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COURT OF APPEALS

STATE OF NEW YORK

IN THE MATTER OF
LARCHMONT PANCAKE HOUSE,

Appellant,

-against-

NO. 16

BOARD OF ASSESSORS, ET AL.,

Respondents.

20 Eagle Street
Albany, New York
February 13, 2019

Before:

CHIEF JUDGE JANET DIFIORE
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE LESLIE E. STEIN
ASSOCIATE JUDGE EUGENE M. FAHEY
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE PAUL FEINMAN

Appearances:

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1 CHIEF JUDGE DIFIORE: The next appeal on this
2 afternoon's calendar is appeal number 16, Matter of
3 Larchmont Pancake House v. the Board of Assessors.

4 Okay. Good afternoon, counsel.

5 MR. CLYNE: Good afternoon, Your Honor. Madam
6 Chief Justice and Associate Justices, may it please the
7 court, Kevin M. Clyne for the appellant, Larchmont Pancake
8 House.

9 Your Honors, may I reserve two minutes for
10 rebuttal?

11 CHIEF JUDGE DIFIORE: You may, sir.

12 MR. CLYNE: Thank you.

13 The Real Property Tax Law - - -

14 JUDGE RIVERA: Counsel, I'm sorry. Do - - - I
15 just need to clarify something. At the point of the death
16 of the mother who creates the trust, one - - - once she has
17 passed away - - -

18 MR. CLYNE: Yes.

19 JUDGE RIVERA: - - - what's the status under the
20 trust of Ms. DeGast?

21 MR. CLYNE: Mrs. De - - - Ms. DeGast, at that
22 point, is the devisee of the trust. And as the trust is
23 effectuated and implemented, she eventually becomes, by
24 terms of the trust, the - - - the property is devised to
25 her in fee - - -



1 JUDGE RIVERA: So she's has a vested - - -

2 MR. CLYNE: - - - where she eventually owns it.

3 JUDGE RIVERA: She's got a vested interest.

4 MR. CLYNE: She has an interest day one, Your
5 Honor.

6 JUDGE RIVERA: She had a reversionary, maybe,
7 future interest before this, because it was revocable, but
8 at this point, it's vested - - -

9 MR. CLYNE: She had an ownership interest at that
10 time.

11 JUDGE RIVERA: She's going to get this property,
12 or her heirs, I assume.

13 MR. CLYNE: Absolutely.

14 JUDGE RIVERA: Okay.

15 JUDGE GARCIA: But is there - - -

16 MR. CLYNE: She had multiple levels of interest.

17 JUDGE RIVERA: All right.

18 JUDGE GARCIA: Is there a time limit for that to
19 happen? I'm - - - I'm not - - - I read it, and it seems
20 like upon the death of - - - of the person who made out the
21 will, that this is going over to the named beneficiaries,
22 but it seems to take four years.

23 MR. CLYNE: Well, Your Honor, it - - - the - - -
24 I guess, we - - - we cannot hold, especially in a remedial
25 statute, Ms. DeGast responsible for how long this trust



1 took to be effectuated. It was also being - - - it was a
2 New - - - it was - - - part of the property was in New
3 Jersey; part was in New York. It was complicated. I don't
4 really - - -

5 JUDGE GARCIA: What were the terms of the trust?
6 Was there a time that that had to happen?

7 MR. CLYNE: I don't think that - - - no, I don't
8 think that there is a time that has - - - that has to
9 happen.

10 JUDGE GARCIA: So up until the time - - -

11 MR. CLYNE: I think the certainly that it would
12 happen is the relevant fact.

13 JUDGE GARCIA: But up until the time the trustees
14 decide to do it, it's - - - that property's in trust. It's
15 held by the trust?

16 MR. CLYNE: That - - - that's correct.

17 JUDGE STEIN: And just - - - I think it was - - -
18 at least to me - - - somewhat confusing throughout all of
19 the arguments in this case being made, where there seemed
20 to be a conflation between the trust, the trustee, the
21 trust beneficiaries, the - - - you know, the - - - the
22 business, and it seemed to me that Ms. DeGast was arguing
23 that her authority to - - - to commence this proceeding was
24 as the president of the business, not as the - - - the
25 devisee of the trust.



