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Appellate Division, Second Department Docket No. 2017-03016

COURT OF APPEALS
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 *AMICUS CURIAE* OF THE NEW YORK STATE SCHOOL BOARDS ASSOCIATION, INC.

JAY WORONA, ESQ.
JEFFREY MONGELLI, ESQ.
Attorneys for *Amicus Curiae*
New York State School Boards Association, Inc.
24 Century Hill Drive, Ste 200
Latham, New York 12110-2125

ROBERT S. SCHNEIDER
EXECUTIVE DIRECTOR

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INTEREST OF THE *AMICUS CURIAE*

The New York State School Boards Association, Inc. (hereinafter also referred to as "NYSSBA" or "the *amicus*") submits this brief *amicus curiae* on behalf of The Town of Mamaroneck, a Municipal Corporation, its Assessor and Board of Assessment Review (hereinafter referred to as "Respondents-Respondents") on the grounds that the issues presently before the Court are of statewide importance to all school districts throughout New York, and the *amicus* will invite the Court's attention to law and arguments that might otherwise escape its consideration and be of special assistance to the Court.

NYSSBA is a not-for-profit membership organization incorporated under the laws of the State of New York. Its membership consists of approximately six hundred and seventy-one (671) or ninety-two percent (92%) of all public school districts and boards of cooperative educational services (BOCES) in New York State.

Pursuant to § 1618 of New York's Education Law, NYSSBA has the responsibility of devising practical ways and means for obtaining greater economy and efficiency in the administration of the affairs and projects of New York's public school districts, on behalf of school districts and BOCES across the State. Consistent with that charge, NYSSBA often appears as *amicus curiae* in both

federal and state court proceedings involving constitutional and statutory issues affecting public schools.

At the state level, some of the more recent of such proceedings include: *Matter of Larchmont Pancake House v. Bd. of Assessors*, 33 N.Y.3d 228 (2019); *Highbridge Broadway, LLC v. Assessor of City of Schenectady*, 27 N.Y.3d 450 (2016); *United Jewish Comm. of Blooming Grove, Inc. v. Washingtonville Cent. Sch. Dist.*, currently pending before the Appellate Division, Third Department; *Paula Cuomo, et al. v. The East Williston Union Free Sch. Dist.*, currently pending before the Appellate Division Second Dep't; *Bd. of Educ. of the Minisink Valley Cent. Sch. Dist. v. Elia*, 170 A.D.3d 1472 (3d Dep't), *lv. to appeal denied*, 33 N.Y.3d 911 (2019); *Maisto v. State of N.Y.*, 154 A.D.3d 1248 (3rd Dep't 2017); *Lawrence Teachers Ass'n, NYSUT, AFT, NEA, AFL-CIO v. New York State Public Employment Relations Bd*, 154 A.D.3d 1248 (3rd Dep't 2017); *The Gerry Homes v. Town of Ellicott, et al.*, 145 A.D.3d 1652 (4th Dep't 2016). At the federal level they include: *J.T v. De Blasio,* currently pending before the U.S Court of Appeals for the Second Circuit; *Bd. of Educ. of the North Rockland Cent. Sch. Dist.*, 744 Fed. Appx. 7 (2nd Cir. 2018).

The appeal presently before this Court involves issues related to challenges of tax assessments which could potentially have a significant financial impact on school districts statewide. NYSSBA submits this brief *amicus curiae* to invite this

Court's attention to law and arguments that otherwise might not be brought to its attention by the parties, and thereby be of special assistance to the Court.

QUESTION PRESENTED

Whether the court below properly determined that the Petitioners-Appellants failed to satisfy the statutory condition precedent to the commencement of a Real Property Tax Law article 7 proceeding when they filed the requisite administrative complaints under Real Property Tax Law § 524(3) in their own name?

The *amicus curiae* respectfully submits that the answer is yes.

STATEMENT OF FACTS

The *amicus curiae* will not recite a separate statement of facts, except as hereinafter specifically cited within the text of its brief. It will defer instead to the facts submitted by the Respondents-Respondents, and as set forth in the Record before this Court.

