



New York Court of Appeals case flips over tax grievance challengers - by Keith Brown and David Pernick

November 05, 2019 - Long Island

Keith Brown,
Brown & Altman, LLP

David Pernick,
Brown & Altman, LLP

The New York Court of Appeals recently decided a case which will dramatically change the requirements for initiating review of real estate tax assessments, triggering additional concerns that property owners in NYS should consider when drafting lease agreements. In *Larchmont Pancake House v. Bd. of Assessors*, 32 N.Y.3d (2019), the Court of Appeals ruled in favor of the municipality,

finding that the beneficiary to a trust lacked proper standing to authorize the commencement of a tax certiorari action in connection with a parcel of real property that was held in the trust's corpus, when that action was commenced not in the name of the trust or record owner, but in the name of the family business that operated the property and paid the taxes.

Under NYS' Real Property Tax Law (RPTL), a party who is dissatisfied with a property value assessment may seek administrative review by filing a tax grievance with the municipal assessor or board of assessment review. Section 524 of the RPTL requires that a complaint be "made by the person whose property was assessed, or by some person authorized in writing by the complainant or his officer or agent to make such a statement who has knowledge of the facts stated herein." Once an action to grieve property taxes is properly filed, the party may seek judicial review of the tax assessment.

This appeal arose out of four property tax certiorari proceedings challenging the annual tax assessments on real property located in the town of Mamaroneck and operated as an "International House of Pancakes" restaurant. The property was originally owned by Frank and Susan Carfora, the proprietors of the restaurant (operated under the corporate name, Larchmont Pancake House, Inc.). The Carforas held the property jointly until Frank's death, after which Susan became the sole owner. Susan died in 2009 and the property was transferred to a revocable trust, pursuant to her will. Pursuant to the trust, four years later the property was transferred to an LLC controlled by Carfora's daughters, Irene and Portia. During the four years between Susan's passing and the transfer of title to her daughters, Portia, as petitioner on behalf of the trust, authorized the grievance of the subject property tax assessments filed in the name Larchmont Pancake House. Each action was contested by the municipality based upon the Petitioner's alleged lack of standing after four years.

Ultimately, the Court of Appeals concurred with the local municipality, finding that Larchmont Pancake House lacked standing to bring these actions because, although it paid the taxes, it had no written, legal obligation to do so. Liability to pay the property taxes rested with the trust, not the petitioner. As the Court of Appeals found, the petitioner lacked standing to bring the certiorari proceedings because: (1) it had no direct legal obligation to pay the taxes; and (2) no written right to commence the proceedings. A lengthy dissent criticized the majority for the Court's abandonment of the pleading requirements in a case, which involved a small closely held family business.

This decision will have a dramatic impact on the terms included in commercial and residential lease agreements. Property taxes are generally paid by the tenant as part of their rent payment. However, tax grievance clauses are heavily negotiated among multinational and sophisticated property owners and real estate developers who may not want to afford their tenants the ability to grieve the taxes. The Larchmont decision means that the tenant no longer has the right to bring the grievance, unless they both: (1) directly pay the property taxes; and (2) have a contractual obligation to do so. Thus, from the tenant's point of view, it would be important to include a section in a lease agreement that expressly grants the tenant the permission to challenge the tax assessment.

The Court of Appeals' decision in Larchmont has caused landlords and tenants to more closely examine lease provisions to ensure the right to bring a tax certiorari claim is clearly spelled out and

conforms to the Larchmont holding. It is no longer sufficient for a tenant to merely pay the property taxes. According to Section 524 of the RPTL, to effectively afford the tenant standing to grieve the annual real property taxes, the tenant must be contractually obligated to do so. Without such a contractual obligation, the property owner is the only party with standing to grieve the property taxes.

Keith Brown is managing partner and David Pernick is an associate attorney at Brown & Altman, LLP, Melville, NY

New York Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540