To be Argued by:
WILLIAM MAKER, JR.
(Time Requested: 30 Minutes)

APL 2021-00103

Court of Appeals
of the
State of New York

In the Matter of
DCH AUTO, as Tenant Obligated to Pay Taxes and
DCH INVESTMENTS INC. (NEW YORK),
as Tenant Obligated to Pay Taxes,

Petitioners-Appellants,

– against –

THE TOWN OF MAMARONECK, a Municipal Corporation, its Assessor and Board of Assessment Review and THE VILLAGE OF MAMARONECK, a Municipal Corporation, its Assessor and Board of Assessment Review,

Respondents-Respondents.

For a Review under Article 7 of the RPTL

BRIEF FOR RESPONDENT-RESPONDENT THE TOWN OF MAMARONECK, A MUNICIPAL CORPORATION, ITS ASSESSOR AND BOARD OF ASSESSMENT REVIEW

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Statement pursuant to 22 NYCRR § 500.13 (a)
of the Status of Related Litigation

There is no related litigation as of this date.

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Questions Presented

1. Are the petitioners-appellants "the person whose property is assessed" given the fact that their leasehold is considered personal property and therefore by law was not, and could not, be assessed?

The Appellate Division answered in the negative.

2. Can the lack of subject matter jurisdiction be waived?

This issue was not decided directly by the Appellate Division; however, by dismissing the tax certiorari petitions, the court implicitly answered: No.

3. Can the respondents-respondents be estopped from discharging their statutory duties?

The answer to this question is the same as the answer to question 2.

4. Was the Second Department's holding predicated upon a decision whose scope should be limited to the tax exemption field?

The answer to this question is the same as the answer to question 2.

Placing the appeal in proper perspective

This brief provides multiple reasons for an affirmance but in reality, this appeal comes down to one fundamental issue: statutory interpretation. At issue is RPTL 524 (3)'s phrase: "the person whose property is assessed". As Point I shows, the petitioners-appellants' leasehold was not, and by law, could not be assessed.

Rather, the "property assessed" is the real property that the petitioners-appellants occupy pursuant to their lease. Since the "property assessed" is the underlying real estate, the "person whose property is assessed" can only be the owner of that property. That was the conclusion of the Second Department in *Matter of Circulo Housing Dev. Fund Corp. v Assessor* (96 AD3d 1053, 1056 [2d Dept 2012]) [" a condition precedent to the commencement of such a proceeding is that the owner must have made a complaint regarding the unlawful assessment to the Board for review pursuant to RPTL article 5 [*see* RPTL 524)"])[1] which it followed in its next two cases on the topic: *Matter of Larchmont Pancake House v Bd. of Assessors* (153 AD3d 521 [2d Dept 2017], *affd on other grounds* 33 NY3d 228 [2019])[2] and the case under appeal: *Matter of DCH Auto v Town of* Mamaroneck (178 AD3d 823 [2d Dept 2019]).[3]

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[1] The Court of Appeals in Michigan reached the identical conclusion (*see* infra at 41-44).

[2] "RPTL article 5 requires that the property owner file the complaint or grievance to obtain administrative review of a tax assessment." (*Larchmont Pancake House*, 153 AD3d at 522).

[3] "Here, the petitioner may qualify as an aggrieved party pursuant to RPTL 704 (1), since it paid the real estate taxes in the challenged tax years. However, in filing the administrative complaints under RPTL 524 in its own name, it failed to satisfy a condition precedent to the commencement of an RPTL article 7 proceeding since it was neither the owner, nor identified in the complaints as an agent of the owner" (citations omitted) (*DCH Auto,* 178 AD3d at 825).

Having determined the petitioners-appellants' landlord is the "person whose property is assessed", the Second Department took the two steps that logic and statutory analysis compelled.

One, RPTL 524 (3) requires the complaint initiating administrative review (administrative complaint) to be filed or authorized by "the person whose property is assessed". The petitioners-appellants are not that person; the owner of the property they lease is that person. Therefore, they did not have the authority to bring the administrative review in their own name. But they did. They acted on their own behalf, not as a duly appointed representative of the property owner (*see* paragraph 1 of the administrative complaints where the petitioners-appellants announce that they are proceeding in their own name: "DCH Auto --- lessee, taxpayer" (R. 100), "DCH AUTO AS TENANT OBLIGATED TO PAY TAXES" (R. 113 and R. 127) and "DCH INVESTMENTS (NEW YORK) AS TENANT OBLIGATED TO PAY TAXES" (R. 142).[4]

[4] The administrative complaint for 2014 is the sole exception (R. 160-165). There, the property owner authorized the filing of the challenge to the assessment (R. 165). In the hurly-burly of litigation, the parties lost sight of that fact. If the Town of Mamaroneck prevails on this appeal, it anticipates (and will accept) an order from this Court that affirms the Appellate Division's Decision & Order but either directly instructs the Westchester County Supreme Court to amend its judgment by reducing the 2014 assessment to the amount stipulated by the parties (R.38 – R. 39, ¶ 48) or modifies the Appellate Division's Decision and Order to the extent of directing that Court to give such instruction to the Westchester County Supreme Court.

Two, because the administrative reviews were brought in the petitioners-appellants' own name, they failed to satisfy the condition precedent of RPTL 524 (3), meaning that the Court lacked subject matter jurisdiction over the proceedings (*see Matter of Larchmont Pancake House v Bd. of Assessors*, 33 NY3d 228, 235 [2019] ["[T]he proper filing of an administrative grievance pursuant to RPTL article 5 is a condition precedent to judicial review pursuant to RPTL article 7"]).

Therefore, the Appellate Division affirmed the Supreme Court's dismissal of the proceedings for lack of subject matter jurisdiction.

The petitioners-appellants offer a variety of arguments for reversal, most notably that as the person required to pay the real property taxes pursuant to their lease, the petitioners-appellants should be allowed to contest the assessment from start (the administrative review) to finish (the tax certiorari proceeding). Because they do not fit within the contours of RPTL 524 (3), they support their argument by, in essence, melding the statutory language of RPTL 524 (3) with the phrase contained in RPTL 704 (1): "[a]ny person claiming to be aggrieved by any assessment of real property . . . " and arguing that since they are a "person . . . aggrieved" under RPTL 704 (1), they satisfy RPTL 524 (3).

Their argument fails because as explained in Point III, *infra*, to treat these two radically different phrases[5] as being synonymous would strip one of the phrases of any meaning whatsoever, a result that courts must avoid (*see e.g. Matter of Mestecky v City of New York*, 30 NY3d 239, 243 [2017] ["We have recognized that meaning and effect should be given to every word of a statute and that an interpretation that renders words or clauses superfluous should be rejected" (internal quotation marks and citation omitted)].

The limited pool of appropriate challengers under RPTL 524 (3) is further borne out by the assessment review process in Nassau County. Nassau County is not governed by RPTL 524, but by its own statute, RPTL 523-b, which expands the type of persons entitled to commence administrative review beyond the limits of RPTL 524 (3). It allows an administrative complaint to be brought in the name of "any person or corporation claiming to be aggrieved by the assessment of real estate. . . ." (RPTL 523-b [6] [a]).

Whether the rules for Nassau County is the better approach is irrelevant for "[i]t is wholly immaterial that the courts might reasonably conclude that what they perceive as the ultimate legislative objectives might better be achieved by more flexible prescriptions, prescriptions which might be judged by some to be more

[5] The phrases share only two words: "person" and a derivative of "assess".

equitable. Whatever may be our view, the Legislature has erected a rigid framework of regulation, detailing as it does throughout specific particulars" (*Hutson v Bass*, 54 NY2d 772, 774 [1981] [internal quotation marks and citation omitted]).

Finally, RPTL 524 (3)'s requirement that administrative complaints be filed by property owners goes back, at a minimum, to a time shortly after the statute was added to the Real Property Tax Law in 1982 as part of a then new Title 1-A[6] (*see* this Court's elaboration upon the administrative review process and its importance in the scheme of assessment review in *Matter of Sterling Estates, Inc. v Bd. of* Assessors, 66 NY2d 122, 124-126 [1985]).

This Court has observed that "if the precedent or precedents have misinterpreted the legislative intention, the Legislature's competency to correct the misinterpretation is readily at hand" (*Highby v Mahoney* (48 NY2d 15, 19 [1979] [internal quotation marks and citations omitted]). Here, the Legislature has not altered RPTL 524 (3). In 1998, when the Legislature borrowed heavily from RPTL 524 in creating an assessment review procedure for Nassau County, it did not conform RPTL 524 (3) to the then newly enacted RPTL 523-b (6) (a) with its expanded categories of person entitled to file administrative complaints.

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[6] (*See* L. 1982, ch 714, section 9 [Compendium for the Respondents-Respondents at Comp. 3 *et seq.* RPTL 524 appears at Comp 5 – Comp. 6)

Even if we were to focus on *Circulo*, that decision is now nine years old and the Legislature has done nothing to alter its holding. "Generally, once the courts have interrupted a statute any change in the rule will be left to the Legislature, particularly where the courts' interpretation is a long-standing one" (*Hinton v Pulaski*, 33 NY3d 931, 933 [2019] [internal quotation marks and citations omitted].

Having given context to the appeal, the detailed argument begins.

Point I

The petitioners-appellants' leasehold was not assessed. Hence, the petitioners-appellants are neither the "person whose property is assessed" nor the "taxpayer".

No one disputes that RPTL 524 (3) requires an administrative complaint to come from "the person whose property is assessed . . . ." Identifying that person starts with determining what "property is assessed".

A. Assessors only assess real property.

The Real Property Tax Law concerns itself only with the assessment and taxation of real property, and limits the definition of real property to land, buildings, and other physical elements (*see* RPTL 102 [12]).

