

**New York State
Court of Appeals**

DCH AUTO, et al.,

Appellants,

-against-

TOWN OF MAMARONECK, et al.,

Respondents

BRIEF FOR AMICUS CURIAE

**ASSOCIATION OF TOWNS OF THE STATE OF NEW YORK
NEW YORK CONFERENCE OF MAYORS AND MUNICIPAL
OFFICIALS**

NEW YORK STATE CONFERENCE
OF MAYORS AND MUNICIPAL
OFFICIALS
119 Washington Avenue, 2nd Floor
Albany, New York 12210
(518)-463-1185
Rebecca Ruscito, *Counsel*
rebecca@nycom.org

ASSOCIATION OF TOWNS OF THE
STATE OF NEW YORK
150 State Street, 2nd Floor
Albany, New York 12207
(518)-465-7933
Sarah Brancatella, *Counsel and
Legislative Director*
sbrancatella@nytowns.org

APL-2021-00103

Original

TABLE OF CONTENTS

Table of Authorities..... 2

Preliminary Statement 3

Interest of Amici Curiae3-4

Argument.....4-10

I. The Court should not complicate a straightforward standard by allowing those who do not own or have permission from the property owner to file a complaint and grieve a property tax assessment at the local level4-9

II. Public policy requires that the owner of a property file an Article 5 complaint or provide permission to file a complaint..... 10

Conclusion 11

Certificate of Compliance 12

Table of Authorities

Cases

Sterling Estates, Inc. v Bd. of Assessors of Nassau County, 66 NY2d 124 (1985)
..... 7,8

Statutes

Real Property Tax Law § 524..... 4,5,6,7,8,9,10

Real Property Tax Law § 525..... 6

Other Authorities

9 Op Counsel SBEA No 63 [Jan. 16, 1991]..... 6

PRELIMINARY STATEMENT

The Association of Towns of the State of New York (AOT) and the New York State Conference of Mayors and Municipal Officials (NYCOM) respectfully submit this brief *amici curiae* in support of Respondents who seek a ruling from the Court of Appeals finding that Appellants, entities that paid property taxes on a parcel of real property pursuant to a lease agreement with the owner of the parcel, may not commence an administrative review of the property's assessment under Real Property Tax Law (RPTL) Article 5 because they were neither the owner nor did they have written authority from the owner to file an RPTL § 524 complaint. The Second Department Appellate Division unanimously upheld Supreme Court's decision dismissing Appellants' RPTL Article 7 tax certiorari petitions on the ground that there was a jurisdictional defect because someone other than the property owner or someone with written authority from the property owner filed the complaints required under RPTL § 524 (3), which is a condition precedent to filing an Article 7 challenge.

INTEREST OF THE AMICI CURIAE

AOT and NYCOM are not-for-profit voluntary membership organizations that train, educate, and advocate for local governments and officials. AOT's membership consists of over 900 of the State's 933 towns while NYCOM's members include 61 of the State's 62 cities and 512 of the State's 533 villages.

Collectively, these associations represent the overwhelming majority of local governments in New York State.

The issues raised regarding who may grieve property taxes at the local level concern local governments across the State. Annually, cities, towns, and villages face numerous challenges to assessments made on real property within their jurisdictions, and having a clear and simple rule on who may challenge an assessment is essential to the goals of local administrative review. While NYCOM and AOT agree with the positions taken by Respondents, it is neither the intent nor the purpose of appearing as *amici* to reiterate legal arguments already presented to the Court. Rather, this brief draws attention to the potential unforeseen impacts on local governments should the Court of Appeals reject the Second Department's finding that a property owner or someone granted permission by the owner must file a complaint under RPTL § 524.

ARGUMENT

I. THE COURT SHOULD NOT COMPLICATE A STRAIGHTFORWARD STANDARD BY ALLOWING THOSE WHO DO NOT OWN OR HAVE PERMISSION FROM THE PROPERTY OWNER TO FILE A COMPLAINT AND GRIEVE A PROPERTY TAX ASSESSMENT AT THE LOCAL LEVEL

As Respondents' brief clearly explains, under RPTL § 524(3) a property owner or those with written permission from the property owner may initiate the grievance process by filing a complaint at the local level. Extending this authority

to non-owners is not only contrary to the clear language of RPTL § 524(3), it unnecessarily complicates a straightforward threshold determination. Upending the law will require local government officials to engage in a level of review more appropriate for the judiciary, delay down the grievance process, and increase costs and the likelihood of litigation. Furthermore, changing who may initiate grievances would complicate issues related to standing at the local level in a manner that is wholly unnecessary. The law already allows non-owners to file complaints by obtaining written permission from the owner. Consequently, AOT and NYCOM urge this Court to uphold the Second Department's decision.

