

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or gspencer@nycourts.gov.

To be argued Wednesday, February 13, 2019

No. 15 Matter of Eastbrooke Condominium v Ainsworth

Real Property Law section 339-y(4) provides that the board of managers of a condominium may act as an agent of each condominium unit owner who has given written authorization to seek review of a tax assessment. Accordingly, Eastbrooke Condominium by its Board of Managers, on behalf of all unit owners, challenged the tax assessments imposed by the Town of Brighton for multiple tax years on the condominium property.

Supreme Court determined the property was overassessed and directed that the owners receive appropriate refunds. The court determined, however, that refunds should only be issued to those owners who filed specific authorizations with the Board of Managers for particular years. The Appellate Division, Fourth Department affirmed, holding unit owners are required to give an authorization for each tax year for which the assessment is challenged and unit owners' authorizations for one year does not give the Board of Managers authorization to act as owners' agent for a different year.

For appellants Eastbrooke Condominium et al: Robert L. Jacobson, Pittsford (585) 218-6290

For respondents Ainsworth et al (Town of Brighton): Thomas A. Fink, Rochester (585) 546-6448

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No. 16 Matter of Larchmont Pancake House v Board of Assessors

Larchmont Pancake House occupies and operates a restaurant in the Village of Larchmont and pays the operating costs for the property, including property taxes. The Pancake House does not own the property. The Pancake House challenged the real property tax assessment on the property in 2010, 2011, 2012 and 2013 and commenced these four proceedings to review the assessments. The Assessor of the Town of Mamaroneck and the Board of Assessment review asked Supreme Court to dismiss the petitions on various grounds, including that the Pancake House was not an aggrieved party and lacked standing to challenge the assessments. Supreme Court denied the request.

The Appellate Division, Second Department reversed and granted the requests to dismiss the proceedings. The Appellate Division noted that although the Pancake House is an aggrieved party within the meaning of the Real Property Tax Law (RPTL) because the assessments had a direct adverse effect on its pecuniary interest, RPTL article 7 requires the filing of a grievance complaint with the Assessor or Board of Assessment Review before a proceeding to challenge the assessment can be maintained. “In this regard,” the Appellate Division observed “RPTL article 5 requires that the property owner file the complaint or grievance to obtain administrative review of a tax assessment” and the Pancake House, which filed the complaints with the Board of Assessment Review, never owned the property.

The Pancake House argues that a taxpayer should not have its assessment review curtailed by a technicality and, in any event, the Appellate Division’s interpretation of the law imposes requirements that do not exist in the law. The Board argues that RPTL article 5 and 7 contain different classes of persons who may act under each and, contrary to the Pancake House’s argument, “property owners and aggrieved parties combining their efforts to review assessments is neither impossible, unlikely nor unheard of.”

For appellant Pancake House: Kevin M. Clyne, Melville (631) 501-5011

For respondents Board of Assessors (Mamaroneck): William Maker, Jr., Mamaroneck (914) 381-7815

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No. 17 Matter of Save America's Clocks v City of New York

The 13 story neo-Italian Renaissance style building at 346 Broadway in New York City was constructed between 1894 and 1898. A clocktower sits atop the western end of the building and houses the largest of the few purely mechanical tower clocks of its kind in New York. A room on the 14th floor of the building contains an interior spiral staircase which leads up to a landing housing the clock's pendulum and then to the clocktower's machine room. The four glass and metal clock faces make up the four walls of the machine room, in the center of which the clock mechanism sits inside a glass and wood enclosure. The clock's 5,000 pound bell strikes the hours. Being a purely mechanical instrument, the clock must be wound every week.

In 1968, New York City acquired the building and from 1972 until 2013 the bottom level of the clocktower operated as an art gallery and performance space accessible to the public. The building fell into a state of disrepair while it was owned by the City. From 1980 until 2015, a city employee gave tours of the clocktower, maintained the clock, and wound the clock weekly. In 1989, the Landmarks Preservation Commission (LPC) designated the clock as an Interior Landmark.

In 2013, the City sold the building to Civic Center Community Group Broadway LLC, who planned to repurpose the building as a residential hotel and combined retail uses. The deed provided that the purchase was subject to the 1989 notice of interior landmark designation. In 2014, LPC granted the owner permission to convert the clocktower into a triplex private apartment and to disconnect the clock from its mechanism and to electrify the clock. Save America's Clocks, Inc., The Historic Districts Council and others challenged LPC's determination, based on New York City's Landmarks Preservation and Historic Districts Law.

As framed by the Appellate Division, First Department, resolution of the dispute turns on whether the Landmark Law permits the LPC to require a private owner of property purchased subject to a notice of interior landmark designation to preserve the historic character and operation of the interior landmark and to continue to allow at least minimal public access to it. Owner argues that LPC has no power to regulate access to and operation of landmarks and should not have the authority to review and approve all changes to interior landmarks that might affect their accessibility. Owner notes that "for decades, landmark owners have made their properties off-limits for security purposes, safety concerns, economic reasons, and even just convenience – all without needing the LPC's approval." Aligned with the owner for this appeal, the City and LPC assert that the law "is built around the premise that preservation is best served when private property owners are able to use and adapt historic buildings so that, in the long haul, they will assume the burdens of preservation." Save America's Clocks and others argue that "granting permission to destroy a last-of-its kind architectural feature in order to accommodate private luxury housing would prioritize wealth and prestige over preservation, thereby standing the Landmarks Law on its head."

For appellant City defendants: Assistant Corporation Counsel Diana Lawless (212) 356-0848

For appellant Civic Center (owner): James P. Rouhandeh, Manhattan (212) 450-4000

For respondents Save America's Clocks et al: Michael S. Hiller, Manhattan (212) 319-4000