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Outside Counsel

Court of Appeals Resolves Uncertainty Over Right of Commercial Tenants to Challenge Taxes

By **Nathan R. Jones**

The recent Court of Appeals decision *DCH Auto v. Town of Mamaroneck*, 2022 N.Y. Slip Op. 03929, 2022 WL 2162629 (June 16, 2022), resolved a raging controversy over whether tenants contractually obligated to pay real property taxes had a long-recognized statutory right to challenge the assessment at the administrative level.

The decisions overruled by *DCH Auto* placed thousands of commercial lessees that challenge their real property taxes at risk of having existing tax certiorari proceedings dismissed or missing critical filing deadlines for future tax years. By unanimous decision, the Court of Appeals establishing binding precedent that a tenant obligated by a lease to pay real property taxes has the statutory right to challenge those taxes.

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Introduction

The New York Real Property Tax Law (RPTL) establishes a two-stage process for challenging a property tax assessment as excessive, unequal or unlawful. First, under Article 5, "a complainant who is dissatisfied with a property assessment may seek administrative review by filing a grievance complaint with the assessor or the board of assessment review." *DCH Auto*, 2022 N.Y. Slip Op. 03929, at *2.

By unanimous decision, the court establishing binding precedent that a tenant obligated by a lease to pay real property taxes has the statutory right to challenge those taxes.

For most of the state, such complaints are governed by RPTL §524, which provides that the grievance complaint "must be made by the person whose property is assessed." RPTL §524(3). Second, once "the board of assessment review has made a determination, any 'aggrieved party' may seek judicial review of the assessment pursuant to RPTL Article 7." Id. However, "the proper filing of an administrative grievance pursuant to RPTL article 5 is a condition precedent to judicial review pursuant to RPTL article 7." Id. at *3.

Leases of commercial property frequently delegate the obligation to pay real property taxes to the tenant and consequently authorize the tenant to undertake administrative and judicial challenges to the assessments on which those taxes are based (commonly described as "net leases").

Prior to the controversy resolved by the Court of Appeals in *DCH Auto*,

it had been generally accepted that taxpayers obligated to pay the taxes through a net lease were "persons whose property is assessed" with the right to file the grievance complaint.

Indeed, the New York State Department of Taxation and Finance's Office of Real Property Tax Services (ORPTS), instructed that "[a]ny person who pays property taxes" including "tenants who are required to pay property taxes pursuant to a lease or written agreement" may file the grievance complaint. ORPTS, Contesting Your Assessment in N.Y. State 2 (February 2012), available at *https://www.tax.ny.gov/pdf/publications/orpts/grievancebooklet.pdf*.

It was also settled law that taxpayers who are legally responsible for paying the taxes, such as through a net lease, are an "aggrieved party" with the right to seek RPTL Article 7 judicial review of the assessment. *Larchmont Pancake House v. Bd. of Assessors*, 33 N.Y.3d 228, 234 (2019).

A Novel Reinterpretation

What was once considered settled law and routine practice concerning who could file a grievance complaint under RPTL §524(3) became unsettled in 2012, when the Appellate Division, Second Department decided *Matter of Circulo Housing Development Fund v. Assessor of City of Long Beach*, 96 A.D.3d 1053 (2d Dept. 2012).

Circulo held, for the first time, that "RPTL article 5 requires that the *property owner* file a complaint or grievance to obtain administrative review of the tax assessment." Id. at 1056. This holding would ultimately be singled out by the Court of Appeals as "a misapplication" of prior precedent. *DCH Auto*, 2022 N.Y. Slip Op. 03929, at *6.

Circulo did not involve a tenant obligated to pay taxes or even a tax assessment challenge. The petitioner in *Circulo* was a not-for-profit housing development fund corporation seeking a property tax exemption pursuant to RPTL §420-a. Unlike tax assessment challenges, RPTL §420-a(1)(a) limits exemptions to the owner of real property. As such, the issue in *Circulo* was whether the petitioner owned the property (due to a typographic error in the deed), not whether a non-owner tenant had a right to file a grievance complaint.

> Thanks to the court's harmonization of the law, tenants challenging real property taxes based on net leases will continue to be able to file the grievance complaint.

Circulo's apparent limitation on who could file a grievance complaint led some assessing jurisdictions to seek to dismiss tax certiorari cases where a non-owner filed the grievance complaint. Some of those challenges were unsuccessful. See, e.g., *Matter of CSC Holding v. Assessor of the Town of Mamaroneck*, Index No. 21073/09 (Sup. Ct. Westchester Co. Aug. 4, 2015).