1 MR. CLYNE: Well, Your Honor, her - - - her
2 interest and her authority was - - - there were several
3 layers of that interest. She was the owner of the business
4 that was operating out of the property. She was a devisee
5 under the trust. And she was a - - - she was - - - and
6 under a Mack v. Ramapo type analysis, this was comparable
7 to a contract vendee, with the certainty that she would
8 eventually become the owner of the property, but she had
9 multiple levels of interest in this real estate, and the
10 standard here is, whether or not this assessment had direct
11 adverse impact on her pecuniary interest. It did on
12 several levels.

13 JUDGE RIVERA: Can I - - - can I ask so, the - -
14 - the trust, or the trustee, is responsible for the corpus.
15 I would think they get the tax bills. Did they send it to
16 her? I mean, how does she know what to pay? How does she
17 know what the bill is? What - - -

18 MR. CLYNE: On top of - - -

19 JUDGE RIVERA: - - - basically, the mechanics.

20 MR. CLYNE: On top of her multiple other
21 relationships, there's a familial relationship.

22 JUDGE RIVERA: Okay.

23 MR. CLYNE: Quite right, Your Honor, she - - -
24 Larchmont Pancake House paid these taxes every year.

25 JUDGE RIVERA: No, I understand that, yes.



1 JUDGE STEIN: What about the fact that she was
2 under no obligation to do that? She voluntarily did that.

3 MR. CLYNE: Well - - -

4 JUDGE STEIN: Does that make a difference?

5 MR. CLYNE: No, I don't think it does, Your
6 Honor. I think the - - - the - - - the standard real - - -

7 JUDGE STEIN: Also, if she said, I'm - - - I'm
8 not going to pay this anymore, what - - - what would have
9 happened?

10 MR. CLYNE: She - - - she would have - - - the
11 property - - - the property would have been lost. Her
12 business would - - - would have been threatened. Her
13 familial connections to the property - - -

14 JUDGE STEIN: Well, maybe the trust - - - it - -
15 - it would have been paid out of the trust?

16 MR. CLYNE: Well, she also had an eventual
17 ownership interest in the property, but her business was
18 operating there, Your Honor. She - - - there were - - -
19 again, did it have a direct adverse impact on her pecuniary
20 interest? It did.

21 JUDGE GARCIA: It clearly isn't enough, right?
22 The - - - just the direct impact is not enough. I mean,
23 you can not pay the taxes. You can pay the taxes to the
24 landlord. If the landlord doesn't pay, it's going to be a
25 direct impact, and we've said that's not enough, right?



1 MR. CLYNE: Right, well, yeah. It - - - in - - -
2 in cases where it could be interpreted as remote or
3 consequential, but that's not the case here.

4 JUDGE GARCIA: But that's consequential. I pay
5 my landlord the taxes, and if he doesn't or she doesn't
6 turn - - - turn them over to the Taxing Authority, I lose
7 my house. That's not that remote, right?

8 MR. CLYNE: It is - - - well, in this particular
9 case, because of all the relations of Ms. DeGast and
10 Larchmont Pancake House, the petitioner here, to this
11 property - - -

12 JUDGE GARCIA: Does the Taxing Authority have to
13 look at that? I mean, does it have to say, you know, okay,
14 what are the terms of the trust? Could they sell the
15 property during the four years they held it before they
16 distributed it or not? Is it revocable - - - revocable
17 trust or not? Why isn't it a very simple rule that is, if
18 you're paying the taxes directly, and you have an
19 obligation to pay, you have the right to bring this action?

20 MR. CLYNE: Your Honor, the Board of Assessment
21 Review, if there were questions, the - - - there - - - the
22 - - - what the respondent is arguing here is that you have
23 to be the owner and only the owner. The Board of
24 Assessment Review has the authority to bring in, take
25 testimony, question this. That is part of their function.



1 JUDGE GARCIA: To question, what?

2 MR. CLYNE: To question who may or may not have
3 an interest, whether or not there is documentation that
4 they may need to - - - to - - -

5 JUDGE GARCIA: And then hire a trust lawyer to
6 look at the trust agreement? Because your argument seems
7 to be centered a lot on the beneficiary of the trust now.

