Matter of Rotunda Realty Corp. v Tax Commn. of the City of N.Y.
2016 NY Slip Op 31205(U)
June 27, 2016
Supreme Court, New York County
Docket Number: 262781/10
Judge: Martin Shulman

[* 1]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 1

----------X

In the Matter of

ROTUNDA REALTY CORP.,
Petitioner,

-against-

THE TAX COMMISSION OF THE CITY OF NEW YORK and THE COMMISSIONER OF FINANCE OF THE CITY OF NEW YORK,
Respondents.

Index No. 262781/10

Decision & Order

Block 484, Lot 23

----------X

In the Matter of

JACQUES, LLC,
Petitioner,

-against-

THE TAX COMMISSION OF THE CITY OF NEW YORK and THE COMMISSIONER OF FINANCE OF THE CITY OF NEW YORK,
Respondents.

Index Nos.
253346/11
258220/12
256233/13
250234/14

----------X

In the Matter of

WB REALTY PARTNERS, LLC,
Petitioner,

-against-

THE TAX COMMISSION OF THE CITY OF NEW YORK and THE COMMISSIONER OF FINANCE OF THE CITY OF NEW YORK,
Respondents.

Index No. 251956/15

----------X

SHULMAN, J.:

Petitioners move for partial summary judgment in the first of the above-captioned Real Property Tax Law ("RPTL") Article 7 proceedings,[1] specifically seeking an order

[1] Petitioners are related entities which presently own or formerly owned the real property at issue herein during the following time periods: Rotunda Realty Corp. (1971 through 2010); Jacques LLC (2010 through July 2014); and WB Realty Partners, LLC (July 2014 to date). See Motion at Exh. 2. Petitioners filed petitions pursuant to RPTL Article 7 for tax years 2010/2011 through 2015/2016, as captioned above.

directing respondents to reclassify the real property at issue as Tax Class 2, Subclass 2A for tax years 2010/2011 through 2015/2016, to correct the property's assessed valuation for all such years in accordance with RPTL §§ 1805(2) and (6) and to issue a refund for overpaid taxes for this period in accordance with petitioner's proposed method of calculation (see Schneider Aff. in Supp. of Motion at ¶16). Although the motion has been brought under the oldest index number, all of the above captioned actions are deemed consolidated for purposes of this motion.

The real property at issue is a four story building located at 499 Broadway in Manhattan (the "property" or "building"). According to the certificates of occupancy issued for the property in 1987 and 2011 (Motion at Exhs. 3 and 4), since 1987 the building has contained five residential units on floors two through four, while the ground floor and cellar space was originally listed as "storage" space in 1987, then as "retail" space in April 2011. Petitioners allege that although the building has been primarily used for residential purposes since 1987, the New York City Department of Finance ("DOF") mistakenly classified it in Tax Class 4 as a loft building with a store from 1987 through 2015, rather than as a Tax Class 2 property.

Petitioners' motion seeks a recalculation of the building's assessed valuation ("AV") for the challenged tax years to reflect RPTL §1805(2)'s statutory caps on increases to property assessments and to correct the value attributed to certain building alterations, which amount was added to the property's AV in the 2010/2011 tax year to conform with RPTL §1805(6).[2]

[2] Petitioners contend that respondents valued the alterations to the property at $660,000 and added $297,000 (45% of $660,000) to the property's AV, when in fact, if

Respondents do not oppose the portion of petitioners' motion seeking reclassification of the property from Tax Class 4 to Tax Class 2, Sub-Class 2A for tax years 2010/2011 through 2015/2016 and as such, this portion of the motion is granted.[3] Nor do respondents dispute petitioners' calculation of the 15% increase pursuant to RPTL §1805(6) for improvements to the building in tax year 2010/2011.

However, respondents oppose petitioners' proposed calculation of the building's AV for the tax years at issue, and cross-move for partial summary judgment declaring that the 2010/2011 tax year is the first year that RPTL §1805(2) applied or would have applied to the property. Respondents specifically take issue with petitioners' recalculation because petitioners propose to apply RPTL §1805(2)'s statutory limitations on assessments going back to tax year 1987/1988, when they have challenged only tax years 2010/2011 through 2015/2016.

Discussion

An award of summary judgment is appropriate when no issues of fact exist. *See* CPLR 3212(b); *Sun Yau Ko v Lincoln Sav. Bank*, 99 AD2d 943 (1st Dept), *affd* 62 NY2d 938 (1984); *Andre v Pomeroy*, 35 NY2d 361 (1974). In order to prevail on a motion for summary judgment, the proponent must make a *prima facie* showing of entitlement to judgment as a matter of law by providing sufficient evidence to eliminate any material issues of fact. *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 (1985);

---

properly classified, the building would only have been subject to a 15% increase ($99,000).

[3] Respondents' counsel states that the building has already been reclassified as Tax Class 2, Sub-Class 2A for the 2016/2017 tax year.