The statute mandates that "[a]ll real property within the state shall be subject to real property taxation, special ad valorem levies and special assessments . . . ." (RPTL 300). To make clear that assessments only involve real property, RPTL 300

continues: "Notwithstanding any provision of this chapter or of any general, special or local law, personal property, whether tangible or intangible, shall not be liable to ad valorem taxation." RPTL 304 (1) repeats the Legislature's intent: "assessments shall be against the real property itself. . . ."[7]

The Real Property Tax Law sets forth the means by which the taxation of real property is to be accomplished. Assessors are "charged by law with the duty of assessing real property . . ." (RPTL 102 [3]), coming up with assessments based upon "the valuation of real property" (RPTL 102 [2]), "maintain[ing] an inventory of all real property located [within their assessing unit]" (RPTL 500 [1]) and making entries upon assessment rolls of certain information for "each separately assessed parcel of real property" (RPTL 502 [2]). Assessors then subscribe an oath attesting that the assessment roll contains "all real property situated in the assessing unit" and that the "estimated value of such real property" was arrived at properly (RPTL 505 [1].

On fixed dates during the year, taxes are computed using a formula that takes

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[7] This Court opined on *ad valorem* taxation in *Ampco Printing-Advertisers' Offset Corp. v City of New York* (14 NY2d 11 [1964]). "The phrase 'ad valorem' means 'according to the value' and is used in the field of taxation to designate an assessment of taxes against property at a certain rate upon its value. *An ad valorem property tax is always based upon ownership of property*" (emphasis added) (*id.* at 22).

into consideration the property's assessed value and the tax rate for the particular tax being levied (RPTL 922 [1] [a] [iii]). Tax bills then are mailed to "each owner of real property at the tax billing listed [on the tax roll]" (RPTL 922 [1] [a]).

This sojourn through the Real Property Tax Law inexorably leads to the conclusion that the words "property is assessed" in RPTL 524 (3) can only refer to real property since real property is the entire focus of that chapter of the Consolidated Laws. The significance of this conclusion is that the petitioners-appellants are tenants and their leasehold is not real property as section *B* explains.

B. Leases are personal property

Leaseholds are not real property (*see Matter of Ft. Hamilton Manor, Inc. v Boyland*, 4 NY2d 192, 197 [1958] ["Under a long line of New York decisions, the interest of a tenant of realty under a real estate lease is not realty but is a chattel real which is personal property"]).[8]

Because of this statutory framework, when the County of Nassau assessed a petitioner for the value of the buildings it had constructed on land leased from the federal government, the assessment was stricken. Since the petitioner's leasehold "constitute[d] personal property, called a chattel real", it could not be assessed

[8] (*see also PK Rest., LLC v Lifshutz*, 138 AD3d 434, 439 [1st Dept 2016], *First Trust & Deposit Co. v Syrdelco, Inc.*, 249 AD 285, 286-287 [4th Dept 1936] and *Matter of Claim of Ehrsam v City of Utica*, 37 AD 272, 274 [4th Dept 1899]).

because New York does not assess personal property (*see Matter of Mitchel Manor No. 1 Corp. v Bd. of Assessors*, 10 AD2d 854, 855 [2d Dept 1960] [citation omitted]).

The Legislature could have superseded common law by including leases within the definition of "real property" in RPTL 102 (12) but did not. Nor were leases defined as 'real property' in the statute that preceded the Real Property Tax Law. This Court once observed that the absence of leases from that definition must have been intentional. "[N]owhere in the Tax Law [now, the Real Property Tax Law] has the Legislature characterized a leasehold as taxable real property. Such omission is understandable, as a lease for years is deemed personalty" (*Grumman Aircraft Eng'g Corp. v Bd. of Assessors*, 2 NY2d 500, 507 [1957], *cert denied* 355 US 814, 78 S Ct 14, 2 L Ed 2d 31[1957]).

C. *The owner is "the person whose property is assessed." Its failure to participate in the administrative review means that the condition precedent for these tax certiorari proceedings was not satisfied.*

The only conclusion that adheres faithfully to the language of RPTL 524 (3) is that since the "property assessed" is the real property known as 700 Waverly Avenue, the "person whose property is assessed" can only be the owner of that property. Concomitantly, since the petitioners-appellants' leasehold was not assessed, they cannot be the "person whose property is assessed".

Challenges to the assessments here required the administrative review to be submitted by the owner of 700 Waverly Avenue, i. e. "the person whose property is assessed". Since that did not occur,[9] a condition precedent for subject matter jurisdiction in these Article 7 proceedings is lacking, rendering the administrative reviews fatally flawed, meaning that these tax certiorari proceedings are without a legitimate foundation to supply the Courts with subject matter jurisdiction.

D. The Westchester County Tax Act specifically provides that the owner is the 'taxpayer'.

In tax certiorari litigation it is common for a tenant whose lease obligates it to pay real estate taxes to refer to itself as the "taxpayer". In Westchester County, that is not true.

The Westchester County Tax Act makes an owner personally responsible for paying the real property tax levied upon the owner's property (*see* Westchester County Tax Act § 283.614 [1] ["Notwithstanding any general, special or local law to the contrary, whenever any tax . . . levied or assessed upon or against the property of any persons . . . except a municipal corporation . . . shall at any time remain

[9] The Town of Mamaroneck is cognizant that 2014 is the exception. To avoid having to add a disclaimer each time the Town points out that the administrative complaints did not satisfy the condition precedent for a tax certiorari proceeding, the Court should understand that the Town is referring only to the 2009, 2010, 2011 and 2013 administrative reviews.

unpaid, such unpaid tax or assessment shall become the personal liability of the owner of the property"]). Thus, the "taxpayer" in Westchester County is the owner of the property being assessed, not someone who, for whatever reason, pays the real estate taxes.[10]

In that same vein, even though RPTL 304 assigns liability for paying real property taxes to certain tenants of certain types of residential property, RPTL 304 (2) makes it clear that "[n]othing in this subdivision shall relieve the owner of real property from the obligation for paying all taxes due on the real property under his ownership. . . ."

The Westchester County Tax Act is consistent with the Real Property Tax Law. Since assessors only assess real property and taxing authorities only tax the owners of real property, the taxing authorities here did not tax the petitioners-appellants' leasehold. They taxed the owner of the property that they leased based not upon the leasehold's value, but the real property's value. The petitioners-appellants paid the taxes not because those taxes had been imposed directly upon

[10] In counties where specific tax acts do not exist, owners are personally liable for the real estate taxes levied upon their properties if they reside in the municipality where their property is located (*see* RPTL 926 [1]). Dictum to the contrary in *Matter of Mack v Assessor* (79 AD2d 604, 605 [2d Dept 1979]) is, respectfully, incorrect.

them but because they were contractually required to do so by their lease. Payment did not make them the "taxpayer" under the Westchester County Tax Act, however.

E. The correct mechanism for challenging assessments.

Although under proper circumstances, a tenant, "aggrieved by any assessment of real property" (RPTL 704 [1]), may bring a tax certiorari proceeding, it does so not because the tenant is "the person whose property is assessed", but because the Legislature has chosen to allow certain persons, in addition to owners, to bring tax certiorari proceedings (*see e.g. Matter of Circulo Housing Dev. Fund Corp. v Assessor* (96 AD3d 1053, 1056 [2d Dept 2012] ["While RPTL article 5 requires that the *property owner* file a complaint or grievance to obtain administrative review of the tax assessment, *any person* claiming to be aggrieved by any assessment may file a petition pursuant to RPTL article 7 . . . ." [citations omitted]).

In other words, although the statutes allow a "person whose property is assessed" to file an administrative complaint and be a petitioner in an Article 7 proceeding, the inverse is not true. A person who is eligible to be an Article 7 petitioner is not automatically entitled to file a complaint for an administrative review. That person also must be "the person whose property is assessed" or been designated by "the person whose property is assessed" in a writing that is "made a

part of such statement [i.e., the administrative complaint] and bear[s] a date within the same calendar year during which the complaint is filed" (RPTL 524 [3]).[11]

The petitioners-appellants did not file the administrative complaints on behalf of their landlord as evidenced by paragraph 1 of the administrative complaints. Each complaint states in no uncertain terms that one of the petitioners-appellants was filing it in its own name "AS TENANT OBLIGATED TO PAY TAXES" (R. 113, R. 127, R. 142) or in the case of the 2009 protest as "lessee, taxpayer" (R. 100).

Moreover, even if the lease were construed, or more accurately, misconstrued as the owner's designation of the petitioners-appellants as its representative, the petitioners-appellants did not comply with RPTL 524 (3) since (A) the lease was not included as part of the administrative protest and (B) the lease is dated 2007 which precedes all of the years at issue (*see* RPTL 524 [3]: "Such written

[11] In their brief, the petitioners-appellants conceal the weaknesses in their arguments by omitting key elements from the materials to which they refer. Most noteworthy is when they quote from RPTL 524 (3) (*see* brief for the petitioners-appellants at 17). They end their excerpt right before the sentence which requires the written authorization to act to "be made a part of such statement" and to be dated in the same calendar year as the administrative review to which it pertains. The petitioners-appellants knew that they had not submitted their lease, which they claim is the source of their authority (*see* brief at 58-59), with their administrative complaints and that even if they had, the lease predates the administrative reviews by a number of years (R. 49 [date of lease: October 10, 2007]).

authorization must be made a part of such statement and bear a date within the same calendar year during which the complaint is filed").

Point II

The Second Department was not the first New York appellate court to recognize that an administrative complaint must be filed or authorized by the property owner.

DCH Auto, and its immediate predecessors, *Circulo* and *Larchmont Pancake House*,[12] did not break new ground. They simply are more recent pronouncements of a long-standing rule.

