

DOCKET NO. HHB-CV-18-60448 SUPERIOR COURT

SUP

GHJCC SWIM & RACQUET CLUB LLC v. JOYCE D. OF NEW BRITAIN

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v.

DIS (FT NEW BRITAIN

TOWN OF BLOOMFIELD

NEW DHlf...Irl September 16, 2020

MEMORANDUM OF DECISION  
ON CROSS MOTIONS FOR SUMMARY JUDGMENT  
FILED BY BOTH PARTIES (#111.00 and #125.00)

The plaintiff, GHJCC SWIM & RACQUET CLUB LLC (Club), in its amended complaint filed on November 30, 2018, alleges the following facts. The plaintiff is an organization described in 26 U.S.C. § 501 (c) (3) of the Internal Revenue Code. The plaintiff - daims to be a nonprofit entity, and, pursuant to General Statutes § 12-81 (7), its quadrennial application for a property exemption should have been accepted by the assessor as of October 1, 2017.

This action is an appeal by the plaintiff from the assessor's denial of its application for a tax exemption for property located at 4 Duncaster Road in Bloomfield. The plaintiff claims that the Club's sole corporate member is the Joyce D. and Andrew J. Mandell Greater Hartford Jewish Community Center, Inc. (Community Center).

The plaintiff makes the following arguments in its memorandum supporting its motion for summary judgment, and provides the affidavit of David Jacobs as evidence to support the arguments. The plaintiff is a limited liability company organized under Connecticut law. The plaintiff further claims that pursuant to 26 C.F.R. § 301.7701-3 (a), the Club is disregarded as a separate entity from the Community Center, which in itself has been determined to be a § 501 (c)

*Notice of decision sent to all counsel of record.  
Mailed to Reporter of Judicial Decisions.  
A. Jordanopoulos, Ct officer 9-16-20*

(3) organization.<sup>1</sup> The Club's property was acquired on or about October 29, 1999, and has been exempt from property taxes by the town of Bloomfield since the date of acquisition. However, the Club, after being granted a tax exemption since 1999, filed its tax-exempt quadrennial report for the grand list of October 1, 2017, which application was denied by the assessor six months later on April 5, 2018, without, as the plaintiff claims, an explanation for the denial.

The plaintiff filed its motion for summary judgment, claiming that based on the exhibits filed with its motion, there are no facts in dispute, and, as a matter of law, the plaintiff is entitled to judgment. The defendant town also filed its motion for summary judgment on counts two, four, and six, related only as to the issue of the claimed tax exemptions under § 12-81 (7), (14), and/or (49).<sup>2</sup> The defendant asserts that there are no facts in dispute, and, as a matter of law, the defendant is entitled to judgment.

For each motion for summary judgment, the moving party has the burden to show the absence of a genuine issue of material fact. "The party seeking summary judgment has the

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<sup>1</sup> The § 501 (c) (3) provision of the Internal Revenue Code provides for a tax exemption from federal income taxes to a corporation that is organized and operated exclusively for charitable purposes.

<sup>2</sup> The plaintiff's November 30, 2018 complaint alleges in counts one, two, four, and six that "[t]he [p]roperty should have been exempted from taxation by the [a]ssessor as of October 1, [2017,] pursuant to [General Statutes] § [12-81 (7)], (14) and/or (49) . . . ." Although the plaintiff raises General Statutes § 12-81 (14) and (49) in the complaint, it does not raise these exemptions in the plaintiff's motion for summary judgment and supporting memorandum, in the plaintiff's reply to the defendant's opposition to the plaintiff's motion for summary judgment, nor in the plaintiff's opposition to the defendant's motion for summary judgment. Nevertheless, it is necessary to address the exemptions raised in § 12-81 (14) and (49), in addition to § 12-81 (7), to determine whether this court may grant the defendant's motion for summary judgment on counts two, four, and six because the plaintiff's November 30, 2018 complaint raises the exemptions of § 12-81 (7), (14), and/or (49) in these counts and the defendant moves for summary judgment on these counts related only as to the issue of the claimed tax exemptions under § 12-81 (7), (14), and/or (49).

burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law . . . and the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact. . . . A material fact . . . [is] a fact which will make a difference in the result of the case." (Internal quotation marks omitted.) *Doe v. WestHartford*, 328 Conn. 172, 191:::-92, 177 A.3d 1128 (2018). "Once the moving party has met its burden . . . the opposing party must present evidence that demonstrates the existence of some disputed factual issue. . . . It is not enough, however, for the opposing party merely to assert the existence of such a disputed issue. Mere assertions of fact . . . are insufficient to establish the existence of a material fact and, therefore, cannot refute evidence properly presented to the court under Practice Book § 380 [now § 17-45]."<sup>3</sup> (Internal quotation marks omitted.) *Fiano v. Old Saybrook Fire Co. No. 1, Inc.*, 332 Conn. 93, 101, 209 A.3d 629 (2019).

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<sup>3</sup> In *St. Joseph's Living Center, Inc. v. Windham*, 290 Conn. 695, 707, 966 A.2d 188 (2009) (*St. Joseph's*), the Supreme Court noted that "[i]t is . . . well established that in taxation cases . . . provisions granting a tax exemption are to be construed strictly against the party claiming the exemption, who bears the burden of proving entitlement to it." However, this case differs from the present case in that the matter in *St. Joseph's*, supra, 700-701, went to trial and resulted in the Superior Court denying the plaintiff's appeal. In *Matter of Greater Jamaica Development Corp. v. New York City Tax Commission*, 25 N.Y.3d 614, 627, 36 N.E.3d 645, 15 N.Y.S.3d 738 (2015) (*Jamaica*), the New York Court of Appeals explained that "[a]lthough the burden of proof generally lies with the party seeking exemption, in a situation like this, where the taxing authority seeks to revoke that exemption previously granted, it is the taxing authority that has the burden of establishing that the property is not exempt from taxation . . . ." This pertained to a procedural posture in which the petitioners commenced the "proceeding pursuant to RPTL article 7 and CPLR article 78 . . . requesting a judgment declaring that the City's decision to revoke the exemptions was arbitrary and capricious and contrary to law and that Jamaica First was entitled to the exemptions," and the petitioners also "sought a judgment directing the City to grant the tax exemptions. The City cross-moved for an order dismissing that part of the petition seeking relief pursuant to CPLR article 78," and the New York Supreme Court "upheld the city's revocation of the tax exemption and granted its cross motion to dismiss the petition." (Footnote omitted.) *Id.*, 621-22. Nevertheless, the courts' discussions of the burden of proof with tax exemptions in *St. Joseph's*, supra, 695, and *Jamaica*, supra, 614, are not dispositive of the burdens required for the motions for summary judgment in the present case. In the present case, each party has its own respective burden to meet for each motion for summary judgment.

The plaintiff contends that it is organized for charitable purposes and is used exclusively for carrying out one or more of such charitable purposes. Based on this contention, the plaintiff claims therefore that it is exempt from paying property taxes to the town of Bloomfield and that the assessor was not justified in denying the application for an exemption.

The test used for determining entitlement to a tax exemption under General Statutes §§ 12-81 (7)<sup>4</sup> and 12-88,<sup>5</sup> as defined in *St. Joseph's Living Center, Inc. v. Windham*, 290 Conn. 695, 708-709, 966 A.2d 188 (2009) (*St. Joseph's*), is as follows: "the property must: (1) belong to . . . 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

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<sup>4</sup> Section 12-81 (7) provides in relevant part that "[t]he following-described property shall be exempt from taxation . . . (7) . . . (A) Subject to the provisions of sections 12-87 and 12-88, the real property of, or held in trust for, a corporation organized exclusively for scientific, educational, literary, historical or charitable purposes or for two or more such purposes and used exclusively for carrying out one or more of such purposes or for the purpose of preserving open space land, as defined in section 12-107b, for any of the uses specified in said section, that is owned by any such corporation, and the personal property of, or held in trust for, any such corporation, provided (i) any officer, member or employee thereof does not receive or at any future time shall not receive any pecuniary profit from the operations thereof, except reasonable compensation for services in effecting one or more of such purposes or as proper beneficiary of its strictly charitable purposes . . . ."

