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Matter of Rite Aid Corp. v Town of Schodack Bd. of Assessment Review

[*1] Matter of Rite Aid Corp. v Town of Schodack Bd. of Assessment Review 2013 NY Slip Op 51790(U) Decided on October 28, 2013 Supreme Court, Rensselaer County Elliott, J. Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on October 28, 2013
Supreme Court, Rensselaer County

In the Matter of the Application of Rite Aid Corporation, Petitioner,

against

Town of Schodack Board of Assessment Review, the Assessor of the Town of Schodack, and the Town of Schodack, Rensselaer County, New York, Respondents, East Greenbush Central School District, Intervenor-Respondent. For review of a Tax Assessment under Article 7 of the Real Property Tax Law.

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Raymond J. Elliott III, J.

Petitioner had initially commenced separate tax certiorari proceedings seeking the review

of Respondents' tax assessment for Petitioner's property located in the Town of Schodack, New

York for the tax years 2011 and 2012. By stipulation of the parties, these proceedings were

combined and the Court held a bench trial on March 20 and March 22, 2013.

The Court heard the testimony of Petitioner's appraiser, Christopher Harland, and

Respondent's appraiser, Stephen Clark, and admitted their respective appraisals into evidence.

The appraisers were vigorously cross-examined. Petitioner and Respondents have submitted

proposed Findings of Fact and Conclusions of Law and Memorandums of Law. The Intervenor-

Respondent has not made any submissions. The Court compliments the attorneys on their

extensive briefing of the issues before the Court.

About Legal Answers

[*2]FINDINGS OF FACT

The subject property is located at 1645 Columbia Turnpike in the Town of Schodack, Rensselaer County, New York and is identified on the tax roll as Parcel No. 189-5-1.12 (hereinafter referred to as the "Property"). The Property contains 1.95 acres of land and is being operated as a 14,564 square foot retail pharmacy store. The store sells prescription drugs in part of the retail space and sells consumer goods in the remaining space. The Property has 374 square feet of frontage on Columbia Turnpike which is the main highway through the Town of Schodack.

The Property was constructed as a free standing single-tenant Rite Aid drugstore in 2006

by Schodack Plaza LLC and was sold to Castleton NY Property, LLC for \$5,512,500 in March

15, 2007. The Property is leased by Petitioner, and under the terms of the lease, the Petitioner

pays annual rent of \$412,161 for the first 20 years of the lease. This is a triple net rent lease and

contains 5 renewal options of 5 years each. Each renewal option calls for an increase in the yearly

rent for the 5 year period.

The taxable status dates for the years under review are March 1, 2011, and March 1,

2012, and the valuation dates are July 1, 2010, and July 1, 2011. The State's equalization rate for

the Town of Schodack for the years 2011 and 2012 was 100 percent. The Respondents' assessed

value of the Property for July 1, 2010, was \$2,500,000 and the Respondents' assessment for July

1, 2011, was the same. This is the equivalent of \$172.00 per square foot.

Petitioner is an aggrieved person within the definition of RPTL 704 and as such is a

proper party to bring this proceeding.

The Property is what is referred to as a "first generation" building meaning that it was [*3]

built to suit for and occupied by the original tenant.

Petitioner's appraiser, Christopher Harland, appraised the Property for a value of

\$1,600,000 on July 1, 2010, and on July 1, 2011. Respondent's appraiser, Stephen Clark,

appraised the Property for a value of \$3,650,000 on July 1, 2010. The parties had stipulated that

Mr. Clark's appraisal could also be used for the July 1, 2011, valuation date.

Mr. Harland and Mr. Clark are both qualified appraisers and the Court finds that they are

capable of rendering expert opinions and appraisal reports.

Both appraisers testified that they used the comparative sale approach and the income

capitalization approach methods to calculate the values of the Property set forth in their

respective appraisal reports. They did not use the cost approach method.

Although they both employed the same comparative sale approach method, the

appraisers' choice of comparable sales was quite different. Mr. Harland used six sales including

four of which were apparently "second generation" buildings. The other two comparables were a

22,670 square foot Tractor Supply store and a 24,000 square foot Staples store both of which far

exceed the square footage of the Property. Mr. Clark used the sales of four free-standing "first

generation" retail drug stores.

Also, although both appraisers employed the same income capitalization approach, their

choice of leased properties was again quite different. Mr. Harland used five leased properties and

none of these properties were retail drug stores. Mr Clark used three leased properties which

were all "first generation" retail drug stores. The appraisers are however in agreement that the

Property is encumbered with a substantially above market rent lease.