Over 40 years ago, the Appellate Division made it clear that to be 'properly filed' the administrative complaint must be filed by the owner of the real property that is assessed. In its 1980 decision in *Matter of Raer Corp. v Vil. Bd. of Trustees* (78 AD2d 989 [4th Dept 1980], *lv dismissed*, 52 NY2d 602 and 677 [1981]), the Fourth Department laid out the initial steps for administrative review this way: "Such statutes provide that an owner of real property may protest the tax assessment

[12] By *Larchmont Pancake House* we are referring to the Second Department's decision (153 AD3d 521 [2d Dept 2017]).

thereon by timely filing with the board of assessment review a complaint. . . ."[13]

This Court confirmed this rule in *Matter of Sterling Estates, Inc. v Bd. of Assessors* (66 NY2d 122, 126 [1985]): "[T]he Legislature has specified that protest is a condition precedent to a proceeding under Real Property Tax Law article 7 by providing that a petition seeking review must show that a complaint was made in time to the proper officers to correct such assessment. Failure to comply with that requirement requires dismissal of the aggrieved taxpayer's petition" (internal quotation marks and citations omitted). (Lest the term "aggrieved taxpayer" cause confusion, the Sterling Estates petitioner was the owner of the real property whose assessment was being challenged [*id.* at 124]).

Eighteen years ago, the Appellate Division once again emphasized this point in *Matter of Raddison Community Assn. v Long*, 3 AD3d 135, 139 [4th Dept 2003], *lv dismissed* 4 NY3d 870 [2005] when it held: "[T]he construction urged by petitioner would be contrary to the purpose of RPTL 524, which requires that a property owner file a complaint with the assessor . . . before seeking relief in court (*compare* RPTL 524, *with* RPTL 706)." In the passage that follows these quoted

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[13] We are mindful that *Matter of Raer Corp.* was decided before RPTL 524 (3) was enacted; however, the predecessor statute controlling administrative complaints, former RPTL 512 (1), also required administrative reviews to be "made by the person whose property is assessed" (*see* L. 1958, ch 959, § 512 [1] which can be found in the Compendium for Respondents-Respondents at Comp. 9 – Comp. 178).

words, the Fourth Department used the words "property owner" or "owner" seven times when summarizing the steps in the administrative review process.

> Upon receiving the complaint of the *property owner*, the board of assessment review has the opportunity to correct the assessment to the *property owner's* satisfaction. The board is aware that, if it does not grant the *property owner* the full relief requested, the *owner* may seek that relief in court. The *property owner* should not, however, be allowed to request new and different relief before the court. The purpose of filing a complaint before the board of assessment review would be defeated if, for example, the board granted all of the relief requested by the *property owner*, and the *owner* nevertheless thereafter commenced an RPTL article 7 proceeding seeking a further reduction of the assessment.

Matter of Raddison Community Assn. v Long, 3 AD3d at139-140 [emphasis added for the words 'property owner' and 'owner', internal quotation marks and citations omitted]).

Circulo and its progeny simply followed these precedents.

Point III

The difference in the language of RPTL 524 (3) and RPTL 704 (1) means that the petitioners-appellants cannot be "the person whose property is assessed."

Sections RPTL 524 (3) and RPTL 704 (1) serve different purposes, define different sets of people, and come into play at different times in the overall review of assessments.

RPTL 524(3) requires the complainant at the administrative level to be "the person whose property is assessed, or . . . some person authorized in writing by the complainant or his officer or agent . . .",[14] while RPTL 704 (1) is more expansive, permitting "[a]ny person claiming to be aggrieved by any assessment of real property . . . ." to be the petitioner in a tax certiorari proceeding (assuming, of course, that the proceeding is preceded by a proper administrative complaint). These statutes create separate categories for who must file an administrative complaint and who thereafter may challenge an assessment in court.

The Second Department saw the dichotomy in language and harmonized the statutory scheme by determining the phrase "the person whose property is assessed" to be synonymous with the word "owner", while recognizing that RPTL 704 (1)'s

[14] Point VII (B) establishes that the petitioners-appellants' lease did not appoint them as the owners' representative for administrative review of the property's assessment.

phrase refers to a larger group of potential petitioners in the tax certiorari proceeding that follows the administrative review. In doing so, the Appellate Division did precisely what this Court has directed lower courts to do (*see Matter of the Town of Irondequoit v County of Monroe*, 36 NY3d 177, 182 [2020] ["When the statutory provision to be interpreted is but one component in a larger statutory scheme, it must be analyzed in context and in a manner that harmonizes the related provisions and renders them compatible" (internal quotation marks and citations omitted)] and *People ex rel. McCurdy v Warden*, 36 NY3d 251, 262 [2020] ["As the language of Penal Law § 70.45 [3] and Correction Law § 73 [10] demonstrates, the two provisions serve entirely different purposes and, thus, are not in tension with each other"]).

Decisions of this Court stating this rule of statutory construction abound (*see e.g. Matter of Natl. Energy Marketers Assn. v New York State Pub. Serv. Commn.*, 33 NY3d 336, 348 [2019], *Leader v Maroney, Ponzini & Spencer*, 97 NY2d 95, 104 [2001], *Matter of Branford House, Inc. v Michetti*, 81 NY2d 681, 688 [1993], *Matter of Aaron J.*, 80 NY2d 402, 407 [1992] and *Rocovich v Con Edison*, 78 NY2d 509, 515 [1991]).

The Second Department's construction of the phrase in RPTL 524 (3) follows this Court's admonition that when statutes contain completely dissimilar terms, each

must be given its own meaning so that neither is rendered superfluous (*see e.g.* ["all parts of a statute are intended to be given effect and . . . a statutory construction which renders one part meaningless should be avoided" (citations and internal quotation marks omitted)]. Hence the Appellate Division recognized that it was incumbent upon it to interpret these phrases so as to give each a place in the assessment review process, and that is what it did.

The court recognized that article 5 controls the administrative review while article 7 governs the judicial challenge of an administrative review and that nether article intrudes upon the domain of the other. It also appreciated that by using such disparate phrases, the Legislature limited the person who must bring the administrative review to one class of person: "the person whose property is assessed"[15] but expanded the group who may sue to have an assessment reduced to anyone "claiming to be aggrieved by any assessment" (RPTL 524 [3] versus RPTL 704 [1]).

To give each of these completely different phrases its own meaning, the Second Department determined that the narrow language of RPTL 524 (3) described the owner of the real property being assessed, but that the Legislature's more expansive language in RPTL 704 [1] meant that potential tax certiorari litigants

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[15] or that person's designee

consist of a larger class, including tenants who are obligated to pay the real property taxes levied upon the properties that they rent. This interpretation permits the phrase "the person whose property is assessed" to retain its vitality and to have purpose in the statutory scheme. The Second Department's skilled navigation of the interplay between the phrases in RPTL 524 (3) and RPTL 704 (1) avoided an interpretation that would have rendered the phrase in RPTL 524 (3) meaningless.

People v Brancoccio (83 NY2d 638 [1994]) provides cogent support for the Appellate Division's approach. There, this Court was called upon to construe the Criminal Procedure Law that in one subsection established the impact of an indictment being "filed" in a superior court while misdemeanor charges are pending in an inferior court, and in another subsection described what occurs when a prosecutor obtains an adjournment from that inferior court in order to present the case to a grand jury and an indictment "results".

The Court concluded that since the statute contained different words ("filed" and "results"), "[w]e should credit the Legislature with having intentionally made the distinction [for w]hen * * * the Legislature uses unlike terms in different parts of a statute it is reasonable to infer that a dissimilar meaning is intended" (*id.* at 642 [internal quotation marks and citations omitted]).

The Third Department has followed this Court's direction when construing the Real Property Tax Law. *Matter of Level 3 Communications, LLC v Clinton County* (144 AD3d 115 [3d Dept 2016]) required it to construe the terms "distribution" and "transmission" in the context of the assessment of fiber optic installations. The Court appreciated that these terms "are independently used in separate subdivisions of RPTL 102 (12)." It "therefore treat[ed] the Legislature's distinct use of those terms as evincing a separate meaning for each" (*id.* at 119 [citations omitted]). The Court summed up with unassailable logic: "To attribute the same meaning to distribution and transmission would render one of these terms superfluous, an outcome to be avoided" (*id.*).

The Second Department's reconciliation of RPTL 524 (3) and RPTL 704 (1) is consistent with New York law regarding the nature of leaseholds and follows this Court's instruction to give meaning to all phrases in a statute. It also is supported by

(i) RPTL 523-b,

(ii) Form RP-524, the form of administrative complaint promulgated by New York State, and

(iii) statutes in other states.

Moreover, the Second Department's conclusion is the same conclusion reached by courts of other states (*see e.g. Walgreen Co. v Macomb Twp.*, 280 Mich App 58 [Court of Appeals 2008] *lv denied* 482 Mich. 1187 [2008], *reconsideration of denial of leave denied* 482 Mich. 917 [2009]).

It is to an exposition of these points that this brief now turns.

Point IV

The Appellate Division's interpretation of RPTL 524 (3) is supported by another RPTL statute, by the form of administrative complaint promulgated by the State and by case law and statutes from other states.

A. RPTL 523-b

Further proof of the Legislature's decision to differentiate between complainants in administrative reviews and petitioners in tax certiorari proceedings can be found in its creation of the Assessment Review Commission for Nassau County.

This statute, added to the Real Property Tax Law in 1998, does not limit the persons who may file grievances to the persons described in RPTL 524 (3). It increases the pool to "any person or corporation claiming to be aggrieved by the assessment of real estate. . . ." (RPTL 523-b [6] [a]). The clash in the language of RPTL 524 (3) and RPTL 523-b proves that the Legislature's intent was to make the

set of persons who may file administrative complaints pursuant to RPTL 524 smaller than the group of persons who may do so in Nassau County. Otherwise, it would have conformed the class of permissible RPTL 524 (3) complainants to the class created by RPTL 523-b.

