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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY

Patrick DeAlmeida
Presiding Judge



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February 27, 2014

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Re: Sisters of Mercy of the Americas Mid-Atlantic Community, Inc. v.
City of Sea Isle City
Docket No. 012607-2011

Dear Counsel:

This letter constitutes the court's opinion after trial in the above-referenced matter challenging the denial of an exemption from local property taxes on two parcels for tax year 2011. For the reasons explained more fully below, the court concludes that the subject property qualifies for a partial exemption from local property taxes as property actually used in the work of a corporation organized exclusively for religious purposes pursuant to N.J.S.A. 54:4-3.6.

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I. Findings of Fact and Procedural History

The following findings of fact are based on the credible testimony of the trial witnesses, the exhibits admitted into evidence during trial and stipulated facts.

Plaintiff Sisters of Mercy of the Americas Mid-Atlantic Community, Inc. (the “Sisters of Mercy”) is a non-profit, religious organization incorporated in Missouri in 2006. According to Article 7 of its Articles of Incorporation,

[t]he corporation is organized, and shall be operated, exclusively for religious, charitable, scientific, literary and educational purposes

Plaintiff’s By-Laws provide that the

[p]urpose of the Corporation shall be as set forth in Article 7 of the Articles of Incorporation of the Corporation and shall include by way of example but not by way of limitation religious, educational, healthcare and social services consistent with Proper Law of the Sisters of Mercy of the Americas as adopted from time to time. The activities of the Corporation will be carried out consistent with Proper Law and the laws, teachings and traditions of the Roman Catholic Church.

The Sisters of Mercy, who take a vow to serve the poor, sick and uneducated, engage in a variety of religious charitable activities in New Jersey, Philadelphia, Northeast Pennsylvania, New York City, Long Island and Westchester County, New York. Their work is carried out through social services, health care, and education. The sisters operate social services centers, an alternative school for poor women, a Catholic college preparatory school, and a school for educationally disabled students and young adults, as well as other entities. In addition, the sisters minister extensively to the homeless and teach in schools operated by the Catholic Church. Having taken vows of poverty, the sisters do not profit from their charitable acts, which they consider to be a tenet of their religion.

According to the credible testimony of Sister Margaret Taylor, a member of the Sisters of Mercy for 52 years at the time of trial and the organization's Director of Sponsorship, the organization's Constitution requires that the sisters engage in "reflective leisure" on a regular basis. Sister Margaret explained what the court finds to be a sincerely-held religious belief that reflective leisure is a firm basis of spirituality for the sisters and that in the absence of contemplative reflection the sisters' charitable works will suffer, as will their relationships with other people and God. Sister Margaret described this tenet as "not frivolous, an essential and integral part of a whole life of someone pursuing a path of Christian sanctity."

The Sisters of Mercy own two parcels of real property in Sea Isle City, Cape May County. Block 58.02, Lot 1282 is commonly known as 22-30 58th Street. On this parcel is located a two-story building constructed to host meetings and retreats. The building contains nineteen rooms, one of which is used as a chapel, and the remainder of which are spare bedrooms. Twenty-five guests can be accommodated in the building at a time. The facility has a common dining room, common kitchen and a common bathroom (although two of the bedrooms have small adjoining bathrooms). The living areas are designed for communal living. The building has cable television, Internet access and telephones. Newspapers are delivered when the sisters are staying at the facility. The second floor of the building has a large conference room. Block 58.02, Lot 1288.01, which adjoins the first parcel, is commonly known as 34 58th Street. This parcel contains only the parking lot used by those attending functions or on retreat at the building on the adjoining parcel. Both parcels, which combined do not exceed five acres, are one block from the Atlantic Ocean.

The communal living facilities are used by the Sisters of Mercy for annual retreats. Members of the religious order are permitted to spend a week at the facility during the summer.

The sisters' summer retreats are not unstructured vacation time. The sisters wake early to pray and have a communal breakfast prepared by volunteers. Before 9 a.m. cars gather to take the sisters to the local parish for liturgy. After mass, the sisters return to the facility for a communal meal prepared by volunteers. The sisters are free to spend the afternoon at leisure. Sister Margaret testified that the sisters generally read, walk, swim, sit on the beach and visit local attractions. The sisters gather for a communal evening meal, served by sister volunteers.