INTRODUCTION[1]

RPTL[2] article 5 sets forth the administrative review process that applies to the filing of complaints challenging a property's tax assessment. Pursuant to RPTL § 524(3), the administrative review must be commenced by the filing of a statement by "the person whose property is assessed, or by some person authorized in writing by the complainant..." (RPTL § 524(3)). Any such authorization, given by the owner in writing must be "made a part of such statement and bear a date within the same calendar year during which the complaint is filed." (*Id.*). If the person authorized to file the statement is dissatisfied with the determination of the pertinent board of assessment review, that person may seek judicial review of the tax assessment pursuant to RPTL article 7.

An issue arises, however, because RPTL § 704(1) allows any person claiming to be "aggrieved" by a property's tax assessment to commence the judicial proceeding permitted by RPTL article 7 while also requiring that the aggrieved person allege that an administrative complaint was filed pursuant to RPTL article 5 (RPTL § 706(2)). As such, the filing of a proper administrative grievance under RPTL article 5 is a condition precedent to seeking judicial review

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[1] This Brief *Amicus Curiae* was not authored in any part by counsel for any party, and no person or entity other than the *Amicus*, its members or counsel made a monetary contribution to the preparation or submission of this Brief.

[2] All "RPTL" citations and references throughout this Brief are to the New York State Real Property Tax Law.

pursuant to RPTL article 7. Thus, resolution of the appeal herein centers on the question of who may file an RPTL article 5 complaint.

Petitioners-Appellants argue, in part, that the term "person whose property is assessed" within RPTL § 524(3) and the term "[a]ny person claiming to be aggrieved" within RPTL § 704(1) encompass the same class of persons. Therefore, any party aggrieved by a property tax assessment may file an administrative complaint to challenge the assessment pursuant to RPTL article 5 (*see* Petitioners-Appellants' Brief at pp. 29-32). Accordingly, their own filing of the RPTL article 5 administrative complaints at issue herein was proper even though they are not the owner of the assessed property.

Respondents-Respondents, on the other hand, counter that the phrase "person whose property is assessed" within RPTL § 524(3) and "[a]ny person claiming to be aggrieved" within RPTL § 704 (1) establish separate categories of people, one for those who can file an administrative compliant under article 5, and another for who may thereafter challenge the assessment in court under article 7 (*see* Brief of Respondents-Respondents Town of Mamaroneck and its Assessor and Board of Assessment Review (hereinafter "Town of Mamaroneck" Brief) at p. 33). Only the owner of the property, or an owner's designee, may file a complaint seeking administrative review of a property tax assessment pursuant to RPTL

article 5. Because that did not happen,[3] the condition precedent to filing the RPTL article 7 proceedings was not satisfied (*see* Town of Mamaroneck Brief at p. 26).

Consistent with its prior decisions in *Matter of Larchmont Pancake House v. Bd. of Assessors*, 153 A.D.3d 521 (2d Dep't 2017), *aff'd on other grounds*, 33 N.Y.3d 228 (2019) and *Matter of Circulo Housing Dev. Fund Corp. v. Assessor of the City of Long Beach*, 96 A.D.3d 1053 (2d Dep't 2012), the court below determined that while Petitioners-Appellants may qualify as an aggrieved party for purposes of initiating an RPTL article 7 judicial proceeding, they failed to satisfy the condition precedent to the commencement of such a judicial proceeding thereunder because, for purposes of commencing the administrative complaints process pursuant to RPTL § 524(3), it was neither the owner of the subject property, nor identified in the complaints as an agent of the owner (*Matter of DCH Auto v. Town of Mamaroneck*, 178 A.D.3d 823 (2d Dep't 2019)).

In its brief, the *amicus curiae* will focus primarily on the proper interpretation of the meaning and scope of RPTL §§ 524(3) and 704(1) and why, consistent with the requirements of these provisions of law, this Court should affirm the decision of the court below and rule in favor of Respondents-Respondents.

[3] The Town of Mamaroneck's brief indicates that the 2014 town administrative complaint is an exception because the property owner authorized the filing of the challenge to the assessment (*see* page 18, footnote 4, and page 26, footnote 9; *see also* Petitioners-Appellants' Brief at page 57, footnote 19). Therefore, the statements and arguments contained within this *amicus curiae* brief do not pertain to or refer to that 2014 administrative complaint.

ARGUMENT

I. THE COURT BELOW PROPERLY DETERMINED THAT PETITIONERS-APPELLANTS ARE NOT AUTHORIZED TO SEEK ADMINISTRATIVE REVIEW OF THE PROPERTY TAX ASSESSMENTS AT ISSUE HEREIN PURSUANT TO RPTL § 524(3).