Administrative review at the local government level is a mechanism used to resolve questions related to real property tax assessments in a cost effective and efficient manner. The process to grieve a tax assessment is simple; if someone disagrees with the tax assessed value of their property they may file a complaint and present an argument urging the Board of Assessment Review to reduce or amend the assessed value of the property (*see* RPTL §§ 524, 525).

Unlike litigation to and pursue a judicial remedy, the tax grievance process is uncomplicated and allows members of the public to file a grievance and participate in the process without having to devote a significant amount of time or incur substantial costs by hiring a professional attorney to represent them (*see* 9 Op Counsel SBEA No 63 [Jan. 16, 1991]). Similarly, a straightforward administrative

review process is important to local governments because it helps municipalities resolve assessment issues inexpensively and expeditiously. The process enables local governments to “close the tax roll and establish the tax rate with some confidence that the revenues produced by the levy will be sufficient to meet budget requirements” (*Sterling Estates, Inc. v Bd. of Assessors of Nassau County*, 66 NY2d 122, 125 [1985]). Courts also benefit from a local review process because the procedure curtails the number of cases that go to litigation, and thus avoids stressing already overburdened dockets (*see id.*).

The language of RPTL § 524(3) clearly and unequivocally states that the complaint filed at the local level “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 statute goes on further to state that written authorization from the owner must be given in the same year the complaint is made (*id.*). Were the Court to essentially add language to the statute to authorize parties with contractual obligations to pay property taxes the authority to file assessment complaints, assessors and the Board of Assessment Review would be forced to become experts in contracts. Determining whether a legal obligation exists and if a contract is current and enforceable can be complicated and exacting endeavor. It would be impractical and inappropriate to require local governments conduct such an administrative review

for a number of reasons. First, as stated previously, reimagining the statute would require assessors and Boards of Assessment Review to render a determination as to the contractual obligation of the person filing the complaint when an assessor's and Board's expertise and role lie solely in assessing real property value. This change could open ample room for error and challenge resulting in more litigation thereby undermining one of the purposes behind administrative review (*see Sterling* at 125 [stating that an important goal of the grievance procedure is to limit litigation]).

Secondly, requiring assessors and Boards of Assessment Review to participate in a complex analysis exceeding the scope of their expertise would like result in local governments requiring the appointment of special counsel and increasing costs for both the municipality and the complainant. Many municipalities, towns and villages in particular, do not have attorneys employ corporation counsels and instead contract for legal services. As a result, any action requiring the advice of counsel is an additional expense to the locality. Local governments should not be obligated to untangle legal and personal histories to determine what, if any, contractual obligations exist requiring a party to pay property taxes. Moreover, individual complainants should not be required to engage an attorney to represent their interests in what should be a simple threshold determination of their property tax assessment.

Another reason to avoid the reinterpretation of RPTL § 524(3) is that a change complicating who may file complaints will slow down the entire grievance process. This result is impractical given the amount of time available to prepare for a hearing pursuant to RPTL § 524(1). Instead of resolving a question related to the validity of an assessment, grievance days could be consumed with evaluating whether an appropriate party filed a complaint. Determining the contractual obligation of a party to pay property taxes has absolutely no impact on a property's value assessment, which is the objective and purpose of grievance days.

Arbitrating contractual questions for private entities is not an effective or efficient use of municipal time and resources, nor is the public served by engaging in this belabored endeavor. Furthermore, given the timing of the grievance process, local governments may not have the opportunity or resources to properly determine if a complainant has a legal obligation to pay property taxes. Under RPTL § 524(1) complaints may be filed up until the very day before the board of assessment review hearing. Though hearings may be adjourned (*see id.*), there may simply be an insufficient amount of time for a local government to obtain the information necessary to appropriately evaluate the situation. This inadequacy also increases the likelihood of litigation, which may be necessary because this type of inquiry into legal obligations should be reserved for judicial review. In a civil action, as opposed to an administrative proceeding, there is more time and clearly

delineated rules for evidentiary discovery, the parties are represented by attorneys, and judges, who routinely evaluate questions of standing, make the final determinations. Indeed, had Appellants adhered to the statutory procedures articulated in the Real Property Tax Law they could have commenced an Article 7 proceeding and a court would be in the position to determine if they were aggrieved parties due to legal obligations to pay property taxes.