Sister Margaret described the retreats as an integral part of the sisters' spiritual life. Many of the members of the order work with the urban homeless population, which can be an emotionally trying experience. The retreats allow the sisters to engage in reflective consideration of their work, to contemplate and appreciate the greater meaning of their charitable acts, and to prepare to return to service. In addition, the communal meals and prayers allow the sisters to connect spiritually with other members of the order with whom they do not have frequent contact and to become reacquainted with the overall mission of their organization.

In addition, the Sisters of Mercy use the building for administrative meetings. The facility is the only Sisters of Mercy building with a large conference room and living facilities. Given the geographic diversity of the organization's membership, the facility serves as the central location for leadership meetings and the periodic election of officials.

The facility is also used for retreats by groups affiliated with the Sisters of Mercy on a year-round basis. Use of the facility is limited to those organizations with missions consistent with the religious beliefs of the Sisters of Mercy. A member of the Sisters of Mercy must be present during retreats involving outside organizations. Among the groups permitted to use the facility are the Mercy Neighborhood Ministries, which provide adult day care services, before and after school programs and support groups for women, Mercy College student leaders, and

nurses who work at Mercy Hospital. The Sisters of Mercy consider it part of their religious mission to support the spiritual development of other groups engaged in charitable acts consistent with Catholic teachings. Use of the facility by affiliated groups sometimes involves guest speakers and conferences, but generally is limited to retreat activities and communal meals similar to those enjoyed by the sisters during the summer.

When the sisters use the facility for retreats their personal spending accounts are debited to defray costs. The same is true when affiliated groups use the facility. Nominal charges to the groups offset the cost of maintaining the building. The parties have stipulated that the Sisters of Mercy do not profit from any activities at the subject property and operate the facility at a loss.

For tax year 2011, the parcel containing the main building was assessed for local property tax purposes at \$2,583,600. The parcel containing the parking lot was assessed at \$856,800. The Director, Division of Taxation's average ratio for Sea Isle City for tax year 2011 exceeds 100%.

On October 27, 2010, the Sisters of Mercy applied for an exemption for the subject property from local property taxation pursuant to N.J.S.A. 54:4-3.6 for tax year 2011.

On March 8, 2011, the municipal tax assessor denied the application.

On April 8, 2011, the Sisters of Mercy filed a Complaint in this court challenging the tax assessor's determination.

The matter was thereafter tried.

II. Conclusions of Law

The Legislature has provided an exemption from local property taxes for

all buildings actually used in the work of associations and corporations organized exclusively for religious purposes, including religious worship

[N.J.S.A. 54:4-3.6.]

The exemption applies only if the use of the building is “not conducted for profit” and the entity seeking the exemption is a non-profit entity that “owns the property in question and is incorporated or organized under the laws of this State and authorized to carry out the purposes on account of which the exemption is claimed” Ibid.

If a building is found to be exempt, “the land whereon any of the buildings . . . are erected, and which may be necessary for the fair enjoyment thereof, and which is devoted to the purposes above mentioned and to no other purpose and does not exceed five acres” is also exempt. Ibid.

Because they represent a departure from the fundamental approach that all property owners bear their fair share of the local property tax burden “[t]ax exemption statutes are strictly construed, and the burden of proving entitlement to an exemption is on the party seeking it.” Abunda Life Church of Body, Mind & Spirit v. City of Asbury Park, 18 N.J. Tax 483, 485 (App. Div. 1999)(citing New Jersey Carpenters Apprentice Training & Educ. Fund v. Borough of Kenilworth, 147 N.J. 171, 177-78 (1996), cert. denied, 520 U.S. 1241, 117 S. Ct. 1845, 137 L. Ed. 2d 1048 (1997); Princeton Univ. Press v. Borough of Princeton, 35 N.J. 209, 214 (1961)). “[A]ll doubts are resolved against those seeking the benefit of a statutory exemption” Borough of Chester v. World Challenge, Inc., 14 N.J. Tax 20, 27 (Tax 1994)(quoting Township of Teaneck v. Lutheran Bible Inst., 20 N.J. 86, 90 (1955)). These standards, however, do “not