CONCLUSIONS OF LAW

As pointed out by Judge Egan in Matter of Rite Aid Corporation, Respondent, v Susan

Otis, as Assessor of the Town of Malta, et. al., Appellants (102 AD3d 124, 125-126 (3d Dept

2012):

"The law governing tax certiorari proceedings is well settled and may be

succinctly stated. Although a municipal tax assessment enjoys a presumption of validity, that presumption may be overcome by producing substantial evidence that [the] property has been overvalued' (Matter of Niagara Mohawk Power Corp. v. Assessor of Town of Geddes, 92 NY2d 192, 196,699 N.E.2d 899, 677 N.Y.S.2d 275 [1998]; see Matter of Regency Realty Assoc., LLC v. Board of Assessment Review of the Town of Malta, 75 AD3d 950, 951, 905 N.Y.S.2d 710 [3d Dept 2010]; Matter of Rite[*4] Aid of NY No. 4928 v. Assessor of Town of Colonie, 58 AD3d 963, 964,870 N.Y.S.2d 642 [3d Dept 2009], lv denied 12 NY3d 709, 908 N.E.2d 925,881 N.Y.S.2d 17 [2009])—a burden often satisfied by the submission of a detailed, competent appraisal based on standard, accepted appraisal techniques and prepared by a qualified appraiser' (Matter of Niagara Mohawk Power Corp. v. Assessor Town of Geddes, 92 NY2d at 196; accord Matter of PNL Stillwater LLC v. Board of Assessors of Town of Stillwater, 94 AD3d 1401, 1402, 943 N.Y.S.2d 279 [3d Dept 2012]; Matter of Regency Realty Assoc., LLC v. Board of Assessment Review[*5] of the Town of Malta, 75 AD3d at 951; see Matter of Corvetti v. Winchell, 75 AD3d 1013, 1014, 906 N.Y.S.2d 172 [3d Dept 2010], lv denied 16 NY3d 701, 942, N.E.2d 319, 917, N.Y.S.2d 108 [2011]). Once the presumption of validity has been rebutted, Supreme Court must weigh the entire record, including evidence of claimed deficiencies in the assessment, to determine whether [the] petitioner has established by a preponderance of the evidence that its property has been overvalued' (Matter of FMC Corp. [Peroxygen Chems. Div.] v. Unmack, 92 NY2d 179, 188, 699 N.E.2d 893, 677 N.Y.S.2d 269 [1998]; accord Matter of[*6] Rite Aid of NY No. 4928 v. Assessor of Town of Colonie, 58 AD3d at 964; see Matter of Corvetti v. Winchell, 75 AD3d at 1014)."

RPTL 302(1) states in part: "The taxable status of real property in cities and towns shall

be determined annually according to its condition and ownership as of the first day of March and

the valuation thereof determined as of the applicable valuation date....". (my emphasis added).

Petitioner contends that the Property should be valued as a "fee simple" interest and not

as a "leased fee" interest. Pursuant to this contention, Petitioner's appraiser purported to value

the Property using "second generation" buildings and properties not encumbered by above

market value leases. Petitioner essentially argues that the value of the Property is inflated by the

above market value lease and the fact that it was built to suit a "first generation" drug store.

Petitioner contends that this increase in value should not be attributed to the value of the "fee

simple" interest and that the Property should be valued in accordance with its value without these

enhancements. Petitioner argues that its appraisal shows the true market value of the Property.

Respondent contends that the Property should be valued according to its actual condition [*7]

and ownership on the taxable status date. Pursuant to this contention, the Respondent's appraiser

purported to value the Property using "first generation" retail drug stores that were paying above

market rents. Respondent argues that there is an active sub-market of "first generation" retail

drug stores and that its tax assessment reflects the condition of the Property as a "first

generation" retail drug store. Petitioner argues that its appraisal shows the condition of the

Property according to its current use.

Seven Third Department decisions have addressed the issue of the proper method to value

"first generation" drug stores. In the latest decision, Matter of Rite Aid Corporation (supra at

126), Judge Egan stated: "Although the proper valuation of stand-alone, national retail

pharmacies with long-term leases has been the subject of six prior appeals to this Court (see *Matter of Eckerd Corp. v. Burin*, 83 AD3d 1239, 920 N.Y.S.2d 824 [2011]; *Matter of Rite Aid*

of NY No. 4928 v. Assessor of Town of Town of Colonie; *Matter of Brooks Drugs, Inc. v. Board*

of Assessors of City of Schenectady; *Matter of Eckerd Corp v. Gilchrist*; *Matter of Eckerd Corp.*

v. Semon, 44 AD3d 1232, 844 N.Y.S.2d 468 [2007]; *Matter of Eckerd Corp. v. Semon*, 35

AD3d 93, 829 N.Y.S.2d 238 [2006]) —and much debate".