The failure to synchronize must not have been an oversight since RPTL 523-b (6) (b) specifically incorporates the grounds for contesting assessments contained in RPTL 524. Hence the Legislature was well aware of RPTL 524 (3) when it enacted RPTL 523-b.

RPTL 523-b demonstrates that if the Legislature had wanted to give persons, other than property owners, the right to pursue administrative review in their own names in places outside of Nassau County, it knew how to do so. By not broadening the RPTL 524 (3) definition, the Legislature intended that when RPTL 524 applies, it is the property owner who must file the administrative complaint.[16]

RPTL 523-b also illustrates that if there is to be a change in the assessment review process, that change must come from the Legislature. This has happened before in the field of tax certiorari. When this Court allowed a lower court to reduce an assessment below the value requested in the article 7 petition, the Legislature

[16] Other states are more expansive (see e.g., Conn General Stat § 12-111 [a]).

stepped in to amend RPTL 720 (1) (b) to prevent that from happening again outside of New York City (For a synopsis of these events, *see Matter of Raddison Community Assn. v Long*, 3 AD3d 135, 138-139 [4th Dept 2003], *lv dismissed* 4 NY3d 870 [2005]).

B. Form RP-524

The form for administrative complaints promulgated by New York State is further proof that the Second Department was correct. In paragraphs one and two on page one, the form asks for the "Name and telephone no. of owner(s)" and the "Mailing Address of owner(s)" (R. 100),[17] not for information about an aggrieved person who is not the owner. Paragraph 7 on page one asks for the "[p]roperty owner's estimate of market value of property . . ." (*id.*).

Since RPTL §524 (3) allows an owner to have a representative file an administrative complaint on the owner's behalf, paragraph three on page one provides spaces within which can be inserted the "Name, address and telephone no. of representative of owner. . ." (R. 100).

Part Four of RP-524, entitled "DESIGNATION OF REPRESENTATIVE TO MAKE COMPLAINT", is where the owner makes the actual designation. At the

[17] We refer to only one of the administrative complaints filed in these proceedings because all the forms are identical.

beginning of Part Four, the owner (or one of its officers if the owner is not an individual) is identified by name, followed by the appellation: "as complainant (or officer thereof)" (R. 103). The owner then names the representative and signs Part Four above the line that reads "Signature of owner (or officer thereof)" (*id.*). By "complainant", the form is referring to the property owner.

In addition, Part Five on page 4 asks for the "Signature of owner or representative" (*id.*). Part Six allows for a stipulated reduction to an assessment before the complaint is presented to the Board of Assessment Review. Such stipulation is signed by the Assessor and the "Complainant or representative" (*id.*).

There is no place on the form where the signature of an aggrieved party (other than the owner) is asked for, required, or even allowed.

It also is important to note that when constructing form RP-524, the New York State Board of Real Property Services had only RPTL 524 (3) to which to refer. Clearly it understood that the phrase "the person whose property is assessed" meant the property owner for if the Board had a larger group of complainants in mind, paragraph 1 of the form would have read something like: "Name and telephone no. of aggrieved person", instead of "owner".

C. Michigan

The Second Department was not the first appellate court to reach the conclusion that RPTL 524 (3)'s phrase "the person whose property is assessed" means the owner of that property. The phrase "the person whose property is assessed on the assessment roll" appears in section 211.30 (4) of the statutes of State of Michigan. It was interpreted in the context of the procedure for the administrative review of an assessment in *Walgreen Co. v Macomb Twp.* (280 Mich App 58 [Court of Appeals 2008], *lv denied* 482 Mich. 1187 [2008], *reconsideration of denial of leave denied* 482 Mich. 917 [2009]) --- a case remarkably similar to this one.[18]

A tenant, that was obligated to pay the real property taxes pursuant to its lease, filed the equivalent of RP-524 with the Macomb Township Board of Review, Michigan's version of New York's Board of Assessment Review. It did not have authorization from the property owner to pursue a protest.

The Board of Review denied relief and the tenant appealed to the Tax Tribunal, the adjudicative body that performs the same function as the New York

[18] *Walgreen Co.* involved assessments for the years 2003 through 2006. Effective 2007, the Michigan Legislature revamped the procedure for reviewing assessments. Cases dealing with the revised system do not consider *Walgreen Co.* to have been wrongly decided, just obsolete with respect to properties that qualify for assessment review under the new law (*see e.g. Spartan Stores, Inc. v City of Grand Rapids*, 307 Mich App 565, 569-573 [Court of Appeals 2014]).

Supreme Court in tax certiorari proceedings. The Tax Tribunal upheld the Board of Review so the tenant appealed again, this time to the Michigan Court of Appeals.

Before the appellate court, the tenant argued, among other things, that it "was a party in interest because it was responsible for paying the property taxes" (*Walgreen Co.*, 280 Mich App at 61). For that reason, it claimed that it had the right the right to protest the assessment at the administrative level. The Court of Appeals disagreed.

In construing the statute, the Court concluded: "[b]cause petitioner did not provide the board of review with any indication that it was the agent of a 'person whose property is assessed on the assessment roll', the statute [controlling the procedures before the Board of Review, viz. Mich. Comp. Laws § 211.30 (4)] does *not* give petitioner any rights" (*Walgreen Co.*, 280 Mich App. at 65).

The tenant also argued that it was "a party in interest" within the meaning of another statute --- Mich. Comp. Laws § 205.735 (3) --- and as such had the right to bring a proceeding before the Tax Tribunal to challenge the assessment. Section 205.735 (3) allows "a party in interest", though not the "person whose property is assessed on the assessment roll", to commence a proceeding in the Tax Tribunal, just like RPTL 704 (1) allows "any person . . . aggrieved by any assessment" to bring a tax certiorari proceeding in New York.

The Court of Appeals responded by noting that section 205.735 (3) "governs the Tax Tribunal's jurisdiction to consider a petitioner's appeal from an adverse decision of a board of review. *It is not applicable to initial challenges to tax assessments before boards of review*" (*Walgreen Co.*, 280 Mich App. at 65 [emphasis added]). For that reason, the Michigan appellate court affirmed the Tax Tribunal.

In a way that mirrors the Appellate Division's view, the Michigan Court of Appeals distinguished between who must be the party in an administrative review (i.e. the person whose property is assessed on the assessment roll or its agent[19]) and which parties are permitted to commence legal proceedings following the conclusion of an administrative review, a category that includes a party in interest.[20] Thus, in a statutory structure similar to New York's, Michigan concluded that the phrase "the person whose property is assessed on the assessment roll"[21] means exactly what the Second Department says the nearly identical phrase in RPTL 524 (3) means (*see*

[19] (*see* Mich. Comp. Laws § 211.30 [4]).

[20] (*see* Mich. Comp. Laws § 205.735 [3]).

[21] Michigan considers a lease with a term longer than 35 years to be a "transfer of ownership" for tax purposes, thereby allowing the tenant to notify the assessor so that its name can be placed upon the assessment roll (*see* Mich. Comp. Laws §§211.27a [6] [g] and 211.27a [10]). The tenant did not follow that procedure and as a result was not listed on the assessment roll (*see Walgreen Co.*, 280 Mich App. at 66).

also Union Pac. Land Res. Corp. v Shoshone County Assessor, 140 Idaho 528, 534, 96 P3d 629, 635 [2004] where the Idaho Supreme Court denied an assessor the right of review before the Tax Commission because Idaho Code § 63-407 limits the persons who can request a hearing to "any *person whose property is assessed*", and the assessor "is not a property owner").

D. Colorado, Nevada, and Wyoming

These states have statutes that use the word "owner" and the phrase "person whose property is assessed" synonymously. Colo Rev Statutes Annotated § 37-45-127 (1) requires the administrative body known as the board of directors to publish notice of its meeting to review assessments in newspapers best suited to notify "the owners of property" of where they can find information about the assessments of their property, and of the time and place where they can lodge objections to the assessments. Subsection 2 provides that "any person whose property is assessed" may file written objections to the board. Finally, subsection 3 describes the procedure for an "owner of property" to obtain judicial review of the board's findings on his/her objection. Clearly, the statute considers the "owner[] of property" and the "person whose property is assessed" to be one and the same.

Nev Revised Statutes Annotated § 541.220 (1) and Wyo Statutes Annotated § 41-3-776 (a) are practically identical to the Colorado statute. These three states show

that the phrase a "person whose property is assessed" is commonly understood to refer to the owner of that property.

Point V

Lack of subject matter jurisdiction cannot be ignored.

The want of subject matter jurisdiction is a defense that cannot be waived. It can be raised at any time. This precept has been followed steadfastly by this Court and all four Departments of the Appellate Division (*see Fin. Indus. Regulatory Auth., Inc. v Fiero*, 10 NY3d 12, 17 [2008] ["Although the issue of subject matter jurisdiction was not raised in the lower courts, a court's lack of subject matter jurisdiction is not waivable, but may be [raised] at any stage of the action, and the court may, *ex mero motu* [on its own motion], at any time, when its attention is called to the facts, refuse to proceed further and dismiss the action" (internal quotation marks and citation omitted)], *Repwest Ins. Co. v Hanif*, 178 AD3d 973, 975 [2d Dept 2019], *Strunk v New York State Bd. of Elections*, 126 AD3d 777, 779 [2d Dept 2015], *Matter of Hart Family LLC v Town of Lake George*, 110 AD3d 1278, 1280 [3d Dept 2013], *Matter of Hook v. Snyder*, 193 AD3d 588, 589 [1st Dept 2021] and *Davis v State of New York*, 64 AD3d 1197, 1197 [4th Dept 2009].

