

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1253

CA 12-00514

PRESENT: SMITH, J.P., CENTRA, LINDLEY, AND WHALEN, JJ.

IN THE MATTER OF ONTARIO SQUARE REALTY CORP.,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

ASSESSOR OF THE TOWN OF FARMINGTON, DONNA
LAPLANT, RESPONDENT-RESPONDENT.

PANZARELLA & COIA, P.C., ROCHESTER (CHAD M. HUMMEL OF COUNSEL), FOR
PETITIONER-APPELLANT.

BOYLAN CODE LLP, ROCHESTER (SHEILA M. CHALIFOUX OF COUNSEL), FOR
RESPONDENT-RESPONDENT.

Appeal from an order of the Supreme Court, Ontario County
(Kenneth R. Fisher, J.), entered January 26, 2011 in a proceeding
pursuant to RPTL article 7. The order granted the motion of
respondent to dismiss the petition.

It is hereby ORDERED that the order so appealed from is
unanimously affirmed without costs.

Memorandum: Petitioner commenced this RPTL article 7 proceeding
seeking review of the real property tax assessment of its property.
Supreme Court properly granted respondent's motion to dismiss the
petition on the ground that petitioner failed to serve the notice of
petition and petition within the applicable time period provided in
CPLR 306-b. In opposing the motion, petitioner's attorney submitted
an affirmation seeking an extension of time for service in the
interest of justice. Contrary to petitioner's contention, it "was
required to serve a notice of cross motion in order to obtain the
affirmative relief of an extension of time to serve the [petition with
a notice of petition or an order to show cause] upon [respondent]
pursuant to CPLR 306-b" (*Lee v Colley Group McMontebello, LLC*, 90 AD3d
1000, 1000-1001; see *DeLorenzo v Gabbino Pizza Corp.*, 83 AD3d 992,
993). In any event, the court properly considered all of the relevant
factors in determining whether to extend the time for service in the
interest of justice (see CPLR 306-b; *Leader v Maroney, Ponzini &
Spencer*, 97 NY2d 95, 105-106; *Brown v Wilson Farms, Inc.*, 52 AD3d
1324, 1324-1325), and the court properly denied petitioner's request
for that relief (see *Eggleston v A.C. & S., Inc.*, 17 AD3d 1167, 1167-
1168).

Entered: November 9, 2012

Frances E. Cafarell
Clerk of the Court