<sup>5</sup> Section 12-88 provides: "Real property belonging to, or held in trust for, any organization mentioned in subdivision (7), (10), (11), (13), (14), (15), (16) or (18) of section 12-81, which real property is so held for one or more of the purposes stated in the applicable subdivision, and from which real property no rents, profits or income are derived, shall be exempt from taxation though not in actual use therefor by reason of the absence of suitable buildings and improvements thereon, if the construction of such buildings or improvements is in progress. The real property belonging to, or held in trust for, any such organization, not used exclusively for carrying out one or more of such purposes, but leased, rented or otherwise used for other purposes, shall not be exempt. If a portion only of any lot or building belonging to, or held in trust for, any such organization is used exclusively for carrying out one or more of such purposes, such lot or building shall be so exempt only to the extent of the portion so used and the remaining portion shall be subject to taxation." In the present case, the plaintiff does not rely upon the exception in § 12-88 regarding a portion being used exclusively for carrying out such purposes being exempt from taxation and the remaining portion being subject to taxation.

(5) not constitute low or moderate income housing." (Internal quotation marks omitted.) Of the five criteria referred to in *St. Joseph's*, only the first and second are relevant for consideration in this analysis. *St. Joseph's*, supra, 290 Conn. 708-709.

In determining the first criterion that "the property must belong to or be held in trust for a corporation organized exclusively for charitable purposes," there are three factors we must consider. (Internal quotation marks omitted.) *St. Joseph's*, supra, 290 Conn. 713. The first factor is whether the corporation or organization "is organized to carry out an exclusively charitable purpose." *Id.* The second factor to be determined is whether the corporation or organization seeking a charitable tax exemption is self-supporting. *Id.* The third factor is whether the corporation or "organization's activities serve to relieve a burden on the state." *Id.* The court "clarified] that only the first factor, i.e., whether the purpose expressed in the organization's fundamental documents, is the sine qua non of a charitable organization." *Id.*, 713 n.27.

The defendant makes the argument that the Club is not a § 501 (c) (3) organization under the Internal Revenue Code, and the plaintiff does not qualify for a charitable exemption because it is not an entity organized exclusively for charitable purposes. See Defendant's Memorandum in Support of Defendant's Motion for Summary Judgment dated February 28, 2020, pp. 3, 10-11.

Although the plaintiff alleges in its amended complaint that it is a nonprofit entity § 501 (c) (3) organization, the closest that the plaintiff comes to establishing this fact is to argue that the Club is entitled to an exemption under § 501 (c) (3) because the plaintiff is subsumed within the Community Center, an organization that on its own is exempt from federal income taxes under § 501 (c) (3) of the Internal Revenue Code.

The court notes that, related to tax exemptions, General Statutes § 12-89a provides in relevant part that "[a]ny organization claiming exemption from property tax . . . under the

provisions . . . of [section 12-81 (7)], may be required upon request, at any time, by the assessor or board of assessors in such municipality to submit evidence of certification from the Internal Revenue Service . . . that such organization has been approved for exemption from federal income tax as an exempt organization under Section 501 (c) or 501 (d) of the Internal Revenue Code."

