

No. CV18-6080550

CAPITAL FOR CHANGE, INC.) SUPERIOR COURT
) NEW HAVEN JUDICIAL DISTRICT
BOARD OF ASSESSMENT APPEALS) NOVEMBER 2, 2020

Judicial District of New Haven
SUPERIOR COURT
FILED
11/02/2020

CHEF CLERK'S OFFICE

MEMORANDUM OF DECISION

I. INTRODUCTION.

The tax appeal now before the court presents the issue whether the subject property, owned by the appellant, Capital For Change, Inc. ("CFC"), is exempt from taxation pursuant to Conn. Gen. Stat. § 12-81(7). For reasons discussed below, the subject property is not exempt.

Most of the pertinent facts have been stipulated by the parties. The subject property ("Property") is located at 10 Alexander Drive in Wallingford. CFC operates its business at the Property together with the business of its subsidiary, T Energy Efficiency Financing Co. ("CEEFCO"). Both CFC and CEEFCO are exempt from Federal taxation pursuant to § 501(c)(3) of the Internal Revenue Code.

On January 8, 2018, CFC filed a tax exemption application with the Town of Wallingford Assessor, claiming an exemption pursuant to Conn. Gen. Stat. § 12-81(7). The Assessor denied the application, and CFC timely appealed to the Board of Assessment Appeals ("Board"). The Board denied the appeal on March 15, 2018. An appeal to the Superior Court pursuant to Conn. Gen. Stat. § 12-89 was timely filed on April 27, 2018.

The appeal was tried to the court on February 7, 2020. Most of the pertinent facts were stipulated by the parties. The court additionally heard the testimony of one witness, Calvin V. Vinal, the President of CFC. Following post-trial briefing, the case was argued on October 28,

2020.

II. DISCUSSION.

There is no genuine issue as to any material fact. The parties differ on the proper characterization of that evidence and the application of Conn. Gen. Stat. § 12-81(7) to the facts established by the evidence. Under these circumstances, the court will discuss in turn: (A) the text of § 12-81(7), (B) the case law construing that text, and (C) the proper application of the statutory provision in question to the facts established by the evidence.

A. The Text of § 12-81(7).

Conn. Gen. Stat. § 12-81 sets forth categories of property that "shall be exempt from taxation." The category in question is the category set forth in § 12-81(7). That section provides in pertinent part as follows:

(A) [T]he real property of a corporation organized exclusively for ... charitable purposes or for two or more such purposes and used exclusively for carrying out one or more of such purposes

(B) [H]ousing for persons or families of low and moderate income shall not constitute a charitable purpose under this section.....

Subsection (B) makes the statutory term "charitable purposes" a term of art for purposes of Conn. Gen. Stat. § 12-81. No matter how "charitable" a purpose might be in common parlance - *oi*, for that matter, for purposes of the Internal Revenue Code - "housing for persons or families of low and moderate income shall not constitute a charitable purpose *under this section.*"

(Emphasis added.) The term "section" facially applies to the entire text of Section 12-81. *A*

fortiori, it applies to subsection (7), paragraph (A) of that section. The statutory text is

unambiguous. If the meaning of the text "is plain and unambiguous and does not yield absurd or

unworkable results, extratextual evidence of the meaning of the statute shall not be considered." Conn. Gen. Stat. § 1-2z. "When legislation contains a specific definition, the courts are bound to accept that definition." *State v. Acordia, Inc.* 310 Conn. 1, 21-22, 73 A.3d 711 (2013). (Internal quotation marks and citation omitted.)

The repeated use of the word "exclusively" in subsection (A) has independent significance. For its property to be exempt from taxation, a corporation must be "organized exclusively" for "charitable purposes." The property must also be "used exclusively" for charitable purposes. This means that if a corporation is organized exclusively for multiple charitable purposes (in the common parlance), but one of those purposes is housing for persons or families of low and moderate income, the corporation is not "organized exclusively" for "charitable purposes" within the meaning of subsection (A). Similarly, if real property is used exclusively for charitable purposes (in the common parlance), but one of those purposes is housing for families of low and moderate income, the real property is not "used exclusively" for "charitable purposes" within the meaning of subsection (A).