Hargrove v State (138 AD3d 777 [3d Dept 2016]) is particularly instructive since like this case, it involved a plaintiff's failure to comply with a statutory condition precedent for suing a municipality. *Hargrove* was a personal injury action. The claimant did not file a timely notice of intention to file a claim under the New York Court of Claims Act but commenced litigation nonetheless. The State moved to dismiss. Its motion was denied. On appeal, the Appellate Division held: "[T]he claimant's failure to comply with the filing requirements of the Court of Claims Act deprived the Court of Claims of subject matter jurisdiction. . . . Accordingly, the Court of Claims should have granted that branch of the State's motion . . . to dismiss the claim for lack of subject matter jurisdiction" (*id.* at 778 [citations omitted]).

Hargrove's requirement that a condition precedent must be satisfied for there to be subject matter jurisdiction is consistent with this Court view that a properly filed administrative complaint is a *sine qua non* for subject matter jurisdiction (*see Matter of Larchmont Pancake House v Bd. of Assessors* (33 NY3d 228, 235 [2019]) ("[T]he proper filing of an administrative grievance pursuant to RPTL article 5 is a condition precedent to judicial review pursuant to RPTL article 7").

Since subject matter jurisdiction was lacking here, it did not matter when that defense was raised.

Point VI

There is no split among the Departments, as the only appellate case that can be considered at odds with the Second Department did not interpret state law.

A central theme of the petitioners-appellants' brief is its proposition that since at least 1956, the courts have (or more accurately one appellate court has) recognized that a person other than an owner may file the complaint required to initiate administrative review (brief for petitioners-appellants at 6). The petitioners-appellants pick 1956 because that was the year when *Matter of McLean's Dept Stores, Inc. v Commr.* (2 AD2d 98 [3d Dept 1956]) was decided.[22]

McLean's Dept Stores does not indicate a split between the Second and Third Departments for three reasons.

First, *McLean's Dept Stores* was decided before the Real Property Tax Law was codified in 1958 (*see* Compendium for Respondents-Respondents at Comp. 9 to Comp. 178) and before the current RPTL 524 was enacted in 1982. Its holding cannot be considered an interpretation of that statute. This Court must measure *DCH Auto* against the statute that currently exists, not the statutes that preceded it.

Second, *McLean's Dept Stores* construed a local law in the City of

[22] At issue in *Matter of Onteora Club v Bd. of Assessors* (29 AD2d 251 [3d Dept 1968]) was the forerunner to RPTL 704 (1), not the forerunner to RPTL 524 (3).

Binghamton. The Third Department made clear that the lessee had the right to administrative review because lessees fit the category of those who could ask for review "within the meaning of the local law" (*McLean's Dept Stores,* 2 AD2d at 101). Accordingly, *McLean's Dept Stores* does not support the argument that under RPTL 524, a lessee can file a complaint for the administrative review of an assessment.

Third, Binghamton's local law does not mirror RPTL 524. Insofar as relevant to this discussion, RPTL 524 (3) provides:

> "Such statement must be made by the person whose property is assessed, or by some person authorized in writing by the complainant or his officer or agent to make such statement who has knowledge of the facts stated therein."

The like provision in the Binghamton law provided:

> "which statement must be made by the person assessed or whose property is assessed, or by some person authorized to make such statement and who has knowledge of the facts stated therein."

McLean's Dept Stores, 2 AD2d at 99.

By this disjunctive ("the person assessed or whose property is assessed"), which does not exist in RPTL 524 (3), Binghamton created two categories of grievant. While the City did not define the members of each category, the Third

Department determined that one of the categories included tenants obligated by their leases to pay the real estate taxes.

Since the Binghamton law does not apply here, the universe of possible protesters contained in that law is irrelevant, except to emphasize that Binghamton may have thought it necessary to enlarge the universe of grievants, just as the Legislature did for Nassau County when it enacted RPTL 523-b.

The recent lower court decisions

The three Supreme Court cases cited by the petitioners-appellants at pages 29-30 of their brief as being at odds with *DCH Auto* are decisions rendered by the same jurist. These cases obviously do not represent the view of the Fourth Department and therefore cannot serve to even hint at a split between the Second and Fourth Departments.[23]

It is only when the Fourth Department speaks to the issue that we will know whether it and the Second Department are in conflict.

In sum, at present there is no conflict among the Judicial Departments.

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[23] Furthermore, all three cases were decided before the decision in *DCH Auto* was rendered. (*DCH Auto* was issued on December 11, 2019; all three cases were decided in 2018).

Point VII

The petitioners-appellants easily could have complied with RPTL 524 (3) in each year at issue and in fact did comply in 2014.

Section 5 (e) (iv) of the lease between the petitioners-appellants and the property owner does not obligate the landlord to become involved in proceedings to reduce its property's assessment unless local law requires it to be a participant in which case it must participate (R. 56). In order to meet the requirements of RPTL 524 (3), all the petitioners-appellants needed to have done was to invoke that section and have the landlord sign the administrative complaint or designate someone to do so on its behalf.

The administrative review in 2014 illustrates just how simple the process is. By then the petitioners-appellants must have realized that they had not been following the proper procedure and so arranged to have their landlord challenge that year's assessment (R. 160). The landlord did so by authorizing the petitioners-appellants' attorney to act on its behalf at the administrative level (R. 165). The petitioners-appellants' attorney prepared the administrative complaint, signed it as the landlord's representative (R. 163) and submitted it to the Mamaroneck Town Assessor and Board of Assessment Review. After the Assessor promulgated the

final assessment roll, that same attorney, now acting on behalf of the petitioners-appellants, pursued judicial relief on their behalf (R. 168- R. 175), thereby bringing the issue of the Town's 2014 assessment properly before the courts.

A. There are numerous ways for aggrieved tenants to satisfy RPTL 524 (3).

The petitioners-appellants' lease and the 2014 assessment review demonstrate why the 'doomsday scenario' they predict will not occur. Property owners and aggrieved parties can combine their efforts to review assessments. Such co-operation is neither impossible, unlikely nor unheard of. The 2014 administrative review is a perfect example.

Matter of Grecian Garden Apts., Inc. v Barlow (71 Misc 2d 457 [Sup Ct, Monroe County 1972]) is another. There the administrative review was brought "by an agent on behalf of the owner of the property, whereas the petition instituting the proceeding was made by a lessee of the property who was required to pay the taxes" (*id.* at 458) — the exact course chartered by the courts (*see e. g. Circulo, Larchmont Pancake House and DCH Auto*).

Such an alignment makes economic sense since an owner must anticipate that there will be a day when the person currently paying the real estate taxes no longer will be doing so. When that day comes, the owner will be better positioned to find

a new payor if the assessment is at its lowest possible level. Likewise, the person that is paying the tax has an incentive to furnish the owner with all the information an owner may need to file an administrative complaint. Furthermore, there is no indication either in this record or in general that landlords and tenants will not co-operate and this Court should not decide this appeal with the assumption that there will be a lack of co-operation.

It is easy to imagine other ways that a tenant can make sure that RPTL 524 (3)'s mandatory condition precedent for an RPTL Article 7 proceeding is met. Examples include a lease that frees a tenant from paying the real estate taxes attributable to an assessment for which the owner did not file an administrative complaint when requested to do so, or a lease which grants a tenant a limited power of attorney to sign the owner's name to an administrative complaint and to file it with the Board of Assessment Review.

B. The lease did not designate the petitioners-appellants as the owner's representative in the administrative review process.

Contrary to the argument made in Point V of the petitioners-appellants' brief (brief for petitioners-appellants at 58-59), the lease here cannot be deemed to have appointed the petitioners-appellants as their landlord's agent for the purpose of filing

grievances. Section 5 (h) of the lease does appoint the petitioners-appellants as the landlord's attorney-in-fact to make payments to third parties, but this delegation made specifically "for the sole purpose of making [such] payments" (R. 56). It stands to reason that if the landlord meant to appoint the petitioners-appellants as its attorney in fact for filing grievances in its name, the lease would have said so, and there would have been no need for section 5 (e) (iv) to require the landlord to "join and cooperate" with the petitioners-appellants in challenging the assessment (R. 56).

In addition, the complaints themselves say that they are being filed by and on behalf of the petitioners-appellants, not the owner (*see* R. 100, R. 113, R. 127 and R. 142)

Finally, RPTL 524 (3) requires the written authorization to be made part of the papers submitted as part of the administrative review. The record shows that the administrative complaints filed in these proceedings did not contain a copy of the lease and except for 2014, the petitioners-appellants' landlord neither signed the RP-524 forms nor a separate authorization that was appended to the administrative complaints (R. 100- R. 104, R.113- R.118, R. 127- R. 133 and R. 142- R. 148).

C. *The timeline for protesting assessments does not present an obstacle to a tenant.*

The petitioners-appellants try to create a false sense that it "might not be practical" for an aggrieved tenant to arrange for its landlord to authorize a challenge to an assessment (brief for petitioners-appellants at 33).

When an assessment is claimed to be incorrect, that claim ordinarily is repeated year-after-year until the litigations are tried, settled, or withdrawn whether or not the annual assessment changes. Here, for example, the Town assessments at issue start in 2009 and continue annually, with the exception of 2012, until 2014 (R. 35 – R. 39, ¶¶ 23-48).

The tentative assessment roll is promulgated on the same day each year and the date for filing an administrative complaint is easily ascertained from the date of promulgation. Even today one knows that, barring a change in the statute, ten years from now, the tentative assessment roll in towns in Westchester County for 2031 will be promulgated on June 2, 2031 (June 1 will be a Sunday) and that a complaint challenging an assessment on that roll will be due by June 17, 2031.[24]

[24] Tentative assessments rolls for towns outside of Westchester County come out on May 1 of each year. Hence, the 2031 tentative assessment roll will be promulgated on May 1, 2031 and administrative complaints will be due by May 20, 2031.

