

DOCKET NO. UWY-CV-19-6048320

SUPERIOR COURT

KINGDOM 1⁸¹

JUDICIAL DISTRICT
OF WATERBURY

VS.

CITY OF WATERBURY

MARCH 1, 2023

MEMORANDUM OF DECISION
SUMMARY JUDGMENT

SUPERIOR COURT
WATERBURY J.D.

MAR 01 2023

CLERK'S OFFICE

INTRODUCTION:

This matter is a tax appeal concerning the valuation and taxation by Waterbury of real property located at 189 Wood Street in Waterbury. The plaintiff has asserted that the property is exempt from taxation, but the defendant denied the plaintiff's exemption application, and the Waterbury Board of Assessment Appeals (BAA) upheld that denial. The plaintiff has appealed the denial to this court. The complaint comprises a single count asserting a claim pursuant to General Statutes § 12-117a. Each of the parties has filed a motion for summary judgment on the single count.

UNDISPUTED FACTS:

The following facts are undisputed and are relevant to a resolution of the summary judgment motions. On October 1, 2018, and at all times relevant to this matter, Kingdom 15¹ (plaintiff) owned the real property and improvements located at 189 Wood Street in Waterbury (Property).¹ On the October 1, 2018 grand list, the City of Waterbury (defendant) valued the Property at \$59,637 and assessed taxes based on 70 percent of the foregoing value. The plaintiff

¹ The plaintiff also owns a separate property located at 42 Ives Street, which is used for church services and is not a subject of this litigation.

is a church, and has also been designated as a charitable organization by the Internal Revenue Service pursuant to § 501(c)(3) of the Internal Revenue Code at all times relevant to this matter. The plaintiff timely filed an application for exemption from taxation for the Property with the defendant, however, the defendant denied the plaintiff's application, and the BAA upheld that denial. As a result, the plaintiff has timely appealed the denial to this court, asserting a claim pursuant to § 12-117a.

The Property is being used exclusively to provide services to impoverished and disabled veterans of the United States armed forces. The program deployed by the plaintiff at the Property is called Each One Reach One. The Property is not used for any purpose other than for the program. The purpose of the program is to foster the Christian faith of each participant while assisting each participant with the ability to better live independently within the community. In accomplishing its purpose, the program offers Bible study and discussion, assistance with job training and placement, substance abuse and mental health treatment, counseling, assistance with medications and financial literacy education. The program enrolls up to five participants at a time and houses the participants while they are in the program. Typically, the program lasts for at least about ninety days. Housing is only provided while participants are actively engaging in the program. The program charges a monthly fee of \$540, but most participants receive funding to participate in the program. Veterans are referred to the Program by various private non-profit organizations as well as by the government, including the Department of Corrections.

STANDARD OF REVIEW:

A trial court hears tax appeals pursuant to General Statutes §§ 12-117a and 12-119 de novo, and, if the taxpayer is aggrieved, must arrive at its own conclusions as to the value of the property at issue by evaluating all of the evidence, including the opinions of appraisers. The

court is to apply its general knowledge and experience in evaluating all of the evidence presented. See *Davis v. Westport*, 61 Conn. App. 834, 840, 767 A. 2d 1237 (2001).

The trial court must first determine whether the taxpayer is aggrieved by the assessment, specifically whether or not the assessment is excessive. A finding of aggrievement concerns both issues of fact and of law. An affirmative finding of aggrievement is a condition precedent to engaging the court's broad discretionary power to grant appropriate relief. In exercising its discretion, the court should correct the valuation if it is found to be excessive. Whether the property has been overvalued is a question of fact. It is the taxpayer's burden to show that the valuation is excessive, and the trial court must determine whether the taxpayer has offered sufficient, credible evidence that the subject property has been overvalued. When making a claim pursuant to § 12-119, the plaintiff must prove more than mere overassessment as in § 12-117a, proving instead that the assessment was manifestly excessive and could not have been arrived at except by disregarding the provisions of the statutes applicable to determining the valuation of such property.