8 MR. CLYNE: It's not just the trust documents,
9 Your Honor. It's, again, her business relationship to the
10 property - - -

11 JUDGE STEIN: But isn't the point of their
12 authority to determine who the owner is? I mean, that's
13 something that - - - that, you know - - - this is not a
14 court. This is an administrative proceeding, and - - -
15 and, you know, maybe in this case it would be simple to
16 figure out what - - - who - - - what the beneficial, you
17 know, who - - - who was going to end up with this property
18 and who was doing what and what the relationships were.
19 Maybe it isn't so in - - - easy, but - - - but doesn't the
20 - - - the Board of Assessment Review need a simple rule, so
21 that it can do its part, and then it can get to the court
22 and legal questions can be decided there?

23 MR. CLYNE: If I understood your question
24 correctly, you started saying, isn't it their job to
25 determine who the owner is?



1 JUDGE STEIN: Who the owner is, right.

2 MR. CLYNE: That's not - - - that's not - - -
3 because that's not what 524(3) says.

4 JUDGE STEIN: Well, let's assume we think that's
5 what it says. Would - - - wouldn't that serve the same
6 purpose - - -

7 MR. CLYNE: To - - - to - - -

8 JUDGE STEIN: - - - as all those - - - all those
9 powers that you're talking about to bring people in and
10 take testimony or whatever it is. It's - - - it's to
11 determine who has the - - - let's put it this way - - - who
12 has the authority, right. But if - - - if that is - - - if
13 that means, owner, then it's - - - it's a relatively simple
14 inquiry, as opposed to what you're suggesting they're
15 supposed to do.

16 MR. CLYNE: Well, again, we - - - we're dealing
17 with a remedial statute here, Your Honor. On - - -

18 JUDGE FAHEY: Well, but didn't - - - to follow up
19 on Judge Stein's question, it - - - you know, your argument
20 seems to be that my clients, the aggrieved party there,
21 here, and - - - and they've suffered a - - - a pecuniary -
22 - - there's been a pecuniary effect on them.

23 And - - - and it seemed to me that the Appellate
24 Division, and you can comment on this, almost acknowledged
25 that. They seem to say that, yes, that they are the



1 aggrieved party, but - - - but that this is really for the
2 court to obtain jurisdiction, it's a condition precedent to
3 the filing of the - - - of the assessment or the grievance,
4 I guess, it's called here, that it's - - - it's got to be
5 done by the person or party that owns the property, and in
6 this instance, it was the trust. And so what - - - they're
7 constrained. They don't even have jurisdiction to address
8 the question of an aggrieved party if the wrong person has
9 filed.

10 So while you may be one hundred percent on the
11 aggrieve - - - right on the aggrieved party argument, it
12 seems a difficult problem, that they saw, to - - - that is
13 being argued to us, is that - - - that the court really
14 could never obtain jurisdiction, because the wrong person's
15 name was on it.

16 MR. CLYNE: Your Honor, they did find, the
17 Appellate Division did find that we were an aggrieved party
18 under Article 7. Where they erred, is finding that - - -

19 JUDGE FAHEY: Okay, under art - - - yeah, right,
20 7-0 what?

21 MR. CLYNE: - - - the - - -

22 JUDGE FAHEY: 704.

23 MR. CLYNE: 704.

24 JUDGE FAHEY: Right.

25 MR. CLYNE: Where they erred was determining that



1 the condition precedent requires that the filing be by the
2 owner. The only condition precedent is the filing within
3 the time frame - - -

4 JUDGE FAHEY: Right, so - - - so the quest - - -
5 does - - - does - - -

6 MR. CLYNE: It doesn't have to be by the owner.

7 JUDGE FAHEY: We both - - - we both understand
8 then the same way. That's the Appellate Division said to
9 us, right?

10 MR. CLYNE: That's correct.

11 JUDGE FAHEY: Yeah, and - - - and so why doesn't
12 the court have to obtain jurisdiction first before it can
13 look at the issue of the aggrieved party?