justify distorting the language or the legislative intent” of the exemption statute. Boys’ Club of Clifton, Inc. v. Township of Jefferson, 72 N.J. 389, 398 (1977). “[W]hile the construction of the applicable statute must be strict, it must also be reasonable.” Phillipsburg Riverview Org., Inc. v. Town of Phillipsburg, 26 N.J. Tax 167, 175 (Tax 2011), aff’d, 27 N.J. Tax 188 (App. Div.), certif. denied, 215 N.J. 486 (2013); accord International School Serv., Inc. v. Township of West Windsor, 412 N.J. Super. 511, 524 (App. Div. 2010), aff’d, 207 N.J. 3 (2011). “The rule of strict construction must not defeat the evident legislation design.” Phillipsburg, supra, 26 N.J. Tax at 175.

In Paper Mill Playhouse v. Township of Millburn, 95 N.J. 503 (1984), our Supreme Court established a three-prong test to determine whether property is exempt under N.J.S.A. 54:4-3.6. While the Paper Mill opinion concerned the moral and mental improvement of men, women and children provision of the statute, the holding provides a relevant and useful framework for determining whether the religious purposes provision of N.J.S.A. 54:4-3.6 has been met. In order to establish that real property is exempt from taxation under the statute a claimant must demonstrate that: (1) it is organized exclusively for religious purposes; (2) the operation and use of the property is not conducted for profit; and (3) the subject property is actually being used for the tax exempt purpose. Id. at 506.¹ The prongs are addressed in turn.

(1) Organized exclusively for religious purposes.

Whether an entity is organized exclusively for the exempt purpose must be determined from the property owner’s organizational documents. Black United Fund of New Jersey, Inc. v. City of East Orange, 17 N.J. Tax 446, 455 (Tax 1998), aff’d, 339 N.J. Super. 462 (App. Div.

¹ At the time Paper Mill Playhouse, supra, was decided, N.J.S.A. 54:4-3.6 required that the subject property be actually and exclusively used for religious purposes. The statute has since been amended to eliminate the exclusivity requirement. L. 2001, c. 18.

2001); 1711 Third Avenue, Inc. v. City of Asbury Park, 16 N.J. Tax 174, 180 (Tax 1996); Planned Parenthood of Bergen County, Inc. v. City of Hackensack, 12 N.J. Tax 598, 610 n. 6 (Tax 1992), aff'd, 14 N.J. Tax 171 (App. Div. 1993).

The municipality does not dispute that the Sisters of Mercy are organized exclusively for religious purposes. Plaintiff's organizational documents support the stipulation. While it is true that the Sisters of Mercy's Articles of Incorporation permit the organization to engage in "religious, charitable, scientific, literary and educational" purposes, it is plain from the testimony adduced at trial that the Sisters of Mercy are an order of religious women dedicated to providing various services in a manner consistent with their religious beliefs. The group exists to fulfill a religious mission. To the extent that the sisters may engage in charitable, scientific, literary or education endeavors, those acts are all subordinate to and in furtherance of the sisters' religious beliefs. The court is satisfied that this prong of the Paper Mill test is satisfied.

(2) The operation and use of the property must not be conducted for profit.

The municipality concedes that the operation and use of the subject property is not conducted for profit. The evidence adduced at trial supports this stipulation. The Sisters of Mercy take a vow of poverty. No member of the organization receives a profit from activities conducted at the subject property. In addition, operation of the facility is undertaken at a loss. Plaintiff's organizational documents provide that upon dissolution of the Sisters of Mercy all remaining corporate assets will be distributed to the Sisters of Mercy of the Americas, another charitable religious organization. The evidence in the record clearly establishes that this prong of the Paper Mill test has been satisfied.

(3) The subject property must actually be used for the tax exempt purpose.