B. Case Law.

Tax exemptions for real property used for "charitable purposes" date from colonial times, and Connecticut case law on this subject has been evolving since *American Asylum v. Phoenix Bank*, 4 Conn. 172 (1822). The most recent Supreme Court decision to address the statutory phrase in question is *St. Joseph's Living Center, Inc. v. Town of Windham*, 290 Conn. 695, 966 A.2d 188 (2009) ("*St. Joseph's*").¹ *St. Joseph's* sets forth a five-pronged test on the subject:

¹ *Waterbury First Church Housing, Inc. v. Brown*, 170 Conn. 556, 3676 A.2d 1386 (1976), heavily relied upon by C4C, is not pertinent to the statutory issue presented in the present case. *Waterbury First Church* did not involve Conn. Gen. Stat. § 12-81, pertaining to exemptions

[I]n order for real property used for charitable purposes to qualify for tax exemption under §§ 12-81 (7) and 12-88, the property must: (1) belong to or be held in trust for a corporation organized exclusively for charitable purposes; (2) be used exclusively for carrying out such charitable purposes; (3) not be leased, rented or otherwise used for a purpose other than the furtherance of its charitable purposes; (4) not be housing subsidized by the government; and (5) not constitute low or moderate income housing.

Id., at 709 (Internal quotation marks and citation omitted.)

In this case, as in *St. Joseph's*, the fourth and fifth prongs of the test are clearly inapplicable. There is no claim that the Property is "'housing,' as that term is ordinarily understood, nor does the record support such a characterization." 290 Conn, at 709. In addition, as was also the case in *St. Joseph's*, "the third prong is applicable only when the taxpayer is allowing another entity to use its property and is claiming that such a use is in furtherance of its own charitable purpose Because that prong is not applicable in the present case, our analysis ... is confined to the first two prongs ... which precisely track the statutory language." *Id.*

C. Application of the Statutory Provision to the Facts.

1. "Organized exclusively for charitable purposes."

The first prong of the *St. Joseph's* test is whether the Property belongs to "a corporation organized exclusively for charitable purposes." This test is itself analyzed pursuant to a three-factor test:

from property tax assessments. Rather it involved the statutory ancestor of Conn. Gen. Stat. § 12-412, which itemizes exemptions for the payment of sales and use taxes. The statutes in question are not identical. The sales and use tax exemption at issue in *Waterbury First Church* exempted "[s]ales of tangible personal property to charitable and religious organizations." 170 Conn., at 557 n. 1. The property tax assessment exemption set forth in Conn. Gen. Stat. § 12-81(7) is much more elaborate and its meaning must be determined by the textual and case-law analysis set forth in the text of this opinion. *Waterbury First Church* had no occasion to examine the interplay between paragraphs (A) and (B) of § 12-81(7) and did not purport to do so. That interplay is, in contrast, central to the legal issue presented in this case.

The first, and most important factor requires an examination of the corporate entity itself to determine if it is organized to carry out an exclusively charitable purpose. The second factor ... is whether an entity claiming charitable tax status for tax exemption purposes is self-supporting. The third factor asks whether an organizations's activities serve to relieve a burden on the state.

290 Conn., at 713. These factors will be considered in turn.

The first factor, whether the corporate entity is organized to carry out an exclusively charitable purpose, is the "most important" factor, 290 Conn., at 713, and "the sine qua non of a charitable organization." *Id.*, n. 27. "In determining the purposes for which a corporation has been formed, we begin by examining the entity's foundational documents." *Id.*, at 714. C4C's Certificate of Incorporation sets forth the specific "purposes of the Corporation":