When interpreting statutory language, the primary objective is to find out the will of the legislature. "As the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof" (*Majewski v. Broadalbin-Perth Cent. Sch. Dist.*, 91 N.Y.2d 577 (1998)).

RPTL § 524(3) establishes the requirements that a person must satisfy in order to file a complaint to administratively challenge a property tax assessment. One of those requirements is the making of a statutorily prescribed statement by the person whose property is assessed or by said person's authorized designee in accordance with the provisions of the statute. RPTL § 524(3) states in part:

> Notwithstanding the provisions of section five hundred twenty-eight of this title, ... a complaint with respect to an assessment shall be on a form prescribed by the commissioner and shall consist of a statement specifying the respect in which the assessment is excessive, unequal, or unlawful, or the respect in which real property is misclassified, and the reduction in assessed valuation or taxable assessed valuation or change in class designation or allocation of assessed valuation sought. Such statement shall also contain an estimate of the value of the real property. 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. *Such written authorization must be made a part of such statement and bear a date within the same calendar year during which the complaint is filed.* (emphasis added).

a. The plain meaning of the text contained within RPTL § 524(3) expressly identifies who may file a complaint to commence an administrative review of a property tax assessment under RPTL article 5.

This Court has stated: "When the language of a statute is clear and unambiguous, courts are obligated to construe the statute so as to give effect to the plain meaning of the words" (*Cole v. Mandell Food Stores*, 93 N.Y.2d 34 (1999)). As a general rule, "Words of ordinary import used in a statute are to be given their usual and commonly understood meaning, unless it is plain from the statute that a different meaning is intended" (N.Y. McKinney's Statutes § 232; *see also People v. Shakun*, 251 N.Y. 107 (1929)).

Here, the plain meaning of the words "the person whose property is assessed" contained within RPTL § 524(3) evinces that "the person" who can commence the administrative review refers to the owner of the assessed real property (*see Matter of Larchmont Pancake House v. Bd. of Assessors*, 153 A.D.3d at 522; *Matter of Circulo Housing Dev. Fund Corp. v. Assessor of the City of Long Beach*, 96 A.D.3d at 1056-1057). In this context, reliance on the opinion of the Appellate Division, Third Department, in *Matter of McLean's Dept. Stores v.*

Comm'r of Assessment of the City of Binghamton, 2 A.D.2d 98 (3d Dep't 1956) would not be proper. That court concluded that an "aggrieved" person may commence an administrative review pursuant to a local law that permitted complaints to be filed by "the person assessed or whose property is assessed." It did so without consideration of the plain meaning of this latter phrase. However, the phrase "whose property" clearly signifies that "the person" necessarily refers to the owner of the assessed property. That is because the ordinary and common meaning of the word "whose" in connection with "the person" implies ownership in the context of property. By way of illustration, the most obvious and natural response to the question: "whose property is this?" would be an answer that identifies the owner of the real property as opposed to a non-owner. Accordingly, the *amicus* respectfully submits that reliance on the *McLean's* decision toward resolution of the issue herein would not be proper.

In addition, Title 1 of RPTL article 5, which sets forth general provisions governing procedures applicable to the assessment of properties, provides further support that "the person" referred to in RPTL § 524(3) is limited to the owner of the property. Those provisions identify the assessed property with reference to the owner and provide that notices and disclosures be sent to the owner. For example:

- RPTL § 500 obligates the assessor in each city and town to maintain an inventory of all the real property located therein, including the names of *the owners of the real property*.
- RPTL § 502 describes the form of the assessment roll and requires provision to be made for the entry of the name of *the owner*, *last known owner or reputed owner* for each separately assessed parcel of real property.
- RPTL § 510 provides that assessors in towns, cities and counties must, not sooner than 120 days preceding the date on which the tentative assessment roll is scheduled to be filed and not later than 10 days prior to the date for hearing complaints in relation to assessments, to mail to *each owner of real property* in their town, city, or county a notice of any increase in the assessment for that year.
- RPTL § 510-a provides that the assessors in towns, counties and cities must, not later than 10 days prior to the date for hearing assessment complaints, (or in the case of the City of New York, not later than 30 days), mail to each *owner of such real property* in their town, city or county a notice of change that the assessor has made in the taxable status of the property from the status of (a) wholly exempt to taxable in whole or in part, or (b) taxable in part to taxable in whole. The notice must include a statement of the date(s) and times at which the board of assessment review shall meet to hear

complaints with respect to assessments. No such notice is required when a STAR exemption has been removed upon the request of *the property owner* or at the direction of the commissioner.

