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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY

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JUDGE

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Re: Green Hill, Inc. v. Township of West Orange
Block 179, Lot 3
Docket No. 018879-2011

Dear Counsel,

In its prior opinion of December 21, 2012, this court found that plaintiff was not entitled to a "continued use" tax exemption in connection with the above-referenced property so as to invalidate defendant's four-month prorated added assessment upon newly constructed improvements. The court however directed the parties to brief the issue of the validity of the assessment under the governing statute, N.J.S.A. 54:4-63.3, and case law interpreting the same, specifically, Schizophrenia Found. of N.J. v. Township of Montgomery, 6 N.J. Tax 439, 441-443 (App. Div. 1984). The court now finds that under the latter case law, defendant's added assessment should be voided.

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PROCEDURAL HISTORY AND FACTS

The procedural history and facts of the case have been set forth in detail in the court's prior opinion dated December 21, 2012. The same are briefly recited herein for purposes of providing a context. Additional relevant facts from the parties' supplemental briefs and plaintiff's statement of undisputed material facts are also included.

Plaintiff, Green Hill, Inc. ("Green Hill") is a New Jersey not-for-profit corporation, providing care to the aged at the above-captioned 20-acre property ("Subject"). From 1965 onwards, the one building and five acres of land upon which it existed were exempt from local property tax. The remaining 15 acres of vacant land was taxed until 2012 by defendant ("West Orange").

In December 2009, Green Hill began constructing additional houses called "Green House Homes" ("Homes") on the 15-acre vacant portion of the Subject. The Homes were intended to be used for care of the aged. Construction of the Homes was completed sometime April 2011.

West Orange issued four temporary Certificates of Occupancy/Compliance ("CO") for four Homes #115; #117; #119 and #121 in June, July and August 2011.[1] All four COs required an "affidavit of compliance for Zoning Board." The temporary COs were issued because the four Homes were considered as one "project" which required a

[1] The temporary COs show that one was issued for "Bldg #5" on June 9, 2011 with an expiration date of June 30, 2011; another was issued for "Building 6" on July 14, 2011 with an expiration date of August 31, 2011; and two others were issued for "Bldg. 3" and "Building 4" on August 8, 2011 with expiration dates of August 31, 2011. It is undisputed that these COs are for the Homes identified by Green Hill as ## 115, 117, 119 and 121. Although Green Hill had stated that six buildings were proposed and erected in April 2011 in its initial summary judgment motion, its present motion addresses only four Homes. In the absence of any dispute in this regard by West Orange, the opinion will address only these four Homes. Note that in its supplemental responses to Green Hill's interrogatories, West Orange stated that per its "Building Department" there was no construction in "buildings 1 and 2" which consisted "of nothing more than footings and foundation."

"sign[] off" from the Township's Soil Conservation unit, and further because "final engineering plans were not signed."

Green Hill then received the State's approval to move residents into each Home in June (Home #119), July (Home #121) and September 2011 (Homes #115 and 117). Green Hill moved the residents on or within a week of the approval date.

West Orange issued a final CO to Green Hill on August 22 or 24 of 2011.[2] Therefore, and thereafter, the assessor issued two tax bills on or about October 7, 2011. One was in the amount of $2,680,700 for the Homes and was pro-rated for the four-month period of September through December of 2011. The second tax bill was for the 15-acre portion of land in the amount of $3,925,000 to correct the mistaken exclusion of the entire Subject (i.e. of 20 acres) by the firm retained by West Orange to conduct a municipal wide revaluation in 2011.[3]

By letter of October 19, 2011, Green Hill filed an Initial Statement Claiming Property Tax Exemption with West Orange's assessor under N.J.S.A. 54:4-3.6 on grounds the Homes were used to provide "skilled nursing and assisted living care to elders." Its cover letter of the same date noted that the four new Homes "were the subject of . . . additional assessments levied . . . in the amount of $2,680,000" and Green Hill's application for exemption related to such assessment, plus for the land on which the new

[2] In its responses to Green Hill's interrogatories, the assessor certified that the "improvements" to the Subject "were completed in April 2011 but were not occupied until August 2011" and that the CO was granted on August 22, 2011. The cover letter from West Orange's counsel noted that a copy of the CO was not available with the assessor but would be obtained from the "Building Department" if disputed by Green Hill. In the cover letter to its supplemental responses to Green Hill's interrogatories, West Orange stated that the "final CO was issued on August 24, 2011." Green Hill does not dispute either August 22 or 24 as the date of the final CO.