It is important to note that § 12-89a provides that the assessor may require an applicant for an exemption to provide evidence of certification that it has been approved as a § 501 (c) (3) organization. A common understanding of the word "may" is that it is discretionary and not mandatory to be approved as a § 501 (c) (3) organization in order to qualify for a tax exemption in Connecticut. The question is, was the intent of the legislature to require all corporations and organizations seeking a tax exemption to be first qualified as a § 501 (c) (3) of the Internal Revenue Code. If the answer is yes, one would expect the legislature to use the term "is required" rather than "may" to follow the federal guidelines on exemptions. Our courts have recognized that there is no wholesale incorporation of federal tax principles but rather, any reference to a federal tax code must be expressly made in the language of that statute. See *Estate of Brooks v. Commissioner of Revenue Services*, 325 Conn. 705, 713-14, 159 A.3d 1149 (2017), cert. denied, \_\_\_ U.S. \_\_\_, 138 S. Ct. 1181, 200 L. Ed. 2d 314 (2018). Therefore, § 12-89a would not be considered an incorporation of § 501 (c) (3).

As noted in *Matter of Greater Jamaica Development Corp. v. New York City Tax Commission*, 25 N.Y.3d 614, 626, 36 N.E.3d 645, 15 N.Y.S.3d 738 (2015) (*Jamaica*), "Internal Revenue Code (26 U.S.C.) § 501 (c) (3) exempts certain organizations *from federal income taxation*. Section 420-a exempts certain organizations from *real property taxation*. Our local governments derive significant revenue from the imposition of real property taxes, and federal income taxation standards cannot be utilized to create a presumption in favor of a property owner

seeking an exemption from a state real property tax." (Emphasis in original.)

As further noted by the *Jamaica* court, "the IRS's definition of what constitutes an exempt charitable purpose is exceedingly broad . . . the second prong of section 420-a (1) (a) requires a court to review the actual or physical use of the property . . . when it exempts from taxation property used exclusively for carrying out thereupon one or more exempt purposes." (Internal quotation marks omitted). *Jamaica*, supra, 25 N.Y.3d 628, citing *Matter of Lackawanna Community Development Corp. v. Krakowski*, 12N.Y.3d 578, 581, 910 N.E.2d 997, 883 N.Y.S.2d 168 (2009).

The similarity between Connecticut's statute, § 12-81 (7), and New York statute RPTL 420-a cannot be ignored. RPTL 420-a (1) recites that property is "entitled to tax exemption if owned by a corporation or association organized or conducted exclusively for religious (or) charitable . . . purposes . . . ." (Internal quotation marks omitted.) *Id.*, 626. Both deal with the "use" of the real estate that is used exclusively for carrying out one or more of its charitable purposes.

It would appear that our legislature recognized that there is a difference in what is eligible for a tax exemption and what is not in enacting § 12-89a. Instead of requiring every corporation or organization to be qualified under § 501 (c) (3), § 12-89a places the burden on the assessor to determine whether the broad definition of "charitable" purpose in § 501 (c) (3) is compatible to a "charitable" purpose under § 12-81 (7).

*Jamaica*, supra, 25 N.Y.3d 627, notes that "the term 'charitable' as used by the Internal Revenue Code (26 U.S.C.) § 501 (c) (3)" in contrast to New York's RPTL 420-a, "is defined as, '[r]elief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of [g]overnment; and promotion of social welfare by

organizations designed to accomplish any of the above purposes, or (I) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency' (26 C.F.R. 1.501 [c] [3]-1 [d] [2])."

Even if this court were to find merit in the plaintiff's argument that the Club is subsumed within the Community Center, which the plaintiff acknowledges is an exempt § 501 (c) (3) organization, and that under 26 C.F.R. § 301.7701-3 (a)<sup>6</sup> the Club is indistinguishable from the Community Center as a non-profit organization, this would not be dispositive of a property tax exemption. Though Connecticut case law has not addressed this issue, case law from at least two other states support this determination. See *Jamaica*, supra, 25 N.Y.3d 627 ("[F]or purposes of determining a real property tax exemption, a favorable determination . . . from the United States Department of the Treasury as to [an entity's] exempt status for other tax purposes is not dispositive . . . ." [Internal quotation marks omitted.]); see also *1785 Swarthmore, LLC v. Lakewood*, Superior Court of New Jersey, Appellate Division, Docket No. A-4701-13T4 (October 28, 2015) (explaining that though the "federal Internal Revenue Service . . . regulations embrace the . . . concept of disregarding a single-member LLC for income tax purposes" and citing to 26 C.F.R. § 301.7701-3 (a), the New Jersey courts "previously held that federal income tax standards generally are irrelevant to questions of real property taxation, which is a function exclusive to state and local government").