- a. To provide financial products and services to support activities that primarily benefit low and moderate income persons and geographies, and minority and otherwise underserved individuals and businesses;
- b. To promote economic and community development, improve economic conditions and economic opportunities, increase and preserve affordable housing options, promote energy efficiency and use of alternative energy, and improve access to health, food and educational resources and other services benefitting low-and moderate-income persons and geographies;
- c. To lessen the burdens of local, state and federal governments, generally;
- d. To solicit, accept, hold, invest, reinvest and administer any contributions, grants, investments, donations, gifts, bequests, devises, benefits of trusts (but not act as trustee of any trust), and property of any sort, without limitation as to amount or value, and to use, disburse or donate the income or principal; thereof for exclusively charitable, scientific and educational purposes in such manner as, in the judgment of the Board of Directors of the Corporation (the "Board"), will best promote the purposes of the Corporation; and
- e. To contract for, purchase, receive, develop, own, manage, operate or lease property, real, personal and mixed, to employ or otherwise retain such persons and to borrow funds as may be necessary to promote and further the purposes and objectives of the Corporation.

(Ex. 1.) These purposes are repeated verbatim in C4C's bylaws. (Ex. 2.)

Purpose (a), "to support activities that primarily benefit low and moderate income persons," combined with purpose (b), to "increase and preserve affordable housing options," makes it clear that an important foundational purpose of C4C is to provide housing for persons or families of low and moderate income.

Under these circumstances, the first *St. Joseph's* factor is not established by the evidence. C4C is not organized to carry out an *exclusively* charitable purpose.

The evidence additionally establishes that C4C is not self-supporting and that its activities serve to relieve a burden on the state. The second and third *St. Joseph's* factors are established by the evidence.

Because the first factor, whether the corporate entity "is organized to carry out an exclusively charitable purpose," is the "most important" factor and the "sine qua non of a charitable organization," 290 Conn., at 713 & n. 27, the first prong of the *St. Joseph's* test is not satisfied by the evidence presented in this case, in spite of the evidence supporting the second and third factors.

2. "Used exclusively for carrying out charitable purposes."

Although the failure of the evidence to establish the first *St. Joseph's* prong is dispositive, the second *St. Joseph's* prong will be considered for the benefit of a reviewing court.

Whether a property is "used exclusively for carrying out charitable activities" is an intensely fact-bound inquiry." *St. Joseph's, supra*, 290 Conn., at 741. "In order to satisfy this exclusivity requirement, an institution must be exclusively charitable, not only in the purposes for which it is formed and to which its property is dedicated, but also in the *manner and means* it adopts for the accomplishment of those purposes." *Id.* (Internal quotation marks, brackets, and

citation omitted; emphasis in original.)

Although the range of C4C's activities reflect the variety of worthy purposes set forth in its Certificate of Incorporation, the particular focus of those activities was made clear by the testimony of its President, Calvin Vinal. Vinal testified that C4C's activities primarily involve the making of loans for certain purposes. Where do these loans go? Vinal gave specific figures for the fiscal year ending March 31, 2020. During the course of that fiscal year, C4C gave a total of \$48 million in loans. Of that total, \$23 million were commercial loans specifically intended to provide housing for persons or families of low and moderate income. Another \$17.4 million was directed to the Energize CT Heat Loan Program ("CT Heat"). Forty percent of this latter amount (approximately \$7 million) is specifically intended to assist persons or families of low and moderate income in providing energy efficient heating systems for their homes. There is no reason to believe that the fiscal year in question was atypical in any way.

Assuming, for purposes of argument, that the CT Heat program does not itself provide "housing" within the meaning of Conn. Gen. Stat. § 12-81(7)(B), it would remain the case that \$23 million of C4C's total loans of \$48 million (or 48%) in the fiscal year in question were specifically intended to provide housing for persons or families of low and moderate income.

Vinal's credible testimony is dispositive of this case. Loans made for the purpose of providing housing for persons of low and moderate income are not "peripheral activities" of C4C. *St. Joseph's*, *supra*, 290 Conn., at 743. Such loans are central to its foundational purpose of providing "housing options" that primarily "benefit low and moderate income persons." (Ex. 1.) Under these circumstances, C4C is not "used exclusively" for carrying out "charitable purposes" as that term is defined in Conn. Gen. Stat. § 12-81(7).

III. CONCLUSION.

The appeal is dismissed.

A handwritten signature in black ink, appearing to read 'Jon C. Blue', written over a horizontal line.

Jon C. Blue
Judge Trial Referee