14 MR. CLYNE: They do - - -

15 JUDGE FAHEY: And where - - - isn't that what you
16 need to address for us?

17 MR. CLYNE: Yes. The obtaining of jurisdiction
18 here, in a real property tax matter, as interpreted under
19 Miller, as interpreted under Sterling Estates, is simply
20 that a - - - during the time frame - - - that during the
21 specified time frame - - - that a grievance be submitted in
22 writing that sets forth, identifies the property, and sets
23 forth the grounds. The name on that grievance is not
24 jurisdictional in any way. It's at best, technical,
25 waivable, and curable. This was never raised by the Town.



1 JUDGE FAHEY: I don't always do this, but let me
2 just give you an example. If - - - it seems particularly
3 harsh here because we're talking for a trust, and one of
4 the beneficiaries is the person who's actually - - - of the
5 trust - - - is paying it here. But what if the name on it
6 was something other? What if it was Buffalo Pancake House
7 and - - - and somebody had written the wrong phrasing,
8 would the court - - - wrong - - - wrong identification in.
9 Would that be - - - someone in the office filing the
10 papers, say. Wouldn't - - - would then the court have
11 jurisdiction, even though someone else had - - -

12 MR. CLYNE: If it said Kevin Clyne, Your Honor -
13 - -

14 JUDGE FAHEY: Right.

15 MR. CLYNE: - - - but it's still - - - it's still
16 not a question of subject matter jurisdiction.

17 JUDGE FAHEY: I see.

18 MR. CLYNE: It can still be - - - it's a
19 technical issue. The name on the grievance, as the courts
20 have held, especially this court in Miller. In that
21 particular case, Miller, some of the grievances were filed
22 for a former owner. And they were not found to be
23 questions of subject matter jurisdiction; they were found
24 to be technical errors that can be cured when raised. The
25 Town never even raised this issue. To allow us, if there



1 were a defect, to cure that defect. I submit there was no
2 defect, but the name is not a jurisdictional issue.

3 CHIEF JUDGE DIFIORE: Thank you, counsel.

4 MR. CLYNE: Thank you, Your Honors.

5 CHIEF JUDGE DIFIORE: Counsel?

6 MR. MAKER: Good afternoon, William Maker, Jr.
7 for the Town of Mamaroneck. I was going to start my
8 presentation at a different point, but I want to pick up on
9 what Judge Stein was saying, because I think she's a
10 hundred percent right. The grievance procedure is supposed
11 to be simple. It's designed to be a simple process. It's
12 designed for owners to be able to do it on their own.

13 But for that owner who feels the need to have
14 assistance, that owner can appoint a representative. But
15 it starts with the owner. And that representative could be
16 a tenant. It could be somebody who might acquire title to
17 a piece of property by virtue of a trust. It could be - -
18 -

19 JUDGE WILSON: Well, so is - - - so is your
20 argument that the beneficiary of the trust, right, Ms.
21 DeGast, who signed an authorization authorizing the law
22 firm to be that person, is invalid?

23 MR. MAKER: Her authorization was on behalf of
24 the Larchmont Pancake House, which is not a beneficiary of
25 the trust. That's where the conflation, that I believe



1 Judge Stein was talking about before, comes back. The
2 Larchmont Pancake House is not - - - has no interest in
3 this trust. As a matter of fact, Ms. DeGast may have had
4 an interest in the trust, but as we all know, certain
5 trusts have expenses and debts, and they never execute that
6 which they're supposed to do.

7 JUDGE WILSON: So - - - so just to be clear,
8 you're not saying that the authorization was invalid, that
9 is Ms. DeGast is an owner, at least a beneficiary through
10 the trust. She can auth - - - do - - - would she have the
11 power - - - is it - - - what I'm getting at, is it - - - is
12 the problem that it says "Larchmont Pancake House" instead
13 of saying "the trust"? Is that the problem?

14 MR. MAKER: Yes, the problem is, is that Mr. - -
15 -

16 JUDGE WILSON: And is that - - - is - - - sorry.
17 And is that problem evident on the authorization or on the
18 petition? Which - - - which is it that's the problem?