*St. Joseph's* strongly suggests that the charitable purpose of a corporation must be spelled out clearly in its certificate of incorporation. *St. Joseph's*, supra, 290 Conn. 711-15. In spite of

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<sup>6</sup> 26 C.F.R. § 301.7701-3 (a) provides in relevant part that "an eligible entity with a single owner can elect to be classified as an association or to be disregarded as an entity separate from its owner."

the effort of the Club to spell out its "charitable purpose," the claimed purpose of the Club was reported in its Tax Exempt Application, to be: "[o]utdoor pool and tennis facility providing summer recreational, social and athletic programs for children and families in the community." Pires' Affidavit, Defendant's Exhibit 11. Noting that the "charitable purpose," as used in § 12-81 (7) is not clearly defined as compared to § 501 (c) (3), our courts have given flesh to the meaning of "charitable purpose" in § 12-81 (7). An example of a recreational camp, similar in content to the plaintiff's swim and racquet club, but held to have a "charitable purpose" by our courts, is the case of *Camp Isabella Freedman, Inc. v. Canaan*, 147 Conn. 510, 162 A.2d 700 (1960) (*Camp Isabella Freedman*).

In *Camp Isabella Freedman*, supra, 147 Conn. 512, the camp, a New York corporation, "purchased a 400-acre tract of land in Canaan for use as a camp site. The plaintiff was organized as a Connecticut corporation . . . . The property contains a lake for swimming and boating, tennis courts, and other sports and recreational areas . . . . Most of the campers are referred by social welfare, psychiatric and sociologic agencies. After an interview by a member of the plaintiff's staff, a camper is accepted if he is found to have a problem in social adjustment and to be in need of guidance. Applicants without social maladjustments and those who seek an inexpensive vacation are rejected." The court explained that "[t]he purposes for which the plaintiff is organized are to be found in its charter. . . . Article 2, § 1, of the plaintiff's charter states that the corporation was formed, among other things, to provide to those persons who could not otherwise afford the same, guidance, recreation and vacations. Article 2, § 6, provides that all of the plaintiff's property shall be used exclusively for carrying out [its] . . . charitable purposes. The definition of charitable uses and purposes has expanded with the advancement of civilization and the daily increasing needs of men. . . . It . . . comprehends activities, not in themselves self-supporting, which are intended to improve the physical, mental and moral condition of the

recipients . . . . In light of these concepts, the conclusion of the court that the plaintiff is organized exclusively for charitable purposes is warranted . . . ." (Citations omitted; internal quotation marks omitted.) *Id.*, 515. See *St. Joseph's*, supra, 290 Conn. 700-701.

In the present case, the plaintiff clarifies its charitable purpose by referring to the deposition testimony of the Community Center's Executive Director that "[t]he charitable purpose of the property is the same as the charitable purpose of the JCC. You know, our mission is a service organization to serve people of all ages and stages throughout the Greater Hartford area, and we do that through programs and services that are in nature recreational, educational, cultural, wellness programs, social programs, and spiritual programs." See Plaintiff's Opposition to Defendant's Motion for Summary Judgment dated June 12, 2020, Plaintiff's Exhibit A.

