
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 IN RESPONSE TO AMICI CURIAE
CVS ALBANY LLC, ET AL.

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Dated: September 16, 2021

Westchester County Clerk's Index No.: 23040/2009
Appellate Division Second Department, Docket No.: 2017-03016

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

There is no related litigation as of this date.

Table of Contents

	Page
Statement pursuant to 22 NYCRR § 500.13 (a) of the Status of Related Litigation	1
Table of Contents	2
Table of Cases and Authorities	2
Questions Presented	3
Preliminary Statement	3
Argument:	
Point A <i>Circulo</i> is not rooted in the tax exemption statutes.	4
Point B The petitioners-appellants' leasehold was not assessed. Hence, the petitioners-appellants are neither the "person whose property is assessed" nor the "taxpayer".	4
Conclusion	4
Certification of Compliance	6

Table of Cases and Authorities

	Page
Cases:	
<i>Matter of Circulo Housing Dev. Fund Corp. v Assessor</i> (96 AD3d 1053 [2d Dept 2012])	3
<i>Matter of DCH Auto v Town of Mamaroneck</i> (178 AD2d 823 [2d Dept 2019])	3

Questions Presented

1. Should the holding in *Matter of Circulo Housing Dev. Fund Corp. v Assessor* (96 AD3d 1053, 1056 [2d Dept 2012]) be limited to matters involving tax exemptions?

By citing *Circulo* in its decision (*see Matter of DCH Auto v Town of Mamaroneck* (178 AD2d 823, 825 [2d Dept 2019]), the Appellate Division answered in the negative.

2. Does the phrase “the person whose property is assessed” refer only to an owner of real property?

The Appellate Division answered in the affirmative.

Preliminary Statement

The amici make the two arguments which are reformulated as questions in the questions presented section above. Both have been refuted in the brief dated September 15, 2021 (Brief) that the respondents-respondents, Town of Mamaroneck, its Assessor and Board of Assessment Review have submitted in answer to the petitioners-appellants’ brief dated July 27, 2021. Rather than repeat Mamaroneck’s arguments, this brief points to those areas of the Brief where each argument is rebutted.

Point A

***Circulo* is not rooted in the
tax exemption statutes.**

The amici's argument is debunked in Point X of the Brief at 69 - 71.

Point B

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

The rebuttal of this argument by the amici can be found throughout the Brief, but especially in Points I, II, III and IV (*see* Brief at 22 – 46).

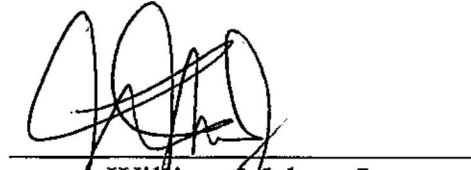
Conclusion

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 as 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 16, 2021

A handwritten signature in black ink, appearing to read 'W. Maker, Jr.', is written over a horizontal line.

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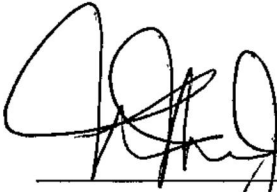
*Attorney for the respondents-
respondents, Town of
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Board of Assessment Review*

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. There are no footnotes.
4. The lines are double-spaced.
5. According to the word count function of the word-processing system, starting after the questions presented, the brief contains 247 words.

Dated: September 16, 2021



William Maker, Jr.

