED WITH:**

**NO. 2000-CA-2719**

**CONSOLIDATED WITH:**

**NO. 2000-CA-2720**

**CONSOLIDATED WITH:**

**ERROL G. WILLIAMS, IN HIS  
CAPACITY AS ASSESSOR  
FOR THE THIRD MUNICIPAL  
DISTRICT FOR THE PARISH  
OF ORLEANS**

**VERSUS**

**THE LOUISIANA TAX  
COMMISSION AND VOA  
WILLOWS AFFORDABLE  
HOUSING CORPORATION,  
INC.**

**CONSOLIDATED WITH:**

**ERROL G. WILLIAMS, IN HIS  
CAPACITY AS ASSESSOR  
FOR THE THIRD MUNICIPAL  
DISTRICT FOR THE PARISH  
OF ORLEANS**

**VERSUS**

**THE LOUISIANA TAX  
COMMISSION AND VOA NEW  
ORLEANS AFFORDABLE  
HOUSING CORPORATION II**

**CONSOLIDATED WITH:**

**NO. 2000-CA-2721**

**CONSOLIDATED WITH:**

**NO. 2000-CA-2722**

**CONSOLIDATED WITH:**

**ERROL G. WILLIAMS, IN HIS  
CAPACITY AS ASSESSOR  
FOR THE THIRD MUNICIPAL  
DISTRICT FOR THE PARISH  
OF ORLEANS**

**VERSUS**

**THE LOUISIANA TAX  
COMMISSION AND VOA NEW  
ORLEANS AFFORDABLE  
HOUSING CORPORATION I**

**CONSOLIDATED WITH:**

**THOMAS L. ARNOLD, IN HIS  
CAPACITY AS ASSESSOR  
FOR THE FIFTH MUNICIPAL  
DISTRICT FOR THE PARISH  
OF ORLEANS**

**VERSUS**

**THE LOUISIANA TAX  
COMMISSION AND NEW  
ORLEANS TOWERS  
AFFORDABLE HOUSING  
CORPORATION, INC.**

**CONSOLIDATED WITH:**

**NO. 2000-CA-2723**

**CONSOLIDATED WITH:**

**NO. 2000-CA-2724**

**CONSOLIDATED WITH:**

**VOA NEW ORLEANS  
TOWERS AFFORDABLE  
HOUSING CORPORATION  
(NEW ORLEANS TOWERS)**

**VERSUS**

**THOMAS L. ARNOLD,  
ASSESSOR, FIFTH  
MUNICIPAL DISTRICT**

**CONSOLIDATED WITH:**

**VOA NEW ORLEANS  
AFFORDALBE HOUSING  
CORPORATION II (WINDRUN  
APARTMENTS) AND VOA  
NEW ORLEANS  
AFFORDABLE HOUSING  
CORPORATION (LAKEWIND  
EAST) AND VOA WILLOWS  
AFFORDABLE HOUSING  
CORPORATION (THE  
WILLOWS)**

**VERSUS**

**ERROL G. WILLIAMS,  
ASSESSOR, THIRD  
MUNICIPAL DISTRICT**

**CONSOLIDATED WITH:**

**NO. 2000-CA-2725**

**CONSOLIDATED WITH:**

**NO. 2000-CA-2726**

**APPEAL FROM  
CIVIL DISTRICT COURT, ORLEANS PARISH**

NO. 99-2933, C/W 99-2934, C/W 99-2935. C/W 99-2937,  
C/W 99-11869, C/W 99-11870, C/W 99-14143, C/W 99-14144,  
C/W 99-14145, C/W 99-14146, C/W 99-15567, C/W 99-15568

DIVISION "D"

Honorable Lloyd J. Medley, Judge

\* \* \* \* \*

**Judge David S. Gorbaty**

\* \* \* \* \*

(Court composed of Judge James F. McKay III, Judge Dennis R. Bagneris,  
Sr., Judge David S. Gorbaty)

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**AFFIRMED**

Defendants Marina M. Kahn, *et al.* appeal the denial of a motion for summary judgment filed by Thomas L. Arnold, in his Capacity as Assessor for the Fifth Municipal District for the Parish of Orleans and Erroll G. Williams, in his Capacity as Assessor for the Third Municipal District for the Parish of Orleans (“Assessors”). They also appeal the granting of the cross-motion for summary judgment filed by plaintiffs VOA Willows Affordable Housing Corp., Inc., *et al.*, wherein the trial court held that the plaintiffs are exempt from *ad valorem* taxes and ordered the City to refund such taxes, which had been paid under protest. For the reasons set forth below, we affirm.



## **FACTS AND PROCEDURAL HISTORY**

Plaintiff corporations are the owners and operators of four apartment complexes in the city of New Orleans: VOA New Orleans Towers Affordable Housing Corporation; VOA Willows Affordable Housing Corporation, Inc.; VOA/ New Orleans Affordable Housing Corporation, Inc./ Windrun Apartments; and VOA/ New Orleans Affordable Housing Corp. II/ Lakewind East Apartments (“VOA Entities”). VOA Entities originally filed suit in the above matters seeking a refund of 1999 *ad valorem* taxes paid under protest.