Apparently there are no Appellate decisions in any other Department addressing this issue [*8]

and likewise the Court of Appeals has not addressed this issue. These seven Third Department

cases do not give clear direction on the issue. Each case turns on its own particular circumstances.

In at least five of these cases, Mr. Harland was the appraiser for the petitioner drug

stores, and presumably, submitted appraisals similar to the one in this instant matter wherein he

based the value of the property in issue on a "fee simple" interest approach using market rent and

market sales. The petitioner-drug store prevailed in three of these cases and all of them involved

appraisals by Mr. Harland and no recent sales of the property in issue. The assessor prevailed in

four of these cases, including the latest, *Matter of Rite Aid Corporation (supra)*, and all have in

common the fact that the Appellate Division based its ruling upholding the assessment on a

recent sale of the property in issue.

In the absence of clear guidance from the Appellate Courts, this Court believes that its

guiding principle in this case is RPTL 302(1). Property is to be assessed according to its

condition and ownership. The Property is a "first generation" free standing drug store encumbered with a long term lease paying above market rents. This is the current condition of

the Property, and it should be assessed as such. Its comparable properties are other "first [*9]

generation" free standing drug stores encumbered with a long term lease paying above market

rents. Its comparable properties are not "second generation" buildings paying market rents. If the

property was to at some later date be occupied by a "second generation" building paying market

rents, then its condition would be different and a different assessed value would be warranted.

The Court finds that the Petitioner has demonstrated through Mr. Hardland's testimony

and appraisal the existence of a valid and credible dispute regarding valuation. However, the

Court further finds that Mr. Harland's testimony and appraisal do not value the Property

according to its condition as of the taxable status date, and thus Petitioner has not proven by a

preponderance of the evidence that the Respondent's assessment of the Property is invalid.

Further, the Court is in agreement with Judge Egan in Matter of Rite Aid Corporation

(supra) and the rationale of the other three Third Department cases addressing this issue that

have held that a recent sale of the property being assessed is the best evidence of its value. As

stated by Judge Egan: "it is well settled that [t]he best evidence of value . . . is a recent sale of the subject property between a seller under no compulsion to sell and a buyer under no compulsion to buy' (Matter of Allied Corp. v. Town of Camillus, 80 NY2d 351, 604 N.E.2d[*10]1348, 590 N.Y.S.2d 417 [1992]; see Matter of Rite Aid of NY No. 4928 v. Assessor of the Town of Colonie, 58 AD3d at 966; Matter of Brooks Drugs, Inc. v. Board of Assessors of City of Schenectady, 51 AD3d at 1095-1096; Matter of Eckerd Corp v. Gilchrist, 44 AD3d at 1240)"(Matter of Rite Aid Corporation (supra at 126-127)

The Property was sold on March 15, 2007, for \$5,512,500. Although Mr. Clark testified that he did not base his appraisal on this sale price because it was at the crest of an unprecedented

commercial and residential boom cycle and before the economic implosion, the sale is nevertheless part of the record before the Court and is being used by the Court as some evidence

in its determination that the Respondent's assessment is valid. Since Mr. Clark appraised the

Property at \$3,650,000 and the Respondents have assessed the Property at \$2,500,000, the Court

finds that the Respondents' have not over-assessed the property.

Accordingly, the Petitioner's Petitions challenging the Respondents' 2011 and 2012 tax year assessments are hereby dismissed.

This shall constitute the Decision, Order and Judgment of the court. This original [*11]

Decision, Order and Judgment is returned to the Attorney for the Respondent. All other papers are delivered to the Supreme Court Clerk for transmission to the County Clerk.

The signing of this Decision, Order and Judgment shall not constitute entry or filing under CPLR

2220. Counsel is not relieved from the applicable provisions of that rule relating to filing, entry

and notice of entry.

SO ORDERED AND ADJUDGED

ENTER.

Dated: October 28, 2013

Troy, New York

RAYMOND J. ELLIOTT, III

Supreme Court Justice

Papers Considered:

1. Notice of Petition and Petition for Review of Assessment of 2011

2. Notice of Petition and Petition for Review of Assessment of 2012

3. Self Contained Appraisal Report for 1645 Columbia Turnpike, Town of Schodack, New York, dated December 14, 2012.

4. Real Estate Appraisal Report dated January 10, 2013.

5. Bench Trial Transcripts dated March 20 and 22, 2013.

6. Petitioner's Proposed Findings of Fact and Conclusions of Law and Post Trial Brief dated September 20, 2013, with annexed Exhibit A.

7. Respondents' Proposed Findings of Fact and Conclusions of Law and Respondents' Post-Trial Memorandum of Law.

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