By contrast, in regard to the stated charitable purpose of the corporation in the Club, the Supreme Court in *St. Joseph's* looked to the organization's foundational documents, including its certificate of incorporation, in determining whether the organization was organized exclusively for charitable purposes. *St. Joseph's*, supra, 290 Conn. 714-15, 714 n.28 (noting that from the organization's certificate of incorporation, its bylaws, and mission statement, "we glean the [organization's] corporate purpose"). The court explained that § 12-81 (7) is satisfied, in part, because the organization's "certificate of incorporation provides that [the organization] shall not carry on any activity not permitted to be carried on by a corporation exempt from federal income tax under [§] 501 (c) (3) of the [Internal Revenue] Code." (Internal quotation marks omitted.) *St. Joseph's*, supra, 711.

The plaintiff's articles of organization, submitted by the defendant in support of its motion, state that "the purposes to be promoted or carried out by the [plaintiff] are as follows: To engage in any lawful act or activity for which limited liability companies may be formed under [the Connecticut Limited Liability Company] Act." Pires' Affidavit, Defendant's Exhibit 24.

Considering the organization of the Club, the defendant notes that the Club filed its Articles of Organization with the Connecticut Secretary of State for the following purposes: "2. The nature of business to be transacted or the purposes to be promoted or carried out by the [c]ompany are as follows: To engage in any lawful act or activity for which limited liability companies may be formed under said [Connecticut Limited Liability Company] Act." Pires' Affidavit, Defendant's Exhibit 24. No mention was made that the plaintiff was formed exclusively for charitable purposes. Contrast the nature of the plaintiff's business and what it seeks to promote with *St. Joseph's*, supra, 290 Conn. 715, "[t]he Center's purpose, as stated in its certificate of incorporation, is: a) To operate exclusively for charitable, educational and scientific purposes, all for the public welfare consistent with activities permitted to be performed by a corporation classified under [§] 501 (c) (3) of the Internal Revenue Code of 1986 . . . ." (Internal quotation marks omitted.) In the present case, the plaintiff's purpose does not favorably compare with the purpose represented in the articles of organization determined to be charitable in *St. Joseph's*, supra, 290 Conn. 714-15, nor does it favorably compare with the purpose represented in the charter determined to be charitable in *Camp Isabella Freedman*, supra, 147 Conn. 515.

Accordingly, the defendant has met its burden as the moving party for its motion for summary judgment and the plaintiff has failed to meet its burden as the moving party for its motion for summary judgment with respect to the first criterion of whether the property "belong[s] to or [is] held in trust for a corporation organized exclusively for charitable purposes . . ." *Id.*, 709. In addition, the plaintiff, as the opposing party to the defendant's motion for summary judgment, has failed to present evidence demonstrating the existence of a disputed factual issue.

Moreover, with respect to the criterion of whether the property is used exclusively to

carry out its charitable purposes, the plaintiff contends that the Club was "clearly organized to carry out and further [the Community Center's] charitable purposes. [The Community Center] is dedicated to . . . [t]he social, intellectual, and cultural enjoyment and development of its constituency as well as [b]etterment of the general community and the preservation and extension of the democratic way of life." (Internal quotation marks omitted.) Plaintiff's Memorandum in Support of Plaintiff's Motion for Summary Judgment dated June 13, 2019, p. 5.

The implication here is that the Club is not carrying out its own charitable purpose, but rather, carrying out the charitable purposes of the Community Center. Accordingly, the plaintiff, has failed to meet its burden as the moving party for its motion for summary judgment with respect to the second criterion of whether the property is "used exclusively for carrying out such charitable purposes . . ." because-it has failed to show that there is no genuine issue of material fact with respect to the plaintiff carrying out its own charitable purpose as required by the provisions of § 12-81 (7). *St. Joseph's*, supra, 290 Conn. 709. Moreover, the defendant has met its burden as the moving party for its motion for summary judgment because it has established that there is no genuine issue of material fact as to the plaintiff failing to carry out its own charitable purpose. The plaintiff, as the opposing party for the defendant's motion for summary judgment, has failed to present evidence demonstrating the existence of a disputed factual issue.