19 MR. MAKER: It would be on - - - it would really
20 be on both, because the owners of the trust, were the two
21 trustees, Kevin O'Donnell and Kimberly Corbin. Ms. DeGast,
22 of course, is neither one of those. She wasn't one of the
23 trustees. And what we're talking about here is the Pancake
24 House, a corporation, bringing on this litigation through
25 the grievance process - - -



1 JUDGE FAHEY: Okay. But why - - - why - - - why
2 isn't this a pleading technicality? You know, in a - - -
3 in a normal action, somebody puts - - - sues me and they
4 sue me as E. Fahey or Edward Fahey and I'm actually Eugene
5 Fahey, you can amend the pleading later, and it's a
6 pleading technicality.

7 MR. MAKER: But we're talk - - - we're talking -
8 - - but we're not talking about somebody suing you as a
9 misnomer. We're talking about a corporation suing, when
10 there is a potential beneficiary who's an individual.
11 They're not the same person. And if the law says that you
12 have - - -

13 JUDGE FAHEY: I think that's where we get into
14 the subject matter jurisdiction question.

15 MR. MAKER: Correct, because in order there to be
16 subject matter jurisdiction, a proper grievance has to be
17 filed. And so as Judge Stein started us down the road,
18 that it is supposed to be a simple thing. As a matter of
19 fact, the representative can do all the work. They can
20 research the property values. They can look to see where -
21 - - whether the property is over assessed or - - - or
22 illegally assessed. All that the 524(3) requires is for
23 the owner to sign the complaint.

24 JUDGE WILSON: Do you know to whom the tax bills
25 were sent?



1 MR. MAKER: I do not. They probably were still
2 in the name of Mrs. Carfora, the decedent, because there
3 was no deed-changing title till - - - to 2013.

4 JUDGE RIVERA: So you don't know the address it
5 was sent to either?

6 MR. MAKER: I would not know that. It probably
7 was sent to Mrs. Carfora's address.

8 JUDGE RIVERA: But - - - but the payments were
9 all from Ms. DeGast. There's no doubt - - -

10 MR. MAKER: Well, not from Ms. DeGast, from the
11 Larchmont Pancake House. And I think it's important. I
12 mean, if people - - -

13 JUDGE RIVERA: But who signed the check?

14 MR. MAKER: I - - - I don't know who signed the
15 check.

16 JUDGE RIVERA: She didn't pay in cash, right, so
17 - - -

18 MR. MAKER: An officer of the - - - of the
19 corporation. It could have been Ms. DeGast; it could have
20 been somebody else who's an officer. I do not know that it
21 - - - those details. But the point here is - - -

22 JUDGE RIVERA: But every one of the checks was
23 cashed, correct? They - - -

24 MR. MAKER: Oh, yes.

25 JUDGE RIVERA: They paid the taxes.



1 MR. MAKER: The - - - the taxes were paid.

2 JUDGE RIVERA: Yeah.

3 MR. MAKER: Yes, there are no two ways about it.
4 And, as I think Judge Stein was also saying, is this isn't
5 - - - determining who's aggrieved is not the providence of
6 a Board of Assessment Review. They're there to talk about
7 value.

8 JUDGE STEIN: Well, we are - - - there's two - -
9 - really two issues in this case, we may or may not get to
10 both of them, but the - - - the first issue has to do with
11 whether the grievance was properly filed in the first
12 place. The second, or the other issue, is as for the
13 Article 7 proceeding, was she an aggrieved party.

14 MR. MAKER: Well, it wouldn't be Ms. - - -

15 JUDGE STEIN: And - - -

16 MR. MAKER: - - - Ms. DeGast; it'd be the
17 Larchmont Pancake House.

18 JUDGE STEIN: Or would - - - would either one of
19 them be an aggrieved party, but - - -

20 MR. MAKER: I argue no, because there is no
21 tangible connection between the Larchmont Pancake House and
22 this piece of property. Usually, these cases do come up
23 with tenancies. So a tenant has a lease. The lease says,
24 thou shalt pay the taxes directly to the Taxing Authority.
25 And therefore, that triggers the - - - the process.



