

S

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. JOSEPH A. DE MARO

Justice

----- TRIAL/IAS, PART 5
NASSAU COUNTY

In the Matter of the Application of

4'BS REALTY V HARBOR PARK DRIVE, LLC.,
75 NOBLE STREET OWNERS, INC.,
120 HORTON HIGHWAY REALTY CORP.,
190 FIRST STREET LLC,
210 E. BROADWAY OWNERS CORP.,
250-255 CENTRAL AVENUE OWNERS INC.,
474 FULTON ASSOC. LLC,
711 SHORE ROAD OWNERS CORP.,
2618 MERRICK REALTY CORP.,
AVR-MASSAPEQUA, LLC,
AEROFLEX LABORATORIES/AEROFLEX
INCORPORATED, ALLENAIR CORPORATION,
ARBIT PROPERTIES, INC./OLD COUNTY
ROAD REALTY LP, A N.Y. LTD, PARTNERSHIP,
KENNETH BADENHOP, BALDWIN BUSINESS
CENTER, LLC, BRAKE SERVICE INC.,
BROWN, ATLEE & ELSIE, BURNSIDE 711, LLC,
C N M ASSOCIATES, LLC, CECILE
REALTY CORP., CERRONE FLORAL REALTY,
INC., COLUMBO, ELLA MARIE and JOSEPH,
COMMUTER HOUSING CO., INC.,
CONNAN, FREDERIC, CONNECTICUT STORAGE
FUND, COZIR CORP., DeCANDIA, VITO,
DELMAR REALTY CO., INC.,
FORLADER, CRAIG & IRWIN, FOWLER-DALEY
OWNERS, INC., FRED SCALAMANDRE and
JOSEPH SCALAMANDRE REAL ESTATE,
FRED SCALAMANDRE and JOSEPH
SCALAMANDRE REAL ESTATE, FREEPORT
RANDALL CO., FREUNDLICH, JERRY,
GARDEN CITY SUPER PUMPER, INC.,
DOMINIC ARCAMONA a/k/a DOMINIC GERAND,
GOLD'S REALTY CORPORATION,
GORDON HILLSIDE CORP.,
GRACE FIVES STEAK HOUSE, INC., LESSEE,
JOSEPH IANNACCI, INWOOD COUNTRY
CLUB, INC., KJM YACHT REALTY CORP.,
LEON PETROLEUM, LLC, LEON PETROLEUM, LLC,
LEVETT REALTY ENTERPRISES, LLC a/k/a
INDEPENDENT COACH CORP.,
LEVETT REALTY ENTERPRISES, LLC a/k/a
INDEPENDENT COACH CORP.,

LEVETT REALTY ENTERPRISES, LLC, a/k/a
INDEPENDENT COACH CORP.,
LOWDEN PROPERTIES/LOWDEN FAMILY TRUST,
LYN-ROG ASSOCIATES,
MAPLEWOOD GARDENS APT. CORP.,
MASKIR PROPERTIES, INC.,
NASSAU RANDALL CO., JOSEPH NESTOLA,
THE NEW YORK RACING ASSOCIATION INC.,
NORTH FORK BANK, NORTH FORK BANK,
NORTH FORK BANK, CARL R. OTTAVIO,
PEAK REALTY CORP., POLIZIO, ROSALIE,
PROGRESSIVE HOLDING, LLC, RAINBOW
HOUSE OWNERS CORP., RO-AM REALTY CORP.,
ROSID PROPERTIES, INC., LAURI
ROSMARIN-PLATTNER, PETER ROSMARIN,
KAREN A. ROSMARIN, KAREN A. ROSMARIN
TRUST, SAB 21-23 SCHENOK ASSOCIATES,
LLC/SAB 11 WELWYN ASSOCIATES, LLC,
SAB DOLPHIN GREEN ASSOCIATES,
LLC/SANDRA ATLAS BASS, SRG PROPERTIES,
THE SANDCASTLES CONDOMINIUM,
SCHOENBERG REALTY CORP.,
SEAWANE GOLF & COUNTRY CLUB, INC.,
SEKELSKY, STEPHEN; SEKELSKY, MARIE
SMITH ST. GARDENS, INC.,
SOUTH SHORE SKATING, INC.,
SOUTH SHORE REALTY, STERN, SAMUEL,
JONAS GUTTER, ALAN GOLDSCHLAGER & BARRY
BLANK, TAD REALTY INC.,
THE WINDEREMERE CONDOMINIUM,
VILLAGE GARDENS OWNERS CORP.,
VLADIMIR REALTY, INC.,
W.S.A. ASSOCIATES, WANLYN REALTY CORP.,
DR. ARTHUR WILDER & MARILYN WILDER,
WIRE & WOOD CONSTRUCTION, INC.,
WOLFIN REALTY CORP.,