- In the year of a revaluation or update of assessments, if the state equalization rate for the immediately preceding assessment roll was less than eighty-five, RPTL § 511 provides that the assessor, not later than 60 days prior to the date set by law for the filing of the tentative assessment roll, mail to *each owner of real property*, an assessment disclosure notice.

Embedded in each of the above requirements is a legislative intent to place responsibility for accepting, and the right to complain about, a property's tax assessment on the owner of the property. To the extent that any such complaint must be filed in an RPTL § 524(3) proceeding, the *amicus* respectfully submits that such intent is equally embedded in that section of law.

b. RPTL § 524(3) expressly limits who other than "the person whose property is assessed" may file a complaint to commence a property tax assessment administrative review proceeding under RPTL article 5.

Pursuant to RPTL § 524(3) "the person whose property is assessed" may authorize another person to make the statement required to file a complaint and thereby commence an RPTL article 5 administrative proceeding to challenge a property's tax assessment. Such authorization must be in writing and must be "made a part of such statement and bear a date within the same calendar year

during which the complaint is filed" (RPTL § 524(3)). Absent such designation, the statute restricts "the person" making the statement to "the person whose property is assessed" (*Id.*).

Thus, the plain language of RPTL § 524(3) limits who can commence an administrative property tax assessment review to the property owner or the property owner's designee who is authorized in accordance with the provisions of the statute.[4] The Petitioners-Appellants do not fall into either category (*Matter of DCH Auto v. Town of Mamaroneck*, 178 A.D.3d at 825. As such, they were precluded from commencing the at issue property tax assessment reviews under RPTL article 5. There is no indication from the statutory text that a non-owner, not otherwise authorized by the owner to do so pursuant to RPTL § 524(3), may commence such a proceeding. Had the legislature intended to allow non-owners to commence an RPTL article 5 administrative review on their own, it could have easily done so.

Because RPTL § 524(3) contains clear and unambiguous language, the Court should not disregard its plain meaning in favor of an interpretation that would include non-owners not otherwise authorized by the owner in accordance with the statute, within the scope of persons who may commence an RPTL article

[4] For purposes of clarification, the phrase "property owner's authorized designee" used within this brief refers to a property owner's designee who is authorized pursuant to the provisions of RPTL § 524(3).

5 administrative review proceeding (*see In re Adoption of Malpica-Orsini*, 36 N.Y.2d 568 (1975) (noting that courts may not legislate, or rewrite, or extend, or expand legislation), *appeal dismissed sub nom. Orsini v. Blasi*, 423 U.S. 1042 (1976); *Oneida Nat. Bank & Trust Co. of Utica v. Manikas*, 10 Misc.2d 671 (Cnty. Ct. Herkimer Cnty. 1958) (stating "A court cannot amend a statute by inserting words that are not there.")).

Any expansion of the class of persons who may commence an RPTL article 5 administrative review should only be accomplished through legislation, not the courts (see *People v. Graham*, 55 N.Y.2d 144 (1982); *Klein v City of Yonkers*, 53 N.Y.2d 1011 (1981) (noting "If the statute is to be amended, that must be accomplished by legislative action and not judicial fiat."); *People v. Kupprat*, 6 N.Y.2d 88 (1959) (stating "We must read statutes as they are written and, if the consequence seems unwise, unreasonable or undesirable, the argument for change is to be addressed to the Legislature, not to the courts."); *Metropolitan Life Ins. Co., v. Boland*, 281 N.Y. 357 (1939)).

c. The provisions of RPTL § 704(1) do not provide a basis for overturning the decision of the court below.

RPTL § 704(1) provides that "any person aggrieved" by a real property tax assessment may commence judicial proceedings to review such an assessment. However, the person commencing such proceedings must show "that a complaint was made in due time to the proper officers to correct such assessment" (RPTL §§

704(1), 706(2); *see Matter of Larchmont Pancake House v. Bd. of Assessors*, 33 N.Y.3d 228 (2019) (stating, "... the proper filing of an administrative grievance pursuant to RPTL article 5 is a condition precedent to judicial review pursuant to RPTL article 7."). As discussed above, only "the person whose property is assessed" or the property owner's authorized designee may file such a complaint (RPTL § 524(3)). The Petitioners-Appellants are not one or the other.