Since the filing of a grievance is an annual event occurring in June for towns in Westchester County, a Westchester tenant has over 5 months from the start of each year to have the landlord sign an authorization designating someone as the landlord's representative in the administrative process.[25] The timeline for action can be entered into a diary or a calendar, making annual repetition of the process rote. Add to this mix that in this age of electronic mail, documents can be transmitted, printed, signed, uploaded and returned in a matter of hours.

Point VIII

The respondents-respondents cannot be estopped from discharging their statutory duties.

A major argument made by the petitioners-appellants is that the respondents-respondents should be estopped from raising the petitioners-appellants' errors. The flaw in this argument is that estoppel is rarely invoked against municipalities

In *New York State Med. Transp. Assn. v. Perales* (77 NY2d 126, 130 [1990]), this Court reminded litigants and courts "that estoppel cannot be invoked against a governmental agency to prevent it from discharging its statutory duties . . . While we have not absolutely precluded the possibility of estoppel against a governmental

[25] RPTL 524 [3] requires that an authorization be made in the same calendar year as the administrative complaint to which it relates.

agency, our decisions have made clear that it is foreclosed in all but the rarest cases" (internal quotation marks and citations omitted).

The progeny of *New York State Med. Transp. Assn.* have repeated its teaching (*see e. g. W. Midtown Mgt. Group, Inc. v State of New York Dept. of Health*, 31 NY3d 533, 541-542 [2018] and *Matter of Schorr v New York City Dept. of Hous. Preserv. & Dev.*, 10 NY3d 776, 779 [2008]). (*See also Matter of Gallo v New York City Dept. of Consumer Affairs*, 170 AD3d 479, 480 [1st Dept 2019]) and *Matter of Wilson v New York City Dept. of Hous. Preserv. & Dev.*, 145 AD3d 905, 907 [2d Dept 2016]).

This rule applies even when a municipal employee dispenses incorrect information (*see Matter of Ryan v Tax Appeals Trib. of the State of NY*, 133 AD3d 929, 930 (2d Dept 2015]) ["[T]he doctrine of estoppel does not apply in tax cases unless unusual circumstances support a finding of manifest injustice. Further, it is well established that erroneous advice given by an employee of a governmental agency is not considered to rise to the level of an unusual circumstance warranting invocation of the doctrine of estoppel" [internal quotation marks and citations omitted], *Wilson v Neighborhood Restore Hous.*, 129 AD3d 948, 949 [2d Dept 2015] ["[E]quitable estoppel is applied against a municipality performing governmental functions only in the rarest of cases and erroneous advice by a governmental

employee will not give rise to an exception to the general rule" (internal quotation marks and citations omitted) and *Matter of New Surfside Nursing Home, LLC v Daines*, 103 AD3d 637, 641 [2d Dept 2013], *affd* 22 NY3d 1080 [2014] ["Furthermore, to the extent that the petitioners allege that they relied upon any such representations, estoppel cannot be invoked to prevent the DOH from discharging its statutory duties" [citations omitted]).

Here, all the Town of Mamaroneck did was to refer readers of its web site to sources within the State's Office of Real Property Tax Services. Its employees did not personally interact with the petitioners-appellants in connection with the preparation and filing of the administrative complaints.

Almost important to keep in mind is that the petitioners-appellants did not rely upon the Town's web site. Counsel who is "responsible for the preparation of all of the grievances" (R. 273, ¶ 12) recounted the steps that he took when preparing the administrative complaints. Each year, he "consult[ed] the applicable statutes and case law" and "check[ed] the applicable publications published by ORPTS" (*id.*). He did not use the Town's web site as a guide, nor does he claim to have even looked at it. Therefore, even if the doctrine of estoppel were applicable, the petitioners-appellants have not proven detrimental reliance which is fundamental to the invocation of that doctrine (*see Roberts v Paterson*, 19 NY3d 524, 530 [2012] and

Flushing Unique Homes, LLC v Brooklyn Fed. Sav. Bank, 100 AD3d 956, 958 [2d Dept 2012]) ["To establish an estoppel, a party must prove that it relied upon another's actions, its reliance was justifiable, and that, in consequence of such reliance, it prejudicially changed its position"]).

Point IX

Courts do not have the same authority to correct mistakes in an administrative review that they have to correct errors in court proceedings.

The Appellate Division correctly concluded that the petitioners-appellants' error was in the administrative review process (*see DCH Auto,* 178 AD3d at 825]). The petitioners-appellants characterize their error as "technical" (brief for the petitioners-appellants at 56).

The failure to "satisfy a condition precedent" can hardly be considered "technical". And the cases upon which the petitioners-appellants rely for that proposition did not involve administrative complaints that failed to satisfy a condition precedent. *People. ex rel. MacCracken v Miller* (291 NY 55 [1943]) dealt with whether the answers given by the relator to the questions contained on the administrative complaint were sufficient to allege that the complainant was objecting to the assessment on the ground that the property was overvalued. The relator owned the property.

People ex rel. Brooklyn Paramount Corp. v Sexton (255 AD 1011 [2d Dept 1938]) focused upon the respondents' contempt of court. The court did note that the respondents had waived their right to reject the application due to its failure to adequately set forth the grounds for the objection to the assessment. Whether the relator had brought on the administrative review correctly was not addressed.

Matter of Skuse v Town of S. Bristol 99 AD2d 670 [4th Dept 1984] also concerned the sufficiency of the information supplied to the Board of Assessment Review; however, the decision makes it clear that the information was supplied by "the property owners" (*id.*).[26]

Matter of Astoria Federal Savings and Loan Assn v Bd. of Assessors (212 AD2d 600 [2d Dept 1995]) does not tell us whether the petitioner was or was not the owner. The issue there was what consequence should befall the petitioner because the administrative complaint was not dated in the same year as the challenged assessment. The Appellate Division overlooked that mistake but in careful, deliberate language, pointed out that it was doing so because this error "was [a] defect[] in the form of the complaint . . . ." (*id.* at 601).

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[26] The part of the decision that spoke to the requirement for written authorization for the board of managers has been superseded by this Court's decision in *Matter of Eastbrooke Condominium v Ainsworth* (33 NY3d 139 [2019]).

In *Matter of Miller v Bd. of Assessors* (81 NY2d 82 [1997]) the owners were involved in the administrative review process. The problem was that "written authorizations did not accompany the verification of the petition for those properties" (*id.* at 84). However, written authorizations from the owners "were filed prior to the return date of the petition" (*id.* at 86), thereby correcting the defect in the Article 7 proceeding before the proceeding was noticed to be heard.

A. The limit on a court's power to correct or overlook mistakes.

A court's ability to overlook a mistake or allow an amendment depends upon whether the error lies in an administrative review or was a mistake made in a tax certiorari proceeding. In the latter situation, there are times when a court can bypass a miscue or permit it to be corrected; not so when the error is in the administrative review as illustrated by the cases reviewed immediately above.

DCH Auto and the Second Department's decisions in *Larchmont Pancake House* and *Circulo* examined the interplay of RPTL articles 5 and 7 (*see DCH Auto*, 178 AD3d at 825, *Larchmont Pancake House,* 153 AD3d at 521 and *Circulo*, 96 AD3d at 1056-1057). As earlier precedents had done, these decisions recognized that there are major differences between the two articles. One major difference is that when an administrative review is improper, a court lacks subject matter jurisdiction in the ensuing RPTL article 7 proceeding.

> "RPTL article 5 requires that the property owner file the complaint or grievance to obtain administrative review of a tax assessment. The petitioner, which filed the complaints with the Board of Assessment Review, never owned the subject property. Therefore, the court lacked subject matter jurisdiction to review the assessments, as the petitioner failed to satisfy a condition precedent to the filing of the petitions pursuant to RPTL article 7"

(*Larchmont Pancake House*, 153 AD3d at 522 (citations omitted).

B. Article 5

This Court stressed the judicial system's inability to rectify mistakes in an administrative review in *Matter of Sterling Estates, Inc. v Bd. of Assessors* (66 NY2d 122 [1985]). There a property owner filed administrative complaints challenging only the assessed value of its land. In the tax certiorari proceedings that followed, the property owner moved to amend its petitions to include, among other things, challenges to the assessed value of the improvements. To have allowed the petitioner to do so would have meant that the petitioner would allege grounds in the judicial proceeding that were not raised during the administrative review. This Court affirmed denial of the motion to amend, observing: "[P]etitioner sought to amend its pleadings to obtain new and different relief based upon injuries not previously protested. The court was without authority to grant that amendment" (*id.* at 124

[citations omitted]). As this Court aptly noted, allowing the petitions to be amended would be tantamount to correcting the mistakes in the administrative complaint.

Long before *Sterling Estates*, this Court had affirmed a decision which restated that it is "well settled that the court is without jurisdiction to review and correct assessments unless a verified complaint has been timely and *properly filed*, according to law" (*Matter of Onteora Club v Bd. of Assessors*, 17 AD2d 1008, 1009 [3d Dept 1962], *affd* 13 NY2d 1170 [1964] [emphasis added]).

Following *Sterling Estates,* the Appellate Division in *Matter of Frei v Town of Livingston* (50 AD3d 1381 [3d Dept 2008]) contrasted a court's authority to correct mistakes when it has subject matter jurisdiction and is acting under article 7 with its inability to ignore or bypass major errors in the article 5 administrative review process by relying upon this Court's decision in *Great Eastern Mall, Inc. v Condon* (36 NY2d 544 [1975]). "That case [*Great Eastern Mall*] dealt with pleading and service defects in the commencement of an RPTL Article 7 proceeding, which may be cured by procedural statutes preferring liberal construction of pleading and correction of technical omissions. Those statutes do not override the specific requirements of RPTL 524 regarding filing of assessment grievance complaints" (*Matter of Frei*, 50 AD3d at 1382).