[3] The tax bill in this regard did not prorate the land assessment. The bill also included an amount of $25,000 towards "improvements" which was also not prorated. In the prior summary judgment motion, the parties stipulated that both tax bills related to the 15-acre portion of the Subject and included land plus improvements. Neither party separately addressed this $25,000 non-prorated amount in their present motion regarding the validity of West Orange's four-month prorated added assessment.

Homes were built. No action appears to have been taken granting or denying Green Hill's exemption application.[4] However, the assessor exempted the entire Subject for tax year 2012.

On November 30, 2011, Green Hill filed a complaint with the Tax Court appealing the 2011 added and omitted assessments. It claimed an exemption under N.J.S.A. 54:4-3.6 and also alleged that the discriminatory assessments were in excess of the Subject's true value. West Orange did not file a complaint or counterclaim.

Green Hill then filed a summary judgment motion claiming the new Homes and the land on which they were built (i.e. the remaining 15 acres) were tax exempt based on the "continued use" principle developed by the courts. The court denied the motion and found that the land on which the Homes were constructed had never been tax exempt at any time prior to their construction therefore the "continued use" principle did not apply.

However, the court also found that in the absence of certain facts it was unable to rule on the validity of West Orange's four-month prorated added assessment and directed the parties to brief this issue. The parties then filed such briefs. Green Hill also filed a summary judgment motion in this regard for procedural completeness.

Green Hill contends that the four-month prorated assessment cannot stand pursuant to N.J.S.A. 54:4-63.3 and Schizophrenia, supra, because as of August 2011, the date when the Homes were deemed substantially complete by the assessor, the Homes were actually being used for tax-exempt purposes. West Orange argues that the Homes should have been assessed from May 2011 since the construction of the Homes was completed April 2011. It also notes that Schizophrenia, supra, does not apply, because

[4] Although West Orange in its brief claims Green Hill did not file an Initial Statement for Exemption, it concedes that this does not adversely impact Green Hill's ability to claim an exemption.

the Homes were not actually used as of April 2011 but at much later dates when the temporary COs were issued or when residents moved into the Homes.

FINDINGS

Summary judgment should be granted in the absence of genuine issues of material facts. R. 4:46-2(c); Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 528-29 (1995) (summary judgment will be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law"). Denial is appropriate only where the evidence is such that reasonable minds could return a finding favorable to the party opposing the motion. Id. at 534, 540.

The issue here is whether the prorated four-month added assessment upon the Homes is proper pursuant to the statute and case law. This can be disposed of by summary judgment in light of the undisputed material facts.

An assessor is authorized to impose an added assessment "when any parcel of real property contains any building or other structure which has been erected, added to or improved after October 1 and completed between January 1 and October 1 following." N.J.S.A. 54:4-63.3. The assessor must "determine the taxable value of such parcel of real property as of the first of the month following the date of . . . such completion." Ibid. "The added assessment is imposed for the tax year in which the improvement is completed, and is prorated for the months remaining in the calendar year following completion of the project." Borough of Freehold v. Nestle USA, 21 N.J. Tax 138, 146

(Tax 2003). In this connection, the term "completed" is defined to "mean substantially ready for the use for which it was intended." N.J.S.A. 54:4-63.1.

In Schizophrenia, supra, the court ruled that for purposes of N.J.S.A. 54:4-63.3, an assessor must not only determine the value of the property as of the first of the month following completion of the new improvement, but also "whether the property is exempt from taxes." 6 N.J. Tax at 442. Therefore, "the tax status of property subject to an added assessment should be ascertained as of the date of the assessment." Ibid. If an exemption is warranted then an added assessment cannot stand since it would be "difficult[]" to "believ[e] that the Legislature intended to tax structures such as churches which have been completed and used for exempt purposes after the original assessment date." Id. at 443. This is especially because a township's reliance upon an existing ratable for tax revenue does not exist for improvements completed after the assessment date. Id. at 442.

Here, West Orange deemed the August 2011 final CO as the date of the Homes substantial completion, thus, imposed the added assessment for September 1, 2011 (the first of the month following August 2011), and prorated the assessment over the remaining four months of September 2011 to December 2011. At this point, however, the Homes were being actually used, or were substantially ready for their intended use, in furtherance of Green Hill's non-profit purposes, that is, providing care for the aged. Thus, they should have been tax-exempt under Schizophrenia, supra. Therefore, West Orange's four-month prorated added assessment for improvements is invalid.

