

To be Argued by:
KEVIN E. STAUDT
(Time Requested: 15 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 RESPONDENTS-RESPONDENTS
THE VILLAGE OF MAMARONECK, A MUNICIPAL
CORPORATION, ITS ASSESSOR AND
BOARD OF ASSESSMENT REVIEW**

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Dated: September 16, 2021

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

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 500.1(f) of the New York State Court of Appeals, Respondent-Respondent Village of Mamaroneck is a municipal corporation organized under the laws of the state of New York that has no parent or subsidiaries.

Dated: September 16, 2021

McCULLOUGH, GOLDBERGER & STAUDT,
LLP

By:  _____

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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. Whether the Appellate Division correctly held that statements and a link contained on the Town of Mamaroneck (“Town”) website to the Office of Real Property Tax Services (“ORPTS”) estop the Town from arguing that a tenant has standing to bring a Real Property Tax Law (“RPTL”) grievance absent an authorization from the owner.
2. Assuming *arguendo*, that the Appellate Division was in error in response to question 1 above, whether statements on the Town’s website can be imputed to the Respondents-Respondents Village of Mamaroneck, its Assessor and Board of Assessment Review (collectively, “Village”).

STATEMENT OF FACTS

The Village adopts the facts set forth in the Brief for the Respondents-Respondents Town of Mamaroneck. The purpose of this brief is to address the sole issue where the facts concerning the grievances filed by the Petitioners-Appellants DCH Auto and DCH Investments Inc. (“DCH”) against the assessments of the Village and the Town diverge.

The Real Property at issue, Section 8, Block 111, Lot 1A on the Village’s official tax map and known by the postal address 700 Waverly Avenue, Mamaroneck, New York (“Subject Property”), is located within the territorial boundaries of both the Town and the Village. At all times relevant hereto, the Town

and the Village each had its own assessor who assessed the Subject Property and each municipality had its own Board of Assessment Review. The Town and the Village maintained separate websites.

It is undisputed that the grievances at issue, whether filed against the Town or the Village, were filed by DCH. DCH was a tenant at the Subject Property and held no ownership interest in the Subject Property. DCH's grievances did not include an authorization from the owner to grieve the assessments on the owner's behalf.

In its brief, DCH states that the Town of Mamaroneck's website contained certain statements and links that would lead a person to believe that its Board of Assessment Review would consider grievances filed by a tenant. DCH does not state that it relied upon those statements contained on the Town of Mamaroneck's website when DCH determined to file its grievances under its own name.

At no time does DCH claim that similar statements and links were present on the Village's website during the relevant time period.

SUMMARY OF ARGUMENT

To the extent that this Court holds that the statements and links contained in the Town of Mamaroneck's website estop the Town from arguing that the RPTL § 524 grievances against the Town's assessment are invalid, this should not estop the

Village from arguing that the RPTL § 524 grievances filed against the Village are invalid.

ARGUMENT

I. The Village has reviewed the brief submitted by the Town and adopts the statements and arguments contained in said brief as if fully set forth herein.

As stated above, all relevant facts and legal issues involved in this case are identical with respect to the Town and the Village grievances, except for one discreet issue discussed below. As such, for the remaining issues we respectfully refer this Court to the Town's brief and adopt the statements and arguments contained in said brief as if fully set forth herein.

II. DCH's contention that certain statements on the Town's website and a link on the Town's website to the ORPTS website suggest that a tenant has standing to bring an RPTL § 524 grievance has no bearing on DCH's proceeding against the Village.

The Town and the Village are completely distinct municipal agencies that, at all times relevant hereto, maintained its own assessment rolls and websites.

DCH contends that, due to statements and links on the Town's website, the Town is estopped from arguing that a tenant can properly file an RPTL § 524 grievance. As discussed in the Town's brief, estoppel does not generally apply in cases against a municipality, including in the context of a tax certiorari proceeding. *Matter of Ryan v Tax Appeals Trib. of the State of NY*, 133 AD3d 929, 930 (2nd Dep't 2015); *Wilson v Neighborhood Restore Hous.*, 129 AD3d 948, 949 (2nd Dep't

2015). Further, even if the doctrine of estoppel did apply, DCH did not allege that it relied upon the contents of the Town's website in filing its RPTL § 524 grievances against the Town. *Flushing Unique Homes, LLC v Brooklyn Fed. Sav. Bank*, 100 AD3d 956, 958 (2d Dept 2012).

However, to the extent that the statements and links on the Town's website affect this Court's determination in any manner, they should not affect this Court's determination with respect to the proceedings against the Village. DCH does not contend that any statement on the part of the Village, its employees, or its publications induced DCH to file an unauthorized RPTL § 524 grievance on behalf of the owner of the Subject Property or that the Town's website evinced a practice on the Village's part of accepting RPTL § 524 grievances filed by an unauthorized nonowner of real property.

CONCLUSION

The statements and links contained on the Town's website are insufficient as a matter of law to estop the Town from rejecting a property tax grievance because the grievance was filed by an unauthorized nonowner of the real property. However, to the extent that this Court finds DCH's argument compelling with respect to its proceedings against the Town, statements on the Town's website have no bearing on the validity of the grievances filed against the Village. It is respectfully requested that this Court uphold the Second Department's Decision and Order in its entirety.

Dated: September 15, 2021
White Plains, New York

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY PURSUANT TO 22 NYCRR §500.1(j) that the foregoing brief was prepared on a computer using Microsoft Word.

Type. A proportionally spaced typeface was used, as follows:

Name of typeface: Times New Roman

Point size: 14

Line Spacing: Double

Word Count. The total number of words in this brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of citations, proof of service, certificate of compliance, disclosure statements, questions presented, or any authorized addendum containing statutes, rules, regulations, etc., is 862.

Dated: September 15, 2021



Kevin Staudt

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
)
COUNTY OF WESTCHESTER)

Ivan Diaz, being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age, and resides at 2160 Holland Avenue, Bronx, New York 10462.

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

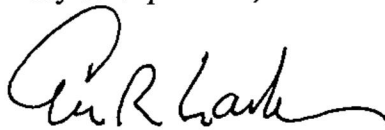
**BRIEF FOR RESPONDENT-RESPONDENT THE VILLAGE OF
MAMARONECK, A MUNICIPAL CORPORATION, ITS ASSESSOR
AND BOARD OF ASSESSMENT REVIEW**

upon designated parties indicated herein at the addresses provided below by means of Federal Express Overnight Delivery of 3 true copies of the same at the addresses of said attorney/parties with the names of each represented party:

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Sworn to before me this
16th day of September, 2021



Notary Public



Ivan Diaz

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Notary Public, State of New York
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Qualified in Westchester County
Commission Expires March 5, 2023