

**Matter of Larchmont Pancake House v Assessor and
the Bd. of Assessment Review of the Town of
Mamaroneck**

2015 NY Slip Op 32901(U)

May 15, 2015

Supreme Court, Westchester County

Docket Number: 23182/10

Judge: Bruce E. Tolbert

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

PRESENT: HON. BRUCE E. TOLBERT, J.S.C.

DECISION AND ORDER

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In the Matter of the Application for a Review
under article 7 of the Real Property Tax Law of a
Tax Assessment by,

Index #'s: 23182/10
14769/11
64930/12
64216/13

Larchmont Pancake House,
Petitioner,

-against -

The Assessor and the Board of Assessment Review
of the Town of Mamaroneck and the Town of Mamaroneck,
County of Westchester, New York,
Respondents.

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The following papers numbered 1-22 were read on Respondents' Motion for Summary Judgment:

DOCUMENTS NUMBERED

Respondents' Motion to Dismiss, Affirmation and Exhibits	1 - 10
Respondents' Memorandum of Law	11
Affirmation in Opposition and Exhibits	12 - 20
Petitioner's Memorandum of Law	21
Reply Memorandum of Law	22

This Motion was brought by the Respondents seeking Summary Judgment and the dismissal of the instant proceeding. Additionally sought by the Respondents are costs and disbursements in these proceedings.

The Respondents had a prior application before this Court specific to a 2009 Tax Certiorari matter. In that case, the Respondents argued that the Petitioner in those proceedings wholly failed to satisfy a condition precedent necessary to challenge the 2009 assessment of the real property. Now before this Court is a new application, on a similar premise. This involves the tax years of 2010, 2011, 2012 and 2013.

The real property is located in the Town of Mamaroneck, New York, and is designated as Block 441, Lot 196. What is alleged by the Respondents herein is that the Petition should

be dismissed because the Petitioner did not satisfy a condition precedent for challenging the assessment of the real property involved and accordingly the Court lacks subject matter jurisdiction. Additionally alleged is that the Petitioner is not an “aggrieved party” and therefore lacks the capacity to sue.

Looking into the specific facts of this matter, it is clear that on said premises an International House of Pancakes franchise is operated. The Petitioner, Larchmont Pancake House is a family - owned and operated business, which was founded by Frank and Susan Carfora. The Larchmont Pancake House Corporation, on June 1, 2010 the taxable status date, was no longer owned by the Carfora’s but by their children. The facts dictate that upon the death of Susan Carfora on October 15, 2009, pursuant to her will, all of the residue of her estate would be put into a Trust whose beneficiaries were her two children, one being Portia DeGast.

The corporate entity, Larchmont Pancake House, paid all of the property taxes. Portia DeGast, one of the Carfora’s daughters served as the President of the corporation and in fact was one of the owners. Ms. DeGast signed the Petition. Ms. DeGast was also designated as attorney-in-fact over the affairs of Susan Carfora, upon the execution of a Durable Power of Attorney executed on February 2, 2006. In 2013, the subject property was conveyed to the beneficiaries of the Trust, Portia DeGast being one of them.

Respondents’ contention is that the Petition is not signed by the owner of the property in that the Petitioner corporation or Ms. DeGast did not own the property on the day of the signing of the Petition, and that the Petition should be dismissed based upon the a precondition of the assessment challenge under as such is required by RPTL Section 524 for the Complaint. This Court’s query, would be well if neither Petitioner nor Ms. DeGast did not own the property, who did? Does property own itself? The latter question being whimsical at best. Ms DeGast was one of the beneficiaries of a Trust which owned the property and she was the President of the Petitioner Corporation. Who would have been the person or entity to be the better Petitioner? If the concept would have been both trustees, this Court is not going to hang the decision on that simplistic peg.

The more interesting debate falls under the requirement that under RPTL Section 704 The petitioner needs to be the “aggrieved party”. Well why the person who pays the taxes is **not** the aggrieved party is quite confusing to this Court. Although, the Court is mindful that both sections of the Real Property Law are not consistent linguistically, the Court is mindful of what the legislative intent is.

They mix and match “owner” and “aggrieved party” and then this Court believes that it is required to understand what is really the purpose of the legislation. The facts are quite case specific or case sensitive in some of these cases, and this Court finds that the case at bar cannot be simplistically put in the dismissal pile, because to this Court it would seem against what the legislative intent is.

The Respondent municipality, cites the case of In Re Circulo Housing Dev. Fund Corp. v. Assessor, 96 A.D. 3d 1053 (2nd Dept.), indicating that the holding of *Circulo* by the Appellate Division, would in fact require this Court to dismiss the case at bar. Although, this Court does

believe that *Circulo* is an interesting case decided by the Appellate Division, it does not dictate the ruling herein. This Court finds that *Circulo* is clearly distinguishable in its facts. The *Circulo* facts are not identical and not specifically on point, and it must be noted that *Circulo* was a tax exemption case. In *Circulo*, a proceeding was commenced under Article 7 of the Real Property Law. Such filing involved three properties. The Circulo Housing Development Fund Corporation was specifically formed to operate and maintain housing projects. So the concept of ownership was clear in that case, in that The Circulo Housing Development was an operator and not an owner. The Circulo Housing Development Fund Corporation was in fact created to be an operator.

Moreover, the fact that the Town waited so many years after the filing, for the municipality to complain of this technicality seems a bit disingenuous. It does also appear that even on the Town of Mamaroneck's website, it indicates that "Any person aggrieved by an assessment may file a complaint". If in fact the Town believed that the Petitioner was not technically the owner of the property at the time of the filing of the grievance, clearly as an administrative act, dismissal could have taken place at that juncture. All that was done, was the denial of the grievance, hence leading to the instant Court proceeding.

In reviewing the pertinent sections of the RPTL this Court finds that Portia DeGast was properly empowered to authorize the filing of this matter, and therefore this Court does not see reason why a dismissal would be justified. The Court of Appeals has held that the RPTL as it relates to the review of assessments is remedial in nature and should be liberally construed so that a tax payer's right to have their assessment reviewed is not defeated by a technicality. See, W.T. Grant Corp. v. Srogi, 52 N.Y. 2d 496 (1981). Portia DeGast was an aggrieved party with the necessary standing to institute the proceedings herein.

Accordingly, this Court **denies** Respondents' Motion to Dismiss in its entirety. This Court shall simultaneously Order an Amended Scheduling Order with this Decision and Order, laying out the time table proscribed by this Court for future proceedings herein.

Dated: White Plains, New York
May 15th 2015


HON. BRUCE E. TOLBERT, J.S.C.

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