Prior to the current case on appeal herein, the court below had concluded that RPTL § 524(3) requires the owner of the assessed property to commence an RPTL article 5 administrative review. In *Matter of Circulo Housing Dev. Fund Corp. v. Assessor of the City of Long Beach*, 96 A.D.3d 1053 the petitioner, Circulo Housing Development Fund Corporation ("Circulo Housing"), commenced judicial proceedings pursuant to RPTL article 7 with regard to three properties, one being the East Hudson Street property (*Id.* at 1054). Previously, Circulo Housing had filed an administrative complaint for review of the assessment regarding the East Hudson Street property (*Id.* at 1056). The respondents moved to dismiss the RPTL article 7 judicial proceeding and argued, in part, that Circulo Housing was not the owner of the East Hudson Street property and therefore had failed to satisfy the condition precedent to the commencement of the judicial proceeding (*Id.* at 1055).

The *Circulo* court first recognized the distinction between the set of people who can file an administrative challenge pursuant to RPTL article 5 and the set of people who can file a judicial proceeding pursuant to RPTL article 7. It stated:

> Importantly, while RPTL article 5 requires that the *property owner* file a complaint or grievance to obtain administrative review of the tax assessment (*see* RPTL 524 [3]) *any person* claiming to be aggrieved by any assessment may file a petition pursuant to RPTL article 7 (*see* RPTL 704 [1]) to challenge, inter alia, an "[u]nlawful assessment" (RPTL 701 [9] [a]) (emphasis in original) (*Id.* at 1056)).

According to the court, in order to commence judicial review under RPTL article 7, "the owner must have made a complaint regarding the unlawful assessment to the Board for review pursuant to RPTL article 5 (*see* RPTL 524)." (*Id.)*. Importantly, because Circulo Housing was not the owner of the East Hudson property, and because there was no evidence that the owner of that property ever filed an administrative grievance pursuant to RPTL § 524(3), the condition precedent was not met, and the petition was dismissed (*Id.* at 1056 -1057).

More recently, the court below, in *Matter of Larchmont Pancake House,* once again analyzed the interplay between RPTL § 524(3) and RPTL § 704(1) (*Matter of Larchmont Pancake House v. Bd. of Assessors*, 153 A.D.3d 521 (2d Dep't 2017), *aff'd on other grounds*, 33 N.Y.3d 228 (2019)). In that case, the court below, while finding that the petitioner was an "aggrieved party" for purposes of RPTL article 7, noted that the petitioner was not the owner of the assessed property

for purposes of RPTL article 5 (*Id.* at 522). Because the complaints for administrative review were not commenced by the owner of the assessed property, the court found that the petitioner failed to satisfy the condition precedent required by RPTL § 706(2) related to the making of an RPTL article 5 complaint. The supreme court, therefore, "lacked subject matter jurisdiction to review the assessments" (*Id.*).[5]

Here, as in both *Circulo* and *Larchmont Pancake House*, the court below set forth the requirements of both statutes (*Matter of DCH Auto v. Town of Mamaroneck*, 178 A.D.3d at 825. While it determined that Petitioners-Appellants may qualify as an "aggrieved party" for purposes of RPTL article 7, the court below found that in filing the RPTL § 524(3) administrative complaints in its own name, Petitioners-Appellants "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" (*Id.* at 825).

In analyzing the interplay between RPTL § 524(3) and RPTL § 704(1), the court below, in all three decisions, did not alter the plain meaning of the statutory text contained within RPTL § 524(3). It did not expand the scope of individuals who can commence an administrative review of a property tax assessment.

[5] On appeal, this Court affirmed the lower court's dismissal of the case on the ground that the petitioner was not an aggrieved party within the meaning of RPTL article 7 and therefore lacked standing to maintain judicial review (*Matter of Larchmont Pancake House v. Bd. of Assessors,* 33 N.Y.3d at 240-41).