1 JUDGE STEIN: So you agree that if there was a
2 lease, if there were a legal obligation between the actual
3 title owner and - - - and whoever was paying - - - actually
4 paying the - - - the tax bills, that would be enough to
5 demonstrate aggrievement.

6 MR. MAKER: Agreed, oh, sure.

7 JUDGE STEIN: Okay, so - - -

8 MR. MAKER: I don't think there's any doubt about
9 that.

10 JUDGE STEIN: Okay.

11 MR. MAKER: The issue - - -

12 JUDGE STEIN: So triple net lease or you know
13 whatever - - -

14 MR. MAKER: Yeah, whatever it is. But here, of
15 course, there is no such a - - -

16 JUDGE FEINMAN: Why can't they establish an oral
17 lease?

18 MR. MAKER: Well, so far - - - they - - - they
19 don't claim to be a tenant. The record only calls them
20 occupants. In two places in the record, the word
21 "occupant" is used.

22 JUDGE WILSON: Well, no, doesn't the record also
23 have a couple of affidavits that says that there was a - -
24 - an arrangement for the Pancake House to pay the taxes and
25 other expenses for the property?



1 MR. MAKER: Yes, but it's not contemporaneous
2 when the events occurred. This was after this whole
3 litigation began - - -

4 JUDGE WILSON: No, no, but I think it alleges all
5 the way - - -

6 MR. MAKER: - - - somebody came up and - - -

7 JUDGE WILSON: I think it alleges all the way
8 back to 1995 when Ms. Carfora was still alive.

9 MR. MAKER: Well, when Mrs. Carfora was alive,
10 she owned the property in her own name, so she - - - she
11 was fine.

12 JUDGE WILSON: But it was the Pancake House that
13 was paying the taxes according to those affidavits, not
14 she.

15 MR. MAKER: And - - -

16 JUDGE WILSON: And - - - and to you it's
17 important, the - - - the legal difference between the
18 corporation and these individuals and the trust. Those
19 differences are important to you.

20 MR. MAKER: It is. That is exactly right. But
21 let me - - - let me get back down - - - back, if I might,
22 to - - -

23 JUDGE RIVERA: And DeGast was permitted to be on
24 this property without paying rent, right?

25 MR. MAKER: Yes.



1 JUDGE RIVERA: There's a recognition that
2 otherwise that would have been the relationship.

3 MR. MAKER: I don't know how to describe their
4 relationship. It's nebulous at best. It's nebulous at
5 best, and - - - and to get back to - - -

6 JUDGE RIVERA: She's not a trespasser?

7 JUDGE WILSON: Well, so but that - - - that sort
8 of begs the question then. If it's nebulous and this is on
9 a motion to dismiss, why don't they get a chance to see
10 what the facts are?

11 MR. MAKER: Because of the fact that the - - -
12 the procedure was not properly filed in filing a grievance
13 in the first place. So we get back to the other - - -

14 JUDGE WILSON: You're on - - - you're on the
15 Article 3, now.

16 MR. MAKER: Back to Article 5.

17 JUDGE WILSON: I'm sorry, 5.

18 MR. MAKER: The sec - - - the second of Judge - -
19 - what Judge Stein just alluded to before. And that is,
20 the phrase, a person whose property is aggrieved, 524(3).
21 That is the rub here. And to me - - - and the other
22 phrase, as we all know, a person claiming to be aggrieved
23 by an assessment of real property. These are two very
24 divergent phrases. There's no similarity in - - - between
25 any of them, except for use of the word "person" and the

1 word "assessed".

2 As you have said many times, including most
3 recently I think in the Brancoccio case, when the
4 legislature uses unlike terms in different places, it's - -
5 - it's important to - - - and it's reasonable to say they
6 have a dissimilar - - - dis - - - different meanings. So
7 if you were to decide that they - - - these two phrases
8 meant the same exact thing, you would render one of the
9 phrases superfluous and unnecessary, as something that you
10 have said in many, many cases, should be avoided.