Matter of Raer Corp. v Vil. Bd. of Trustees (78 AD2d 989 [4th Dept 1980]), *lv dismissed*, 52 NY2d 602 and 677 [1981]), provides a powerful example of the inability of courts to act when there are major mistakes in an administrative review. Though sympathetic to the plight of a petitioner who had erred during the administrative review, the Appellate Division dismissed the tax certiorari proceeding, rejecting the property owner's argument that the respondent had waived the deficiencies. "Despite our desire to give liberal construction to these statutes, we are not at liberty to disregard them or in effect annul them. As the above cases indicate, some written complaint must be filed with the board of assessment review indicating the owner's grievance; and such was not done here. Absent that, the board and the court are without jurisdiction" (*id.*).

Matter of Pollak v Bd. of Assessors (62 AD2d 1019, 1019 [2d Dept 1978]) provides an even more powerful example of the court's inability to alter an administrative review. There, this Court had ruled in a condemnation proceeding that the property subject to an assessment review had been rendered valueless. That ruling came after the administrative complaints had been filed. The owner sought to amend his article 7 petition to reflect a demand that the assessment of the property be reduced to $-0-. Even though the owner had no way of knowing what this Court's determination of value would be when his administrative complaints were filed, the

Appellate Division refused his request, holding "[a] petitioner in a tax certiorari proceeding is limited to the relief set forth in his application to review the assessment before the board of review" (citation omitted).

Matter of Waldbaum's, Inc. No. 85 v Bd. of Assessors (106 Misc 2d 556 [Sup Ct, Nassau County 1980]) presented a tutorial on the subject. There the petitioner moved to amend its tax certiorari petitions to add tax lots whose assessments were not included in the administrative review. Waldbaum's argued that the court had the authority to amend the petition based upon (a) the general tenet that review of assessments is remedial in nature and the rules should be relaxed to avoid a taxpayer from being nonsuited due to a technicality and (b) CPLR 2001 and 3026 (*see id.* at 557).

The court recognized that its authority to amend hinged upon "distinguishing between amendments that do and do not affect the jurisdiction of the court. The latter are allowed in accordance with the liberal provisions of the CPLR; the former are not" (*id.*). In denying the motion, the court pointed out that "[i]n a tax certiorari proceeding, the settled law is that petitioner is limited to the relief set forth in his application to review the assessment" (*id.* at 558) (citation omitted).

The following few sentences from another Supreme Court decision sets forth the legal principle succinctly. "We are well aware of the rule that pleadings shall be

liberally construed and that a taxpayer shall not have review of his assessment defeated by a technicality. However, before a court can liberally construe pleadings, it must have jurisdiction. Since the complaint before the Board of Assessment Review did not include inequality as a ground, an Article 7 proceeding could not have been taken alleging inequality. For us to permit the petitioners to proceed in this action, we would be permitting them to continue an action which they are prohibited from taking directly. Petition dismissed for want of jurisdiction" (*Matter of Lussi v Bd. of Assessors*, 113 Misc 2d 558, 559 [Sup Ct., Essex County 1982]).

Matter of the City of Little Falls v Bd. of Assessors (68 AD2d 734 [4th Dept 1979]) is our final illustration. The administrative complaint filed by the City alleged that its property in the Town of Salisbury was overvalued. When it realized that it should have claimed that the assessment was erroneous, illegal and excessive, Little Falls moved in the article 7 proceeding for permission "to amend both its 1976-1977 application and the petition" to add these additional grounds (*see id.* at 738). The Fourth Department refused to allow this change to the administrative complaint. "The sole objection raised by the City in its application is overvaluation. It may not seek other relief. The court is without jurisdiction to consider any other objection. For this reason, amendment of the application to allege any other objection to the assessment is not permissible" (*id.* at 739).

Here, as in these foregoing cases, the administrative complaints did not provide the predicate for subject matter jurisdiction in the ensuing tax certiorari proceedings. The petitioners-appellants' error was not superficial but went to the very core of the administrative review. Hence the Second Department was correct not to have ignored, by-passed or corrected their mistakes.

C. Article 7

In contrast, RPTL article 7 gives courts, with subject matter jurisdiction, some leeway to correct minor inaccuracies in the judicial process. Cases of courts correcting inconsequential mistakes in tax certiorari proceedings where the propriety of the administrative review was not at issue include *Matter of Garth v Bd. of Assessment Review* (13 NY3d 176 [2009]) (omission of a return date from the notice of petition does not deprive court of jurisdiction), *Matter of Miller v Bd. of Assessors* (91 NY2d 82, 86 [1997]) (defect overlooked because corrected "prior to the return date of the petition"), *Matter of Great E. Mall, Inc. v Condon* (34 NY2d 544 [1975]) (naming only one of a town's three assessors as a respondent in an Article 7 pleading is a curable technical defect; no defect in the administrative review occurred), *Matter of Plaro, Inc. v Assessor* (101 AD3d 886, 888 [2d Dept 2012]) (erroneous designation of the parcel's tax map identification numbers in an article 7 petition held "a defect in form" that may be fixed), *Matter of Ames Dept Stores v Assessor*

(102 AD2d 9, 13 [4th Dept 1984]) (unverified Article 7 petition allowed to be corrected) and *Bergman v Horne* (100 AD2d 526 [2d Dept 1984]) (dealt with unverified article 7 petition; reached same conclusion as *Ames Dept Stores*).

Particularly instructive is *Matter of Bd. of Managers v Bd. of Assessors* (96 AD2d 739 [2d Dept 2012]). There, the administrative complaint reported accurately the number of condominium units whose assessments the petitioner wanted to grieve, but the tax certiorari petition omitted many of those units. Since the error was in the article 7 petition, not in the administrative complaint, the court affirmed the lower court's decision to permit the petitioner to amend its petition.

D. Article 5 versus Article 7

The cases discussed above clearly delineate the limits on a court's power. A court cannot correct a substantive error in an administrative review. On the other hand, a court does have the discretion to allow a small miscue in an article 7 judicial proceeding to be corrected.

The administrative complaints here were "not properly filed, according to law". Hence the petitioners-appellants' tax certiorari proceedings are fatally flawed and cannot be rescued by judicial fiat.

Point X

Circulo is not rooted in the tax exemption statutes.

The petitioners-appellants try to confine *Matter of Circulo Housing Dev. Fund Corp. v Assessor*, 96 AD3d 1053 (2d Dept 2012) to the field of tax exemptions (*see e.g.* brief at 41-42). If it can be so confined, the petitioners-appellants argue, both *Larchmont Pancake House* and *DCH* Auto were wrong to have relied upon it since neither case involved a tax exemption.

While *Circulo* involved the denial of a tax exemption, its outcome was not dictated by the tax exemption statutes. The opinion is grounded exclusively on the requirements of RPTL 524 (3) which applies to all grievances, including claims of unlawful assessment, i. e. the wrongful denial of an exemption.

Circulo Housing Development Fund Corporation (CHFD) commenced proceedings under RPTL Article 7 against the assessor of the City of Long Beach with respect to three properties. The disposition of the petition with respect to the parcel referred to by the Appellate Division as "the East Hudson Street property" is germane here.

CHFD was the one that "filed the administrative complaint for review of the assessment of the East Hudson Street property" (*Circulo,* 96 AD3d at 1056). CHFD

did not own the East Hudson Street property (*id.* at 1054).[27] The owner of the East Hudson Street property "[n]ever filed an administrative complaint for review of the assessment of that property" (*id.* at 1057).

The failure of the owner of the East Hudson Street property to file an administrative complaint resulted in the Supreme Court dismissing the RPTL article 7 petition with respect to that property, a decision affirmed by the Appellate Division, even though that Court held that under RPTL 704 (1), CHFD had "met the definition of a 'person claiming to be aggrieved' by the assessment" (*Circulo,* 96 AD3d at 1056 [citations omitted]).

The Second Department explained its holding by pointing out that "in order to maintain a proceeding pursuant to RPTL article 7, the aggrieved taxpayer must . . . allege in the petition that 'a complaint was made in due time to the proper officers to correct such assessment' (RPTL 706 [2]). Failure to comply with this requirement requires dismissal of the petition (*see Matter of Sterling Estates v. Board of Assessors of County of Nassau*, 66 N.Y.2d 122, 126 [1985]; *see also Matter of Fifth*

[27] *id.* at 1056-57: ("[A]ccording to the deed to the East Hudson Street property, [CHFD] is not the owner of that property").

Ave. Off. Ctr. Co. v. City of Mount Vernon, 89 N.Y.2d at 742)" (*Circulo,* 96 AD3d at 1056).

Since (i) RPTL 524 "requires that the *property owner* file a complaint or grievance to obtain administrative review of the tax assessment (*see* RPTL 524[3])"[28] and (ii) the owner of the East Hudson Street property did not do so, "the petition did not show 'that a complaint was made in due time to the proper officers to correct such assessment,' as is required (RPTL 706 [2]) . . . . Accordingly, that branch of [the City's] motion which was to dismiss so much of the petition as concerned the East Hudson Street property was properly granted, albeit not because [CHFD] lacked standing but because a condition precedent was not satisfied" (*Circulo* 96 AD3d at 1057 [citations omitted]).

The dismissal was due solely to the failure to satisfy article 5's requirement that the property owner be the complainant or authorize the complaint. Whether CHFD or the property owner met the standards for the exemption being sought played no part in the decision.