The court's analysis of whether this prong of the Paper Mill test has been satisfied must be guided by the Appellate Division holding in Borough of Harvey Cedars v. Sisters of Charity of Saint Elizabeth, 163 N.J. Super. 564 (App. Div. 1978), which concerns facts strikingly similar to those before the court. In that case, an organization of Catholic nuns owned an 11-acre parcel adjacent to the Atlantic Ocean. Id. at 566. They sought exemption from local property taxes under N.J.S.A. 54:4-3.6, which then provided an exemption for buildings "actually and exclusively used . . . for religious, charitable or hospital purposes." Id. at 568. Noting that the purpose of the organization was "the instruction and education of youth, the erection and maintenance of hospitals for the sick and destitute, and affording and rendering assistance to the poor and destitute," the Appellate Division described the use of the property as follows:

The direct activities of the organization within the framework of its corporate objects are not conducted at the premises in question but at several other locations in the State of New Jersey, where it maintains and operates schools, children's residences and a hospital. It is at these facilities that the nuns, priests, nurses, etc., are assigned to carry on the charitable work of the corporation.

The Harvey Cedars complex is utilized in the main as a facility for rest and relaxation of the sisters and clergy in the summer season. These participants in the work of the charity sojourn to the beach facility for varied periods during the summer, utilizing the facilities for both religious retreats and vacation purposes, to get away from their everyday work and routine. In the off-season some of the buildings in the complex are used for religious retreats and meetings by clergy and lay groups and organizations. Most of the buildings are designed as dormitories for housing, with meeting rooms where the retreats or meeting sessions are held and workshops are conducted for the sisters and priests related to educational purposes.

[Id. at 566-67.]

A Judge of the Division of Tax Appeals, the predecessor to the Tax Court, found that the property was exempt under the statute. He explained his decision thusly:

I find that in connection with the work of the Sisters of Charity, where they are providing the services of their corporation on a twelve-month year round basis for the utilization and benefit of the people of this State, that it is essential that those nurses who are being employed as nurses in Elizabeth have someplace for, in the old Army jargon, R&R.

And if there is religious atmosphere and a community where that can be enjoyed by them, that is part of the function of this corporation.

I find that this corporation is entitled to an exemption, and that as far as the utilization of all of the buildings that are on this property, they are being used entirely and exclusively for the purposes for which this corporation was formed.

[Id. at 567.]

The Appellate Division, however, disagreed with this conclusion. The court's holding was plain:

In the present case the statutory test of use exclusively for religious or charitable purposes is not met for any of the buildings except the chapel.

* * *

The test to be employed in determining whether property is "actually and exclusively used" for a tax exempt purpose is whether the property is "reasonably necessary" for such purpose. Long Branch v. Monmouth Medical Center, 138 N.J. Super. 524, 532 (App. Div. 1976), aff'd o.b. 73 N.J. 179 (1977).

Here the substantial use of the property as a summer residence or vacation spot for sisters and others who do charitable work elsewhere mandates that the property be denied exemption even though it is also used in part for religious retreats. Providing vacation facilities can simply not be viewed as reasonably necessary for the work of the organization. The status or vocation of the owners or occupiers of property cannot determine property

tax exemption. Teaneck Tp. v. Lutheran Bible Inst., 20 N.J. 86, 88-90 (1955); N.J. Turnpike Auth. v. Washington Tp., 16 N.J. 38, 44-45 (1954). In this regard residences for personnel or religious organizations at a great distance from their place of work and not necessary for the accomplishment of the purposes of the charity are not entitled to tax exemption. Teaneck Tp. v. Lutheran Bible Inst., supra; Cresskill v. Nor. Val. Evangel. Church, supra, 125 N.J. Super. [585, 586-87 (App. Div. 1973)]; International Missions, Inc. v. Lincoln Park, 87 N.J. Super. 170 (App. Div. 1965).

* * *

Accordingly, we find that, except for the chapel and the land necessary for its enjoyment, the lands and buildings are not entitled to exemption from taxes.

[Id. at 568-69.]

This court is, of course, bound by the holding of the Appellate Division, if it can reasonably be said that the appellate court issued its opinion based on facts substantively indistinguishable from those before this court. Judge Crabtree plainly stated the obligations of this court in such circumstances. “Trial courts are free to disagree with appellate opinions; they are not free to disobey.” Tuition Plan v. Director, Div. of Taxation, 4 N.J. Tax 470, 485 (Tax 1982)(citing Reinauer Realty Corp. v. Borough of Paramus, 34 N.J. 406 (1961); Dunham’s & Co. v. Dzurinko, 125 N.J. Super. 296 (App. Div. 1973)). Accord Weir v. Market Transition Facility of New Jersey, 318 N.J. Super. 436, 448 (App. Div.)(“The trial court may disagree with our published decisions but it is obligated to comply with the procedures we mandate within them.”), certif. denied, 160 N.J. 477 (1999).