The Assessors moved for summary judgment, arguing that the facts divulged by the four corporations clearly showed that the corporations were not actually organized and operated exclusively for a charitable purpose. VOA Entities filed a cross-motion for summary judgment, alleging that it met the requirements of LSA-Const. Art. VII, § 21(B)(1)(a) so as to be exempt from payment of *ad valorem* taxes, and therefore was entitled to judgment as a matter of law, ordering a refund of all such taxes paid by it under protest. The plaintiffs also relied upon this court’s ruling in *New Orleans Towers Affordable Housing Corp., Inc. v. Kahn*, 98-1240, 98-1241, 98-1242, 98-1243, 98-1244, 98-1245, 98-1246 (La. App. 4 Cir. 12/29/98), 744 So. 2d 50, which found the four entities at issue in the instant case to be

exempt from *ad valorem* taxation.

After a hearing, the trial court denied the Assessors' motion for summary judgment. It granted the motion of VOA Entities, decreeing that it meets the requirements of LSA-Const. Art. VII, § 21(B)(1)(a), and that its real property is exempt from *ad valorem* taxation. The court ordered the City of New Orleans to refund the 1999 real property taxes paid under protest. The Court further granted the mandamuses sought by the Entities and ordered the Assessors to treat the properties of VOA Entities as tax exempt.

## **DISCUSSION**

Appellate courts review summary judgments *de novo*, using the same criteria applied by trial courts to determine whether summary judgment is appropriate. *Guy v. McKnight*, 99-2284 (La.App. 4 Cir. 2/16/00), 753 So.2d 955, writ denied, 2000-0841 (La. 6/16/00), 764 So.2d 963; *Reynolds v. Select Properties, Ltd.*, 93-1480 (La. 4/11/94), 634 So.2d 1180.

Summary judgment is properly granted only if the pleadings and evidence show that there is no genuine issue of material fact, and that the

mover is entitled to judgment as a matter of law. La. C.C.P. Art. 966 (C). Article 966 has recently been amended; the burden of proof remains with the mover to show that no genuine issue of material fact exists. Now, however, once the mover has made a prima facie showing that the motion should be granted, the burden shifts to the non-moving party to present evidence demonstrating that material factual issues remain. Once the motion for summary judgment has been properly supported by the moving party, the failure of the non-moving party to present evidence of a material factual dispute mandates the granting of the motion. See *Hayes v. Autin*, 96-287 (La. App. 3 Cir. 12/26/96), 685 So.2d 691. We must review the summary judgment with reference to the substantive law applicable to the case. To affirm summary judgment, we must find that reasonable minds would inevitably conclude that the mover is entitled to judgment as a matter of the applicable law on the facts before the court. *Washington v. State, Dept. of Transp. & Development*, 95-14 (La. App. 3 Cir. 7/5/95), 663 So.2d 47.

Defendants assert that the trial court erred in denying the Assessors' motion for summary judgment, arguing that there is no genuine issue of fact and no factual support for the Entities' claim that they are organized and operated exclusively for charitable purposes. However, the denial of a motion for summary judgment is a non-appealable interlocutory judgment

and is not properly before this court. We decline to exercise our supervisory jurisdiction over this matter.

Defendants further contend that the cross-motion for summary judgment was incorrectly granted because the VOA Entities failed to prove that the corporations were organized and operated exclusively for charitable purposes. They aver that genuine issues of material fact remain as to whether any part of the net earnings of the businesses inure to the benefit of the corporations' members. The root of their argument lies within the *New Orleans Towers Affordable Housing* opinion, which addressed the City's lack of proof on this issue:

As to the contention that N.O. Towers was a commercial enterprise operating under the 'cloak of a non-profit organization,' the trial court noted that the City had offered no proof whatsoever to support this argument, despite having been given adequate time for discovery. On the other hand, it found that N.O. Towers offered proof to support its claim to tax exempt status, specifically, an IRS ruling that providing adequate housing or affordable housing to low income families is a charitable purpose.

*Id.* at 53.

In its reasons for judgment in the instant case, the trial court opined:

Defendants' interpretation of this aspect of the Fourth Circuit's opinion as determinative is not sufficiently proven to prevail on the Motion for Summary Judgment. Contrariwise, the VOA Entities have established very clearly in their Cross-Motion that they

are in complete compliance with the requirements of the Louisiana Constitution for tax exemption of their property. The Assessors assert that defendants have used profits from their operations of four apartment complexes improperly. However, there is no proof whatsoever that this is so. On the other hand, the VOA Entities have shown affirmatively that they do not use any of such profits for any purpose other than to support the operation of those properties. The Court finds affirmatively that there is no private inurement which is one of the qualifying provisions for exemption in the Constitution and also finds that the other provisions for exemption are followed scrupulously by the VOA Entities.

It is well settled that as long as a non-profit organization is benefiting the purpose for which it was organized, it is not a commercial entity, and is tax exempt. *Bd. of Administrators of the Tulane Educ. Fund v. La. Tax Comm'n*, 97-0663, 701 So.2d 702 (La.App. 4<sup>th</sup> Cir. 10/1/97) [sic]. Without more, the court finds that the decision of *New Orleans Towers Affordable Housing* [citation omitted] is controlling in this matter.

After reviewing the record, we find that it supports the rulings of the trial court.

## **CONCLUSION**

No genuine issues of material fact exist. Accordingly, for the foregoing reasons, the judgment of the trial court is affirmed.

**AFFIRMED**