Instead, in all three decisions, the court below analyzed the requirements of each statute and, in doing so, determined not only whether the respective parties were "aggrieved" for purposes of RPTL article 7, but also whether the appropriate person had filed the required administrative reviews for the purposes of RPTL article 5. The owner of the East Hudson Street property in *Circulo* and the owner of the subject property in *Larchmont Pancake House* did not commence the required administrative complaints, and the legal proceedings with respect to those properties were properly dismissed by the court (*Matter of Circulo Housing Dev. Fund Corp.*, 96 A.D.3d at 1056-1057; *Matter of Larchmont Pancake House*, 153 A.D.3d at 522). Here, the administrative complaints in question were not filed by either the owner of the property or the property owner's authorized designee, and the RPTL article 7 legal proceedings were properly dismissed by the court (*Matter of DCH Auto*, 178 A.D.3d at 825).

Because the statutory text is the best evidence of legislative intent, the clarity of RPTL § 524(3) warrants this Court's affirmance of the decision of the court below. As discussed above, the category of people who can commence an article 5 administrative review proceeding does not include "aggrieved" non-owners who are not otherwise authorized in accordance with the statute to act as the owner's designee. Noncompliance with the provisions of RPTL §§ 524(3) and 706(2)

deprives the courts of subject matter jurisdiction to review the tax assessment proceedings commenced by Petitioners-Appellants.

For all the foregoing reasons, the *amicus* respectfully requests that this Court affirm the decision of the court below and rule in favor of the Respondents-Respondents.

II. THE INTERPRETATION OF THE COURT BELOW OF RPTL § 524(3) IS CONSISTENT WITH BASIC PRINCIPLES OF PROPERTY OWNERSHIP RIGHTS.

The interpretation of the court below of RPTL § 524(3) is not only consistent with the plain meaning of the statutory text, but it is also consistent with basic principles of property rights.

While the legal parameters of property rights can be the subject of debate, certain fundamental principles are well-established. For instance, the owner typically has the right to exclude others from the property (*see Kaiser Aetna v. U.S.*, 444 U.S. 164 (1979)) and the right to determine exclusively how to use the property.[6] William Blackstone defined property rights as "that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right or any other individual in the universe."[7] Based on these well-established principles, an owner of property, may, for

[6] *See* Clacys, Eric, *Property 101: Is Property a Thing or a Bundle* (2008), George Mason Law & Economics Research Paper No. 09-09.
[7] WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 2 (facsimile ed. 1979) (1765-69).

instance, decide to sell the property, to subdivide the property, to rent the property, or to renovate the property, as well as to not challenge tax assessments on the property.

The language of RPTL § 524(3), and the interpretation of the court below of that language, is consistent with the decision-making authority granted to owners of real property. The statutory text gives the property owner or the property owner's authorized designee, as opposed to a non-owner, the complete discretion to challenge the tax assessment. Just as there may be reasons for an owner to commence an administrative review pursuant to RPTL article 5, there may be reasons for an owner not to commence such a review. For instance, the owner (1) might believe the tax assessment of the property to be fair, (2) might believe the tax assessment of the property to be unfair, but not wish to challenge the tax assessment based on political or altruistic reasons, or (3) might believe a higher tax assessment to be beneficial in terms of justifying the "asking price" when selling the property. Regardless of the reason(s), it is the owner's property that is assessed, and based on legal principles of property ownership, it should be the owner of the property that decides whether to challenge the assessment. Furthermore, although as here, a property owner, through a net lease, may provide a tenant with the right to contest the subject property's tax assessment, the authorization of the tenant to commence an administrative grievance must still

comply with the provisions of RPTL § 524(3) (*see* supra at section I(b); *see also Matter of DCH Auto v Town of Mamaroneck*, 178 A.D.3d 823).

While RPTL article 7 permits any aggrieved non-owner to commence a judicial review of a tax assessment, the condition precedent that requires the property owner or the property owner's authorized designee to first commence an RPTL article 5 administrative challenge preserves the basic decision-making authority and discretion of the property owner. That is, if the owner of the property or the property owner's authorized designee decides not to commence the administrative proceeding, an aggrieved non-owner cannot commence an RPTL article 7 judicial proceeding.

A decision by this Court that would permit aggrieved non-owners who are not owner authorized designees pursuant to RPTL § 524(3) to commence property tax assessment administrative challenges would not only be inconsistent with the plain meaning of RPTL § 524(3) but would also undercut the basic decision-making authority given to property owners.