The Sisters of Mercy argue that the holding in Harvey Cedars is not binding on this court because of a 2001 amendment to N.J.S.A. 54:4-3.6 which removed the exclusivity of use requirement from the statute, L. 2001, c. 18, thereby altering its substantive meaning. That amendment, set forth below in relevant part, provides an exemption for:

all buildings actually ~~and exclusively~~ used in the work of associations and corporations organized exclusively for religious purposes, including religious worship, or charitable purposes, provided that if any portion of a building used for that purpose is leased to a profit-making organization or is otherwise used for purposes which are not themselves exempt from taxation, that portion shall be subject to taxation and the remaining portion shall be exempt from taxation, and provided further that if any portion of a building is used for a different exempt purpose by an exempt entity, that portion shall also be exempt from taxation

[L. 2001, c. 18.]

Plaintiff argues that removal of the exclusive use requirement and recognition of a partial exemption for property used, in part, for religious purposes renders the Harvey Cedars holding inapplicable to this case.

The Harvey Cedars court did emphasize the exclusivity requirement in its opinion, italicizing the word “exclusively” in the paragraph detailing its holding. 163 N.J. Super. at 568. In addition, the court noted that the property’s use as a summer residence or vacation spot for nuns required denial of an exemption “even though it is also used in part for religious retreats.” Ibid. A reasonable interpretation of these references could lead to the conclusion that if the Harvey Cedars court had conducted its analysis under the amended statute the court would have concluded that a partial exemption was warranted to the extent that the buildings under review were used for religious retreats. There is, however, no definitive statement by the Harvey Cedars court that religious retreats, standing alone, justify an exemption under N.J.S.A. 54:4-3.6 for property that is otherwise primarily used as a place to provide a seaside respite from the difficult and emotionally challenging endeavors of religious people. In the absence of a clearer indication in the holding in Harvey Cedars that the exclusive use requirement was the lynchpin of the

court's decision, this court is loath to depart from what appears to be controlling appellate precedent.

In addition, the Sisters of Mercy argue that the holding in Harvey Cedars is indicative of a strict interpretation of the exemption statute which has been relaxed in subsequent opinions. The cases on which the Sisters of Mercy rely apply a “reasonably necessary” standard to determine if the religious and charitable use requirement of N.J.S.A. 54:4-3.6 has been met. See City of Long Branch v. Monmouth Med. Ctr., 138 N.J. Super. 524, 533 (App. Div. 1976) (holding that houses in close proximity to a charitable hospital and rented to staff at below market rates as a subsidy to attract qualified employees were reasonably necessary to operate the hospital on a twenty-four hour basis), aff'd o.b., 73 N.J. 179 (1977); City of Long Branch v. Ohel Yaacob Congregation, 20 N.J. Tax 511, 524 (Tax)(holding that building adjacent to synagogue used to house visiting rabbis and other clergy at a seaside congregation whose membership swells in the summer months, and who have travel restrictions on the Sabbath and on religious holidays, is “reasonably necessary” for operation of the congregation and “not a mere convenience” for the visiting clergy), aff'd, 21 N.J. Tax 268 (App. Div. 2003).

The flaw in this argument, however, is that the Harvey Cedars court also applied the “reasonably necessary” test. The court stated that the “test to be employed in determining whether property is ‘actually and exclusively used’ for a tax exempt purpose is whether the property is ‘reasonably necessary’ for such purpose.” 163 N.J. Super. at 568. Indeed, in support of that passage the court cited the Monmouth Medical Center opinion. Ibid. Reliance on the “reasonably necessary” standard is not, therefore, a basis for departing from what appears to be the controlling decision in Harvey Cedars.