Alvarez v Prospect Hosp., 68 NY2d 320, 324 (1986). Once such proof has been offered, in order to defend the summary judgment motion, the opposing party must "show facts sufficient to require a trial of any issue of fact." CPLR 3212(b); *Zuckerman v City of New York*, 49 NY2d 557, 562 (1980); *Freedman v Chemical Const. Corp.*, 43 NY2d 260 (1977).

The relevant facts herein are not disputed and summary judgment is appropriate where, as here, the only dispute involves statutory interpretation.[4] RPTL §1805(2) provides that assessments for Class 2 properties having less than eleven residential units shall not increase by more than 8% in any one year or 30% in any five year period, as follows:

> The assessment roll of a special assessing unit wholly contained within a city shall identify those parcels classified in class two which have fewer than eleven residential units. The assessor of any such special assessing unit shall not increase the assessment of any parcel so identified in any one year, as measured from the actual assessment on the previous year's assessment roll, by more than eight percent and shall not increase such assessment by more than thirty percent in any five-year period. The first such five-year period shall be measured from the individual assessment appearing on the assessment roll completed in nineteen hundred eighty-one provided that, if such parcel would not have been subject to the provisions of this subdivision in nineteen hundred eighty-one had this subdivision then been in effect, the first such five-year period shall be measured from the first year after nineteen hundred eighty-one in which this subdivision applied to such parcel or would have applied to such parcel had this subdivision been in effect in such year.

Consistent with its prior decision in *Oakwood Condominium v Tax Comm. of City of New York*, 2012 WL 1802563, NY Slip Op 31249(U) ("*Oakwood*"), this court agrees

[4] This court rejects respondents' procedural objections to petitioners' motion for partial summary judgment as the purported defects were remedied in reply (to wit, RJI's were filed under all index numbers and copies of each petition were annexed) and respondents suffered no prejudice as a result thereof.

with respondents' interpretation of RPTL §1805(2). Tax year 2010/2011, the first year in which the building will be properly classified in Class 2, is the first year RPTL §1805(2) applies to this property. As such, 2010/2011 is the base year for measuring the thirty percent limitation on assessments over a five year period. Further, the 2010/2011 assessment cannot exceed eight percent of the 2009/2010 assessment, as follows:

Tax Year	Actual AV	Corrected AV	Change in AV
2009/2010	$ 832,500	$ 832,500	
2010/2011	$1,215,000	$ 998,100	8% + $99,000
2011/2012	$2,111,400	$1,077,948	8%
2012/2013	$2,735,100	$1,164,184	8%
2013/2014	$2,890,134	$1,257,319	8%
2014/2015	$3,136,950	$1,297,530[5]	30% of $998,100
2015/2016	$3,559,950	$1,297,530	30% of $998,100

In *Oakwood*, this court rejected the "rollback" method of calculation that petitioners urge, citing the statutory language and stating: "There is simply no basis to recalculate the subject property's AV for the . . . [the] tax years [at issue] by going back . . . and applying RPTL §1805(2)'s 8% and 30% caps retroactively. To do so would effectively rewrite history." (Bracketed matter added).

The statute's plain language provides that RPTL §1805(2)'s benefits expressly extend to Tax Class 2 properties which have been identified on the tax assessment roll as having fewer than eleven residential units. The first year petitioners' property is to be identified as such on the assessment roll is tax year 2010/2011. Petitioners failed to challenge the classification error prior to that year and thus are not entitled to claim the

[5] Eight percent of $1,257,319 totals $1,357,905, which exceeds thirty percent during this five year period.

statute's benefits for prior unchallenged tax years. *See, e.g., Epstein v Tax Commissioner of City of New York* (Kings County Index No. 24024/89, April 16, 1990 [S. Leone, J]), at Exh. A to Respondents' Memorandum of Law in Opp. to Petitioners' Motion for Partial Summary Judgment and in Supp. of Cross-Motion for Partial Summary Judgment.

Here, with respect to the 8% yearly cap, the statute expressly provides that it is to be "measured from the actual assessment on the previous year's assessment roll". Thus, in calculating any refund due to petitioners for the 2010/2011 tax year and subsequent tax years, the actual assessment for tax year 2009/2010 is the starting point.

For the foregoing reasons it is hereby

ORDERED that the portion of petitioners' motion seeking an order directing respondents to reclassify the subject property as Tax Class 2, Sub-Class 2A for tax years 2010/2011 through 2015/2016 is granted on consent, as is the portion thereof regarding the calculation of building improvements added to the subject property's assessed valuation in tax year 2010/2011; and it is further

ORDERED that the remaining portions of petitioners' motion are granted to the extent that respondents are directed to correct the subject property's assessed valuations for tax years 2010/2011 through 2015/2016 to reflect RPTL §1805(2)'s limitations, which shall be calculated in accordance with this decision, and to refund any overpayments to petitioners; and it is further

ORDERED that petitioners' motion is denied to the extent that the calculation of the subject property's assessed valuation for the challenged tax years is rejected; and it is further

ORDERED that respondents' cross-motion is granted.

Counsel for petitioners shall submit proposed orders implementing this decision's terms to chambers.

The foregoing is this court's decision and order.

Dated: June 27, 2016

Martin Shulman, J.S.C.