Accordingly, and for all the foregoing reasons, this Court should affirm the decision of the court below and rule in favor of Respondents-Respondents.

III. AN EXPANSION OF THE CLASS OF PERSONS WHO CAN FILE COMPLAINTS TO COMMENCE ADMINISTRATIVE REVIEWS OF PROPERTY TAX ASSESSEMENTS UNDER RPTL § 524(3) IS LIKELY TO HAVE A NEGATIVE IMPACT ON SCHOOL DISTRICTS.

This Court has acknowledged the significance of the tax assessment process to local municipalities.

> It is scarcely necessary to recite the importance of the assessment process to the fiscal operation of municipalities. Real property taxation provides the major source of municipal revenues and departmental appropriations are necessarily dependent on the funds available (*Matter of Sterling Estates v. Bd. of Assessors of the Cnty. of Nassau et al.*, 66 N.Y.2d 122 (1985)).

The importance of the tax assessment process is particularly pronounced for New York's public schools because, pursuant to the New York State Constitution, students have a right to a "sound basic education" (N.Y. Const., art. XI, § 1; *see Campaign for Fiscal Equity, Inc. v. State of New York*, 86 N.Y.2d 307 (1995); *Bd. of Educ., Levittown UFSD v. Nyquist*, 57 N.Y.2d 27 (1982)). As part of this "sound basic education," school districts in this state must provide various "essentials" such as "adequate physical facilities and classrooms...access to minimally adequate instrumentalities of learning...adequate teaching of reasonably up-to-date basic curricula...by sufficient personnel adequately trained to teach those subject areas" (*Campaign for Fiscal Equity, Inc.*, 86 N.Y.2d at 317).

Local tax revenue is critical to a school district's ability to provide a "sound basic education." School districts rely on their tax base to fill the revenue gaps created by insufficient state aid and federal funding.

a. Expanding the scope of persons who can file challenges to property tax assessments is likely to result in an increase of tax certiorari proceedings and to disrupt the stability of needed school financial resources derived from local taxation.

The *amicus* recognizes the importance of accurate tax assessments and the right of owners to challenge the fairness of the tax assessments on their property notwithstanding that any such successful challenge can be financially disruptive to a school district. Nonetheless, it remains that in most successful tax certiorari proceedings challenging a property tax assessment, the school district must pay its proportionate share of the tax refund, plus applicable interest, the court determines was overpaid (RPTL § 726(1)(c), (2)).[8]

In addition to the payment of judgments, a successful tax certiorari proceeding has the deleterious effect of diminishing a school district's tax base because less tax money will be collected from the over-assessed property. As a result, a successful challenge to a tax assessment often results in significant financial disruption to a school district, affecting the school district's budget, the

[8] In Suffolk and Nassau counties, laws exist which insulate school districts from liability for tax refunds due to successful tax certiorari proceedings (*see* Suffolk County Tax Act § 3; Nassau County Administrative Code § 6-26.0).

ability to offer educational programs and services, and ultimately the ability to provide a "sound basic education."

Such financial disruption is compounded by New York's property tax cap law. That law establishes a tax levy limit for each school district. The tax levy limit permits school districts to increase their property tax levy from one year to the next by 2 percent or 1 plus the inflation factor, whichever is less, based on a formula (N.Y. Education Law §§ 2023-a(2), (3)(a)). School districts are permitted to take certain exclusions that may boost their tax levy above the tax levy limit (N.Y. Education Law § 2023-a(2)(i)). Tax certiorari decisions, however, are not excluded from the cap.[9]

If a school district's proposed tax levy increase is within its limit, a simple majority of district voters is needed for the approval of the budget. If a school district's proposed tax levy increase exceeds the tax levy limit, a supermajority of district voters (60 percent or more) would be required for the budget to pass (N.Y. Education Law § 2023-a(6)(a)).

A school district that experiences a significant loss to its tax base due to tax certiorari proceedings can attempt to ameliorate the impact of such loss by spreading the tax levy among properties not affected by such proceedings. However, any such attempt must be consistent with New York's property tax cap

[9] *See* NYS Education Department, *Property Tax Cap Guidance* (revised Jan. 2020).

law. As discussed above, an attempt to exceed the tax levy limit in order to make up for revenue shortfalls, would require a supermajority vote on the budget to pass. Therefore, a school district may not be able to fully recuperate from a loss to its tax base as a result of a tax certiorari proceeding.