Bad Facts Make Bad Law

One challenge was successful. In 2017, the Appellate Division, Second Department, decided *Matter of Larchmont Pancake House v. Board of Assessors*, 153 A.D.3d 521 (2d Dept. 2017) (*Larchmont I*), where the petitioner challenged the tax assessment of the property on which it operated a restaurant. The restaurant business and the property owner were owned by the same family, but had no formal legal relationship.

Upon the death of the family matriarch, ownership of the business and the property passed separately to her heirs and to a trust, respectively. *Larchmont I* applied the novel holding of *Circulo*, that "the property owner [must] file the complaint or grievance," to find that, because the petitioner restaurant "never owned the subject property the petitioner failed to satisfy a condition precedent to the filing of the petitions pursuant to RPTL article 7." 153 A.D.3d at 522.

Following *Larchmont I*, more assessing jurisdictions began to seek to dismiss tax certiorari cases where non-owners filed the grievance complaint. Many of these challenges were unsuccessful. See, e.g., *Rite Aid v. Town of Irondequoit Board of Assessment Review*, Index No. E2017001377 (Sup. Ct. Monroe Co. March 6, 2018); *Walgreen Eastern Co.*

v. Assessor of Town of Brighton, Index No. 2017/07289 (Sup. Ct. Monroe Co. March 8, 2018); *Rite Aid v. Town of Williamson Board of Assessment Review*, Index No. 75978/13 (Sup. Ct. Wayne Co. May 17, 2018).

Given the potential ramifications and confusion created by *Larchmont I*, the Court of Appeals granted leave to appeal and numerous amici curiae weighed in, some supporting and some opposing its interpretation of RPTL §524(3). In *Matter of Larchmont Pancake House v. Board of Assessors*, 33 N.Y.3d 228 (2019) (*Larchmont II*), the Court of Appeals sidestepped the issue, affirming *Larchmont I*, but on grounds unrelated to RPTL §524(3)—because the petitioner was "a non-owner with no legal authorization or obligation to pay the real property taxes," it was "not an aggrieved party within the meaning of RPTL article 7" and lacked standing. *Larchmont II*, 33 N.Y.3d at 236. Critically, the court concluded that it had "no occasion to consider the parties' dispute concerning the scope of appropriate challengers under RPTL 524." Id. at 240-41.

Broad Application And Uncertainty

Finally, the occasion to consider the scope of appropriate challengers under RPTL §524 arose when the Appellate Division, Second Department, decided *Matter of DCH Auto v. Town of Mamaroneck*, 178 A.D.3d 823 (2d Dept. 2019). Notwithstanding the previously-accepted right to challenge tax assessments, the court held that a tenant obligated to pay taxes was barred from filing the grievance complaint in its own name, because it was not the property owner. 178 A.D.3d at 825 (relying on *Circulo* and *Larchmont I*).

Thus, the 2019 *DCH Auto* decision placed thousands of commercial taxpayers who challenge their taxes pursuant to net leases at serious risk of having existing tax certiorari proceedings dismissed or missing critical deadlines for future tax years, resulting in tenants having the duty to pay taxes, but no ability to challenge the underlying assessment.

Reversal and Harmony Restored

Drawn by the weight of its impending consequences, *DCH Auto* attracted the attention of more amici curiae at the Court of Appeals, arguing for and against the application of the interpretation of RPTL §524(3) to tenants obligated by their leases to pay the taxes.

In *DCH Auto*, the Court of Appeals unanimously reversed the Second Department's decision, holding that "a grievance complaint filed…at the administrative level by a net lessee who is contractually obligated to pay real estate taxes on the subject property satisfies RPTL 524(3)." 2022 N.Y. Slip Op. 03929, at *5.

The court reasoned that the absence of the word "owner" in RPTL §524(3) was intentional and found that the legislative history of RPTL §524 and its antecedent statutes equated the standards of "aggrieved persons" with "person whose property is assessed." Id. "Interpreting the RPTL such that a net lessee may both file the RPTL 524(3) complaint and (as is undisputed) the [Article 7] petition, given that the complaint is a prerequisite to filing a petition, harmonizes the two statutory steps of our tax assessment scheme." Id.

Thanks to the court's harmonization of the law, tenants challenging real property taxes based on net leases will continue to be able to file the grievance complaint. Existing tax certiorari proceedings no longer risk dismissal on that basis. To quote the Court of Appeals, *Id.,* "Such a result ensures that the party with the economic interest and legal right to challenge an assessment will not be unable to raise a challenge because an out-of-possession landlord that lacks economic incentive fails to file an administrative complaint."