West Orange argues that construction of the Homes was completed in April 2011 therefore the assessor should have imposed an eight-month added assessment starting May of 2011 "regardless of the exempt status of the property." Since the assessor only

imposed a four-month assessment, Green Hill should not be heard to complain especially since West Orange did not file a complaint or counterclaim.

However, the fact is that the assessor deemed the Homes substantially complete in August 2011, imposed an added assessment as of that date, and prorated the same over the remaining four months of that year. Thus, the assessor's alleged error in not using May 2011 as the "completion" date is irrelevant, especially when West Orange did not file a counterclaim or complaint in this regard. In any event, the alleged error does not estop Green Hill from claiming a tax exemption or challenging the added assessment.

West Orange maintains that Schizophrenia, supra, does not apply because construction of the Homes was complete in April 2011, and as of this date the Homes were not actually used for tax-exempt purposes. Rather, they were actually used only on "June 9, June 20, July 26 or September 1, 2011" (June 9 and September 1 being the dates when the temporary COs were issued, while June 20 and July 26 being the dates residents moved in Homes #119 and #121).

The date of "completion" for purposes of an added assessment can be varied. The "issuance of a certificate of occupancy [is a commonly used] indication of when an improvement is ready for use." Snyder v. Borough of South Plainfield, 1 N.J. Tax 3, 7-8 (Tax 1980). However, courts have also deemed a "construction [which] has reached the point where an economically viable structure is in existence as of the critical cut--off date" as being "complete" for purposes of imposing an added assessment. Beranto Towers v. City of Passaic, 1 N.J. Tax 344, 349 (Tax 1980). See also Litton Bus. Sys. Inc. v. Borough of Morris Plains, 8 N.J. Tax 520, 538 (Tax 1986) (applying a "functional test . . . to the use of the building), aff'd, 9 N.J. Tax 651 (App. Div.1988); cf. City of Newark

v. Block 322, Lots 38 and 40, 17 N.J. Tax 103, 105 (Tax 1997) (actual use, as opposed to lack of a CO, is the determining factor for tax exemption).

Here, the assessor imposed the assessment for the four-month period starting September 2011 based upon his conclusion that the August 22, 2011 final CO was the date of substantial completion of the Homes. At such time, two of the four Homes were being actually used for the intended non-profit purpose. Thus, under Schizophrenia, supra, they were tax-exempt.

Further, although Green Hill moved residents into two of the four Homes (Building #115 and #117) on September 7, 2011, those Homes were deemed substantially complete by West Orange on August 22, 2011. As of the first day of the first month following such completion, i.e. September 1, 2011, those Homes were "economically viable structures." Further, on September 1, 2001, Green Hill received the State's approval to move residents into those Homes, thus, those Homes were ready for their intended tax-exempt use. Therefore, Homes #115 and #117 were also tax-exempt as of the added assessment date of September 1, 2011. See e.g. Presbyterian Home at Pennington, Inc. v. Borough of Pennington, 409 N.J. Super. 166, 192 (App. Div. 2009) (assisted living home "could not be considered substantially complete until February 2002," the date it received a license from the State to operate as such, therefore, "land should have been taxed as non-exempt for 2002, but the improvements [should have been] valued as of the first day of the month following completion and, at that point, accorded tax exempt status" pursuant to Schizophrenia, supra), certif. denied, 201 N.J. 143 (2010).

In sum, the court finds that the four Homes were tax-exempt as of the date of the added assessment of September 1, 2011. Therefore, West Orange's four-month prorated added assessment upon the four Homes is invalid.[5]

CONCLUSION

For the aforementioned reasons, the court invalidates the four-month prorated added assessment upon the four Homes and grants Green Hill's motion for summary judgment in this regard. A separate Order in this regard will be entered simultaneously.

Very truly yours

Mala Sundar, J.T.C.

[5] The court's prior opinion of December 21, 2012 noted that Green Hill's challenge to West Orange's omitted assessment upon the 15-acre portion of land will be set for a valuation trial in the absence of a dispositive motion. However, as part of its prior summary judgment motion, Green Hill had requested that the parties be allowed to "submit appropriate computations as to the exempt portion and assessment pursuant to R. 8:9-3" should the court rule that the Homes were deemed tax-exempt. Although this request was in connection with the prior summary judgment motion, the court provides the parties this opportunity should they agree upon such computation. It is expected that the parties will also address the non-prorated $25,000 assessment for improvements included as part of the tax bill for the land assessment. See supra n.3. If parties choose to do so, they should submit an agreed upon computation of the assessment and exempt portion no later than May 24, 2013, after which the court will issue a judgment. If not, the court will set the remaining issues for trial.