The *amicus* respectfully submits that the limitations set forth in RPTL § 524(3) as to who can file a complaint thereunder strikes a balance between the right of property owners to not be overtaxed and the need of school districts for stability in their ability to raise local tax revenues. But an expansion of the class of persons who can commence an RPTL § 524(3) proceeding would disrupt such a balance. The immediate consequence of expanding the class of persons who can commence an RPTL § 524(3) beyond those expressly identified in that section of law will be a likely increase in the number of RPTL § 524(3) proceedings by non-owners. Such an increase, in turn, amplifies the exposure of school districts to the ill effects of potential disruptions to their stream of local taxation revenues. Vulnerability in this context is a constant for school districts and is appropriate when balanced against the rights of ownership, but not when a challenge to a property tax assessment is initiated by a person without ownership rights in a property subject to taxation by a school district. Such an outcome is contrary to the plain language of RPTL §524(3), which helps to limit disruptions to the financial resources and programmatic offerings of school districts. Consistent with

established principles of statutory construction discussed above, it is up to the Legislature to make adjustments to the express limitations it has set forth in RPTL § 524(3). For all the foregoing reasons, this Court should affirm the decision of the court below and rule in favor of Respondents-Respondents.

b. The expectation of a likely increase in the number of tax certiorari proceedings as a result of an expansion of the class of persons who can commence RPTL § 524(3) proceedings and the consequent negative impact on school districts is reasonable.

Pursuant to the statutory text of RPTL §§ 524(3) and 706(2), a condition precedent to the commencement of a tax certiorari proceeding is that the property owner or the property owner's authorized designee must have first commenced an administrative review. Thus, absent the property owner or the property owner's authorized designee commencing an RPTL article 5 administrative review, an aggrieved non-owner cannot commence an RPTL article 7 tax certiorari proceeding (*see Matter of Circulo Housing Dev. Fund Corp.*, 96 A.D.3d 1053; *Matter of Larchmont Pancake House*, 153 A.D.3d 521; *Matter of DCH Auto v. Town of Mamaroneck*, 178 A.D.3d 823; *but see Matter of McLean's Dept. Stores v. Comm'r of Assessment of the City of Binghamton*, 2 A.D.2d 98).

An expansion of the plain meaning of RPTL § 524(3) that allows non-owners who consider themselves aggrieved by a property's tax assessment, but who are not a property owner's authorized designee, to commence administrative reviews at their discretion increases the likelihood of tax certiorari proceedings

being commenced throughout the state. That would be particularly so in the midst of a high taxation environment like New York. Thus, it can be reasonably anticipated that a decision in favor of the Petitioners-Appellants would not only increase the number of tax certiorari proceedings, but also increase the likelihood of school districts paying more property tax refunds and suffering losses to their tax base.

Furthermore, and as discussed above, given the restrictions of the New York State property tax cap, school districts already face difficult challenges in trying to recover revenue shortfalls due to a loss of tax base. School districts that cannot recover revenue shortfalls due to an increase in successful tax certiorari proceedings would be forced to make cuts to district programs and services thereby affecting not only the quality of education, but also the school district's state constitutional obligation to provide a "sound basic education."

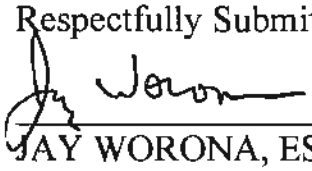
The likelihood of such an outcome provides further support that any amendment to RPTL § 524(3) should be made through legislation, rather than judicial fiat.

CONCLUSION

For all the foregoing reasons, the *amicus curiae* respectfully requests that this Court affirm the decision of the court below in favor of the Respondents-Respondents and grant any such other relief as the court might deem appropriate.

Dated: March 24, 2022
Latham, New York

Respectfully Submitted by:



JAY WORONA, ESQ.
JEFFREY MONGELLI, ESQ.
Attorneys for *Amicus Curiae*
New York State School Boards Association Inc.
24 Century Hill Drive, Ste 200
Latham, New York 12110-2125
Telephone: (518) 783-0200

CERTIFICATION OF COMPLIANCE

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

1. This brief was prepared on a computer using 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 5485 words.

Dated: March 24, 2022

Jay Worona