Petitioners,

INDEX No. 17290/05

For a Judgment Pursuant to
Article 78 of the CPLR,

-against-

COUNTY OF NASSAU, NASSAU COUNTY
ASSESSMENT REVIEW COMMISSION,
RECEIVER OF TAXES, TOWN OF
HEMPSTEAD, RECEIVER OF TAXES,

TOWN OF NORTH HEMPSTEAD,
RECEIVER OF TAXES, TOWN OF
OYSTER BAY, and NASSAU COUNTY
TREASURER,

Respondents.

The above captioned matter was brought on by Order to Show Cause presented and signed on October 31, 2005 (Albert, J.), returnable on November 4, 2005. The Court on November 4, 2005, rendered a preliminary ruling and directed oral argument on November 7, 2005. The petitioners complained of tax bills rendered by respondents, Receivers of Taxes, on October 1, 2005 payable without penalty or interest on November 10, 2005 (Nassau County Charter 5-18.0).

The petitioners complained of the tax and during May, July, August and September 2005, ARC rendered a "determination" reducing the assessed value of their properties. In past years these were electronically sent to the Town Receivers of Taxes and Tax Bills due in April and October were adjusted accordingly. In 2005, this electronic system was not implemented; in 2005 the system had to incorporate "transitional assessments". This was the first year requiring such.

DCA Lorin Schindler, representing ARC, presented Regina Mahony Goodman who was familiar with the process; Ms. Goodman averred that certain assessments had increases phased in over a number of years.

That system was geared to deal with this subject and was being formulated but this year, 2005, had become problematic despite ongoing efforts.

Ms. Schindler argued further that the tax certiorari practice had been to receive taxes and make refunds and further that the County had put an option in place to increase interest on refunds to try to ameliorate the problem.

Ms. Schindler averred that the problem was exacerbated by the County's effort to dispose of as many claims as possible before the end of the year 2005. There is a mandated change as to the source of refunds in 2006.

Counsel for the Receiver of Taxes before the Court (Hempstead and North Hempstead) both indicated that it would take 10 business days for their Receiver to produce new tax bills. (The cause against Oyster Bay has been withdrawn). Counsel here also asserted that only communication from the County, ARC, is acceptable to alter the assessments. Section 5-18.0 Nassau County Charter requires interest and penalties for Bills not paid by November 10.

The complexity of the tax process has been further complicated by a number of factors including statutory oversight of County Budget methods and the institution of annual assessment process. To this comes the transitional assessment and its complications.

These factors have required the County through ARC and the Assessors Office to allocate resources and work to complete a flexible viable system; its not yet perfect but to alter it for petitioners and not all persons similarly situated would work an

injustice. Petitioners have not gotten the benefit of their reduction in the short term but the respondents have not intentionally delayed the tax adjustment and have attempted to ameliorate it.

The application to stay interest or penalty would have the Court waive a statutory mandate, such is improper.

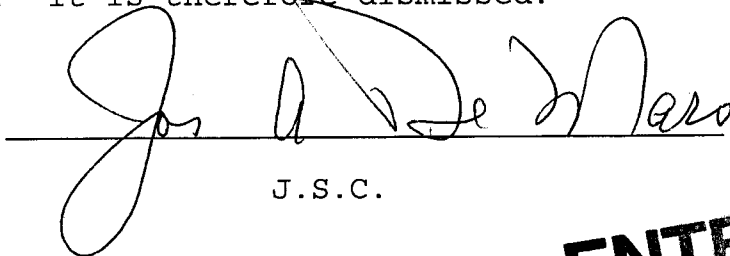
The difficulty in forging a remedy unique to these petitions is that it will place them in a better position than others similarly situated and in effect thwart an effort by respondents to deal fairly with all complaining taxpayers.

The Court cannot find a remedy except the refund with interest process alluded to by Ms. Schindler.

If the Court were to fashion a remedy an infusion of similar suits may so disrupt the process that significant disorder may result.

Finally any remedy here would encourage ARC in the future to sit on determinations until after the tax day which would not be to anyone's advantage.

The application for a Temporary Restraining Order and Preliminary Injunction is denied; this ruling renders the proceeding moot. It is therefore dismissed.



J.S.C.

Dated: November 7, 2005

ENTERED
NOV 10 2005
NASSAU COUNTY
COUNTY CLERK'S OFFICE