Finally, the Sisters of Mercy argue that the record in this case contains critical evidence absent from the record in Harvey Cedars. Here, a leader at Sisters of Mercy credibly testified that periods of “reflective leisure” are a non-frivolous and “essential and integral part of a whole life of someone pursuing a path of Christian sanctity.” It is a sincerely held religious belief of the Sisters of Mercy that these periods of rest are necessary for the sisters to contemplate the greater meaning of their charitable works, to reaffirm the overall goals of their organization, to become acquainted with other women who are carrying out similar missions, and to prepare to return to their challenging work. The court has no doubt that these objectives are furthered by the brief sojourns that the sisters take to the subject property, their periods of group and private prayer and their communal meals. What is less clear, in light of the holding in Harvey Cedars, however, is that the subject property is reasonably necessary to achieve these goals. Presumably periods of reflective leisure can take place anywhere, and likely do on a regular basis during the year, as the sisters undertake their admirable work. Sister Margaret’s testimony does not include a statement that the Sisters of Mercy require a separate, seaside structure to fulfill their requirement to engage in reflective leisure.

Were this court writing on a clean slate, it might very well conclude that the Sisters of Mercy had established that an exemption for the subject property is warranted. Indeed, at the conclusion of trial the court expressed its preliminary conclusion that the subject property is used primarily for religious purposes and that the facts adduced at trial differed sufficiently from those before the court in Harvey Cedars to warrant departure from the holding in that case. The court, however, cautioned that it had not studied the Harvey Cedars opinion closely, and would have to do so before it could issue a final decision. Having examined the evidence closely and considered the Harvey Cedars opinion in greater detail, the court concludes that it is bound by

the appellate precedent. Should the Sisters of Mercy file an appeal from this court's Judgment, it may very well discover that a panel of the Appellate Division will find itself in disagreement with the Harvey Cedars opinion, or may conclude that the amendment to N.J.S.A. 54:4-3.6 and more recent precedents warrant a different outcome. Or, perhaps, the Supreme Court may have a different view of the applicability of the exemption to the facts of this case. This court, however, cannot depart from what it views as controlling appellate precedent.

There is, however, the matter of the chapel on the subject property, as well as the conference room on the second floor of the facility. In Harvey Cedars, the Appellate Division concluded that only the building housing the chapel qualified for an exemption. 163 N.J. Super. at 569. Here, one of the nineteen bedrooms at the facility is used as a chapel. The municipality's counsel made the representation at trial that the city offered to provide a partial exemption for the chapel. The court agrees that such an approach is warranted. In addition, the conference room on the second floor of the facility is used both for religious retreats and for the administrative purposes of the Sisters of Mercy. Unchallenged testimony at trial establishes that the Sisters of Mercy, whose membership is spread over several States, has no other facility in which members can gather for meetings. The court finds that the conference room is reasonably necessary to carry out the purposes of the Sisters of Mercy and is, therefore, exempt under N.J.S.A. 54:4-3.6. This conclusion is not altered by the fact that the conference room is also used for presentations by speakers during retreats for both the Sisters of Mercy and other groups. The court concludes that the primary purpose of the conference room is for the administrative needs of the Sisters of Mercy.

Although the Harvey Cedars court also noted that the property before it contained conference rooms which were not found to be exempt, the opinion makes no mention of trial

court findings that the organization that owned that property conducted administrative meetings in those rooms, had no other similar facilities at its disposal and had a membership so geographically diverse that a central meeting place was reasonably necessary for the operation of the religious group. The court, therefore, does not consider the holding in Harvey Cedars to be controlling on this point.

The court is cognizant of the fact that participants at administrative meetings sometimes spend the night in the bedrooms at the facility. This incidental use of the bedrooms, however, does not change the court's conclusion that the primary purpose of the bedrooms does not qualify that portion of the property for an exemption under the holding in Harvey Cedars.

The court heard limited testimony with respect to the parcel that houses the parking lot. Passing references to that parcel indicate that it is used as parking for people using the building on the adjoining property. In light of the court's conclusion that the building property qualifies for a partial exemption, the court directs the municipality to accord a partial exemption to the parking lot parcel in an amount approximately equivalent in percentage to the partial exemption granted to the chapel and conference room on the adjoining parcel.

Very truly yours,


Patrick DeAlmeida, P.J.T.C.