Lastly, it is wholly unnecessary to stray from the plain language of RPTL § 524(3) and complicate who may file a complaint because the law already provides a remedy for those in Appellants situation, that is occupants of a property who want to challenge the assessed value of the property. RPTL § 524 permits a person authorized in writing by the owner to file a complaint. In this case, Appellants simply need to obtain written permission from the property owner to file the grievance and the issue of assessment value would have been resolved. Clearly, the law specifically addresses circumstances in which non-owners may make complaints with respect to assessments, and, there is no need to complicate a simple system to accommodate those who simply avoid compliance with a well-founded and unobtrusive State law. For these reasons, AOT and NYCOM ask this Court to uphold the Second Department's finding that a complaint to commence the grieving process is restricted by RPTL § 524 to property owners or persons with permission from property owners.

II. PUBLIC POLICY REQUIRES THAT THE OWNER OF A PROPERTY FILE AN ARTICLE 5 COMPLAINT OR PROVIDE PERMISSION TO FILE A COMPLAINT

From a sound public policy perspective, it is rational that property owners must agree to grieving assessments at the local level. For local governments, the property owner that possesses the obligation and, eventually, the consequences for property taxes. If property taxes remain unpaid they are placed as a lien against the property, which significantly limits the ability to transfer property, may affect the credit of an owner, and could ultimately result in foreclosure of the property. While the owner may file a claim against someone with a legal obligation to pay the property taxes, owners nonetheless bear the consequences of owing property taxes. There may be any number of personal or financial reasons why a property owner would not want to grieve an assessment. Having owners involved at the initial stages of the grievance process ensures their interests align with non-owning complainant. This agreement is, again, necessary and consistent with sound public policy because the owner and his or her investment is conclusively impacted by assessments.

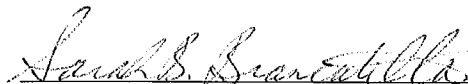
CONCLUSION

For all of the reasons outlined by Respondents and considering all the issues raised in this brief, NYCOM and AOT respectfully request that this Court uphold that part of the Appellate Division's decision finding that an owner or someone


with written permission from the owner must file a complaint under RPTL §
524(3).

Dated: Albany, New York
April 6, 2022

Respectfully Submitted,



Sarah Brancatella
Legislative Director and Counsel to the
Association of Towns of the State of
New York
150 State Street, 2nd Floor
Albany, New York 12207
Telephone: (518) 465-7933
sbrancatella@nytowns.org



Rebecca Ruscito
Counsel to the New York State
Conference of Mayors and
Municipal Officials
119 Washington Avenue, 2nd Floor
Albany, New York 12210
Telephone: (518) 463-1185
rebecca@nycom.org

CERTIFICATE OF COMPLIANCE

The undersigned attorneys hereby certify, pursuant to 22 NYCRR 500.13(c)(1) as follows:

This computer generated Brief was prepared using a proportional space typeface.


Name of typeface: Times New Roman

Point size: 14

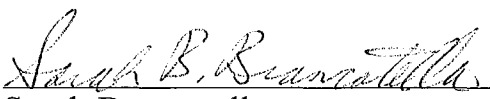
Line spacing: Double

The total number of words in this Brief is 2202, inclusive of headings.

Dated: April 6, 2022
Albany, New York

By: 

Rebecca Ruscito,
Counsel to the New York State
Conference of Mayors and
Municipal Officials
119 Washington Avenue, 2nd Floor
Albany, New York 12210
Telephone: (518) 463-1185
rebecca@nycom.org



Sarah Brancatella
Associate Counsel to the Association of
Towns of the State of New York
150 State Street, 2nd Floor
Albany, New York 12207
Telephone: (518) 465-7933
sbrancatella@nytowns.org