[28] (*Circulo,* 96 AD3d at 1056).

Point XI

Opinions of counsel for State agencies must give way to Court decisions.

The petitioners-appellants emphasize the role played by the Office of Real Property Tax Services and suggest that courts should accept its interpretation of the Real Property Tax Law (brief for petitioners-appellants at 46-48). While courts often look to the administrative agencies that oversee the application of statutes, this Court has drawn a clear distinction between areas where courts may defer to administrative agencies and areas where courts must reach their own conclusions unfettered by decisions made by administrative agencies (*see Albano v Bd. of Trustees*, 98 NY2d 548, 553 [2002] ["Where . . . the question is one of pure statutory interpretation there is little basis to rely on any special competence or expertise of the administrative agency. In such circumstances, the court need not accord any deference to the agency's determination and can undertake its function of statutory construction"] [internal quotation marks and citation omitted]).[29]

This case is one of statutory interpretation. Hence, this Court will decide the meaning and scope of RPTL 524 (3) based upon its own reading of the statutes.

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[29] (*see also, Matter of Walsh v New York State Comptroller*, 34 NY3d 520, 524 [2019], *Matter of DeVera v Elia*, 32 NY3d 423, 434 [2018], *Matter of Level 3 Communications LLC v Erie County*, 174 AD3d 1497, 1500 [4th Dept 2019], *Jackson v Bank of Am., N.A.*, 149 AD3d 815, 821 [2d Dept 2017] and *Roberts v Tishman Speyer Props., L.P.*, 62 AD3d 71, 80 [1st Dept 2009]).

Materials promulgated by the Office of Real Property Tax Services should play no part in the analysis.

Point XII

The cases involving Industrial Development Agencies cited by the petitioners-appellants are irrelevant.

On pages 38 and 39 of their brief, the petitioners-appellants cite three cases involving properties owned of record by Industrial Development Agencies (IDAs): *Matter of EFCO Products v Cullen* (161 AD2d 44 [2d Dept 1990]), *Matter of Big "V" Supermarkets, Inc., Store #217 v Assessor* (114 AD2d 726 [2d Dept 1985]) and *Matter of Birchwood Vil. LP v Assessor* (94 AD3d 1374 [3d Dept 2012]).

IDAs were created for the purpose of attracting commercial and industrial development (*see* General Municipal Law § 852) by making "private financing available to private developers at tax exempt interest rates through the sale of industrial development revenue bonds" (*Matter of Erie County Indus. Dev. Agency v Roberts*, 94 AD2d 532, 533 [4th Dept 1983], *affd for reasons stated below* 63 NY2d 810 [1984]). A complicated arrangement between a developer, an IDA and a lending institution is required to accomplish tax exempt financing. One facet is for title to the real property to be formally vested in the IDA, instead of the developer. The IDA than leases the property back to the company which pays rent equal to the

principal and interest on the industrial development revenue bond. When the bond "is paid in full, the [IDA] returns to the company the title to the project [land]" (*Matter of Erie County Indus. Dev. Agency v Roberts*, 94 AD2d at 535).

This Court has noted:

> "The conveyance of legal title to the [IDA] with simultaneous lease back to the [developer] is structured merely as a mechanism to facilitate financing and is not a genuine allocation of ownership in the agency. The economic benefits and burdens of ownership are reserved to the [developer] and the [IDA] serves only as a conduit for the tax benefits provided by such an arrangement."

Davidson Pipe Supply Co. v Wyoming County Indus. Dev. Agency (85 NY2d 281, 286 [1995]).

Section 874 (1) of the General Municipal Law mandates that real property in the name of an IDA be exempt from real estate tax (*see also* RPTL 412-a). To avoid depriving local municipalities of tax revenue, the developer agrees to make payments in lieu of taxes to the IDA which remits such payments to the affected taxing jurisdictions in order to make them whole. If all goes as anticipated, the economy is stimulated with a new job-producing project, the local taxing authorities receive payments equal to what they would receive if the property were not tax exempt and the company receives the financing and the tax benefits needed to make the investment.

It is through this lens that *EFCO Products*, *Big "V" Supermarkets, Inc.* and *Birchwood Vil. LP* should be viewed. Each petitioner may technically have been a tenant, but their titular status masked the economic reality explained in *Davidson Pipe Supply*. That economic reality makes making these cases *sui generis* and of no use in resolving the issues facing this Court.

Point XIII

19th century decisions cannot be used to construe the Real Property Tax Law.

The petitioners-appellants' reliance on *Matter of Burke* (62 NY 224 [1875]) and *Matter of Walter* 75 NY 354 [1874]) is misplaced because each had been decided prior to 1880 and was predicated on statutes that existed before the modern structure for assessment review had begun to take shape (*see People ex rel. Wallkill Val. R.R. v Keator*, 101 NY 610, 611 [1885] ["Chapter 269 [of the laws of 1880] provides a new and complete system for reviewing upon *certiorari* and correcting errors of assessors. . . ."]).

Here, this Court is called upon to construe the Real Property Tax Law as it presently exists, not as its forbearers may have read. Therefore, the holdings in *Burke* and *Walter* can play no part in the analysis of today's statutes.

Point XIV

The petitioners-appellants cite cases that have no bearing on the interpretation of RPTL 524 (3)

Many of the tax certiorari cases relied upon by the petitioners-appellants dealt with issues other than the definition of "person whose property is assessed." Some examined what it means to be aggrieved by an assessment;[30] in others, the petitioners were the owners of the properties at issue.[31] In one of the cited cases, *Matter of Long Island Power Auth. v Assessor* (164 AD2d 591 [2d Dept 2018]), the Appellate Division's decision does not discuss the administrative complaints. The lower court decision, however, reveals that the owner, National Grid Generation, LLC, also commenced tax certiorari proceedings which must have been predicated upon

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[30] (*see Matter of Ames Dept Store, No. 418 v Assessor* (261 AD2d 835 [4th Dept 1999]), *Matter of Mack v Assessor*, 72 AD2d 604 [2d Dept 1979] [vendee of an unconditional contract aggrieved], *Matter of Onteora Club v Bd. of Assessors*, 29 AD2d 251 [3d Dept 1968] [lessee aggrieved] and *Matter of Waldbaum, Inc. v Fin. Adm'r*, 74 NY2d 128 [1989] [under terms of lease tenant not aggrieved]).

[31] (*see e.g. Matter of Miller v Bd. of Assessors* (91 NY2d 82 [1997]), *Matter of Sterling Estates, Inc. v Bd. of Assessors* (66 NY2d 122 [1985]), and *Matter of Tennanah Lake Townhouse & Villa Community v Fremont*,168 AD2d 789 [3d Dept 1990]), *Matter of the City of Little Falls v Bd. of Assessors* (68 AD2d 734 [4th Dept 1979]) and *Cherrypike Estates, Inc. v Herbert*, 67 Misc 2d 853 [Sup Ct, Nassau County 1971]).

administrative complaints that it had submitted to the Board of Assessment Review (Compendium for the Respondents-Respondents at Comp. 180). Thus, the proceedings brought by the Long Island Power Authority satisfied RPTL 524 (3)'s condition precedent because the owner had protested the assessment.

Unlike the petitioners-appellants who were acting in their own name and on their own behalf, in *Matter of Divi Hotels Mktg., Inc. v Bd. of Assessors* (207 AD2d 580, 581-582 [3d Dept 1994]), the petitioner made clear that the certiorari cases "were being pursued on behalf of the owner of the property." Finally, in *Matter of Rotblit v Bd. of Assessors* (121 AD2d 727, 727 [2d Dept 1986]), "one of the record owners executed the authorizations for those petitions."

None of these cases address the statutory interpretation presented by this appeal.

Conclusion

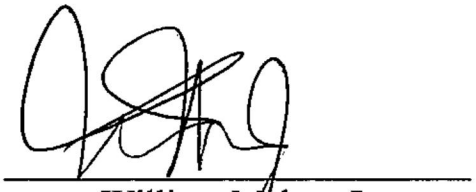
This Court is asked to interpret and apply the words of RPTL 524 (3) as written, against the backdrop of the Real Property Tax Law which deals only with real property and the common law which characterizes leaseholds to be personal, not real property.

Applying the facts to these principles leads to the conclusion that the petitioners-appellants were not "the person whose property is assessed." Hence, the

administrative reviews were defective and did not supply the predicate for subject matter jurisdiction.

The Second Department analyzed the issue in that fashion and reached the correct conclusion.

Dated: September 15, 2021



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Certification of Compliance

This certification is being made pursuant to 22 NYCRR §500.13 (c).

1. This brief was prepared on a computer using the Microsoft Word word-processing program.

2. The type face is Times New Roman.

3. The point size of the main text is 14. The footnotes are in 12 point.

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5. According to the word count function of the word-processing system, starting from the questions presented, the brief contains 13,970 words.

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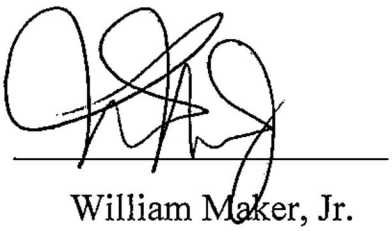

William Maker, Jr.

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
)
COUNTY OF WESTCHESTER)

Brian R. Landy, Jr., being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age, and resides at 38 Davis Avenue, Rye, New York 10580.

That on the 16th day of September, 2021 deponent served the within:

BRIEF FOR RESPONDENT-RESPONDENT THE TOWN OF MAMARONECK, A MUNICIPAL CORPORATION, ITS ASSESSOR AND BOARD OF ASSESSMENT REVIEW

upon designated counsel for the parties indicated herein at the addresses provided below by depositing 3 true copies thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State.

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16th day of September, 2021

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Commission Expires March 5, 2023

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