11 Under Article 3, the only asset that can be
12 assessed in New York State is real estate. It's very clear
13 about that. As a matter of fact, Section 300 specifically
14 says personal property, intangible or tangible, cannot be
15 subject to ad valorem taxation. So if the only property
16 that can be assessed is real property, then the person
17 whose property is assessed could only be the owner of the
18 property. It is not a difficult or ambiguous statute
19 whatsoever when you view it in the context of Article 3.

20 My time has expired. I wish you all a very
21 pleasant afternoon, and a very happy Valentine's Day
22 tomorrow.

23 CHIEF JUDGE DIFIORE: Thank you, Counsel.

24 MR. CLYNE: That wasn't fair.

25 CHIEF JUDGE DIFIORE: Mr. Clyne?



1 MR. CLYNE: It's tough to top that, you know.
2 That was very good.

3 Your Honor, the - - - Article 5 and Article 7
4 have to be read in harmony. They have to be harmonized.
5 The - - - the fact of the matter is, Mr. Maker's arguing
6 that a person whose property is assessed, means something -
7 - - it has to mean something different than aggrieved
8 party. Unfort - - - it's unfortunate that a different
9 language was used.

10 JUDGE FAHEY: That's not the way I - - - I'm
11 reading it. The - - - the way I understood his argument
12 was that he - - - he's drawing a distinction between an
13 administrative challenge and a judicial challenge. That's
14 the way I understand the argument.

15 MR. CLYNE: Well, there - - - there is not any.
16 And the lan - - - the McLean's case that was ultimately
17 cited by this court in Waldbaum makes it very clear.

18 JUDGE FAHEY: Well, then - - -

19 MR. CLYNE: That anybody - - -

20 JUDGE FAHEY: Go ahead. I thought there, though,
21 I thought the petitioner there had an obligation, a legal
22 obligation, to pay taxes.

23 MR. CLYNE: Well, he - - - well, the - - - and
24 the - - -

25 JUDGE FAHEY: That's not the case here.



1 MR. CLYNE: It's - - - that's another issue.
 2 Whether or not a lease is required - - - a lease is only an
 3 indicia of a direct adverse impact. It's not required. In
 4 all of the cases that talk about specific lease language, a
 5 fractional tenant was involved. We are - - - we paid all
 6 the taxes here. We were - - - we op - - - we occupied the
 7 property in whole, paid all the taxes for all the years
 8 under review.

9 Article 5 has to mean, if the administrative
 10 process is to mean anything, as this court laid out very
 11 clearly in Sterling Estates, the - - - the entities who can
 12 file an Article 5 have to be the same would file - - -

13 JUDGE STEIN: Who would sign - - -

14 JUDGE RIVERA: But it would - - - it would be odd
 15 - - - it would be odd, would it not, to write a piece of
 16 legislation that authorizes more people to bring the
 17 judicial proceeding, then the administrative - - -

18 MR. CLYNE: It does seem to - - -

19 JUDGE RIVERA: - - - when the administrative is
 20 the conditioned proceeding.

21 MR. CLYNE: Excuse me, Your Honor.

22 JUDGE RIVERA: No, go ahead.

23 MR. CLYNE: No, it - - - it does - - - it does
 24 seem to - - - to dilute the efficacy of the administrative
 25 review process if more people can file in court, than could



1 file at the administrative level.

2 JUDGE RIVERA: Well, it's illusory, if it's a
3 conditioned proceeding, right?

4 MR. CLYNE: If it's to be - - - if it's devised
5 with the intent of re - - - of reducing litigation. The
6 only thing we know from a plain meaning of language - - -
7 reading of the statute, that person is - - - whose property
8 is assessed does not mean its owner. The legislature uses
9 the term "owner" repeatedly in Section 554, and various
10 places throughout the Real Property Tax Law. So Mr.
11 Maker's argument plays against him here, because it cannot
12 mean owner. It's the only thing that it cannot mean, is
13 owner.

14 MR. MAKER: Thank you, counsel.

15 MR. CLYNE: Thank you.

16 (Court is adjourned)

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C E R T I F I C A T I O N

I, Karen Schiffmiller, certify that the foregoing transcript of proceedings in the Court of Appeals of In the Matter of Larchmont Pancake House v. Board of Assessors, et al., No. 16 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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