The defendant town also filed its motion for summary judgment on counts two, four, and six, as to the issue of the claimed tax exemptions under General Statutes § 12-81 (14),<sup>7</sup> and/or

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<sup>7</sup> Section 12-81 (14) provides in relevant part: "[t]he following-described property shall be exempt from taxation . . . (14) . . . Subject to the provisions of section 12-88, real property and its equipment owned by, or held in trust for, any religious organization and exclusively used as a school, a daycare facility, a Connecticut nonprofit camp or recreational facility for religious purposes, a parish house, an orphan asylum, a home for children, a thrift shop, the proceeds of which are used for charitable purposes, a reformatory or an infirmary or for two or more such purposes . . . ."

(49).<sup>8</sup> Under § 12-81 (49), the property owned by a charitable corporation exclusively used as a nonprofit camp or recreational facility for charitable purposes is exempt from taxation. The defendant argues that this section requires the organization to be formed and the property to be used for a valid charitable purpose, and the plaintiff cannot establish this. For the criterion relevant to § 12-81 (7) of whether the corporation or organization is "organized exclusively for charitable purposes," the defendant has met its burden as the party moving for summary judgment and the plaintiff has failed to meet its burden both as the moving party for its motion for summary judgment and as the party opposing the defendant's motion for summary judgment. *St. Joseph's*, supra, 290 Conn. 709. Therefore, with respect to § 12-81 (49), the defendant has likewise met its burden as the party moving for summary judgment and the plaintiff has failed to meet its burden as the party opposing summary judgment.

In addition, regarding § 12-81 (14), the defendant has met its burden as the party moving for summary judgment in demonstrating the absence of a genuine issue of material fact regarding this property failing to meet the criteria of being "owned by . . . [a] religious organization and exclusively used as a . . . Connecticut nonprofit camp or recreational facility for religious purposes . . . ." The defendant has demonstrated the absence of a genuine issue of material fact with regard to the property housing a Tennis Pro Shop and sports camps, as well as the property being rented to third parties and being advertised as available for corporate retreats, parties, or private events. See Pires' Affidavit, Defendant's Exhibits 3, 4, 5, 7, 9, 19, 27, 28, and 29. In

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<sup>8</sup> Section 12-81 (49) provides in relevant part: "[t]he following-described property shall be exempt from taxation . . . (49) . . . Subject to the provisions of subdivision (7) of this section and section 12-88, real property and its equipment owned by or held in trust for any charitable corporation exclusively used as a nonprofit camp or recreational facility for charitable purposes; provided at least seventy-five percent of the beneficiaries of its strictly charitable purposes using such property and equipment in each taxable year were bona fide residents of the state at the time of such use."

addition, the plaintiff has failed to meet its burden as the party opposing summary judgment.

Given the determination of this court that the plaintiff has failed to demonstrate the absence of a genuine issue of material fact regarding the first two criteria relevant to § 12-81 (7) and identified in *St. Joseph's*, supra, 290 Conn. 708-709, being met, the plaintiff's motion for summary judgment is denied. In regard to the defendant's motion for summary judgment, the defendant has met its burden of showing the absence of any genuine issue of material fact with respect to the first two criteria relevant to § 12-81 (7) not being met, as well as the criteria for § 12-81 (14) and (49) not being met. In addition, the plaintiff as the opposing party has failed to present evidence demonstrating the existence of a disputed factual issue. Accordingly, the defendant's motion for summary judgment, related only to counts two, four, and six, which are the counts of the plaintiff's complaint that challenge the assessor's decision to deny the plaintiff's application for a tax exemption, is granted. The remaining counts of the plaintiff's amended complaint related to the issues of the valuation of the subject premises for the list of October 1, 2017, and October 1, 2018, remain in contention.

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Arnold W. Aronson *Q)A\_fit (LLI, }m*  
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Judge Trial Referee

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