The primary purpose of a motion for summary judgment is to obtain a judgment in a case where there are no material facts in dispute. The summary judgment procedure "is designed to eliminate the delay and expense of litigating an issue when there is no real issue to be tried." *Wilson v. New Haven*, 213 Conn. 277, 279, 567 A.2d 829 (1989); see also *Stuart v. Freiberg*, 316 Conn. 809, 822, 116 A.3d 1195 (2015) ("[t]he fundamental purpose of summary judgment is preventing unnecessary trials"). A motion for summary judgment shall be granted when there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. Practice Book § 17-49; *Wilson v. New Haven*, *supra*, 213 Conn. 279.

When determining whether a genuine issue of material fact exists, the evidence must be viewed in the light most favorable to the non-moving party. *Brooks v. Sweeney*, 299 Conn. 196, 210, 9 A.3d 347 (2010); *LaFlamme v. Dallessio*, 261 Conn. 247, 250, 802 A.2d 63 (2002). The test is whether the moving party would be entitled to a directed verdict on the same facts. *Weber v. U.S. Sterling Securities, Inc.*, 282 Conn. 722, 728, 924 A.2d 816 (2007); *Dugan v. Mobile Medical Testing Services, Inc.*, 265 Conn. 791, 815, 830 A.2d 752 (2003). "[T]he genuine issue aspect of summary judgment requires the parties to bring forward before trial evidentiary facts, or substantial evidence outside the pleadings, from which the material facts alleged in the pleadings can warrantably be inferred. . . . A material fact has been defined adequately and simply as a fact which will make a difference in the result of the case." (Citation omitted; internal quotation marks omitted.) *Buell Industries, Inc. v. Greater New York Mutual Ins. Co.*, 259 Conn. 527, 556, 791 A.2d 489 (2002). "The facts at issue are those alleged in the pleadings." (Internal quotation marks omitted.) *Washington v. Blackmore*, 119 Conn. App. 218, 220, 986 A.2d 356, cert. denied, 296 Conn. 903, 991 A.2d 1104 (2010).

"[T]he moving party for summary judgment has the burden of showing the absence of any genuine issue as to all the material facts, which, under applicable principles of substantive law, entitle him to a judgment as a matter of law. The courts hold the movant to a strict standard. To satisfy his burden the movant must make a showing that it is quite clear what the truth is, and that excludes any real doubt as to the existence of any genuine issue of material fact. . . . When documents submitted in support of a motion for summary judgment fail to establish that there is no genuine issue of material fact, the nonmoving party has no obligation to submit documents establishing the existence of such an issue. . . . Once the moving party has met its burden, however, the opposing party must present evidence that demonstrates the existence of some

disputed factual issue." (Internal quotation marks omitted.) *Ramirez v. Health Net of the Northeast, Inc.*, 285 Conn. 1, 11, 938 A.2d 576 (2008); see also *Baldwin v. Curtis*, 105 Conn. App. 844, 850-51, 939 A.2d 1249 (2008).

ANALYSIS:

The effective complaint is an amended complaint, dated May 17, 2019. The complaint contains one count challenging the taxation of the Property by the defendant on the 2018 grand list pursuant to § 12-117a. The primary issue to be decided here is whether the Property is tax exempt pursuant to General Statutes § 12-81(7). The plaintiff is aggrieved, given the court's findings and analysis below, because it appeals from a decision of the defendant to tax the Property that the plaintiff asserts is tax exempt.

The asserted statutory tax exemption statute, § 12-81, provides in relevant part as follows:

"The following-described property shall be exempt from taxation:

"(7) Property used for scientific, educational, literary, historical, charitable or open space land preservation purposes. Exception. (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 . . . 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, and (ii) in 1965, and quadrennially thereafter, a statement shall be filed on or before the first day of November with the assessor or board of assessors of any town, consolidated town and city or consolidated

town and borough, in which any of its property claimed to be exempt is situated. . . .

"(B) On and after July 1, 1967, housing subsidized, in whole or in part, by federal, state or local government and housing for persons or families of low and moderate income shall not constitute a charitable purpose under this section. As used in this subdivision, 'housing' shall not include real property used for temporary housing belonging to, or held in trust for, any corporation organized exclusively for charitable purposes and exempt from taxation for federal income tax purposes, the primary use of which property is one or more of the following: (i) An orphanage; (ii) a drug or alcohol treatment or rehabilitation facility; (iii) housing for persons who are homeless, persons with a mental health disorder, persons with intellectual or physical disability or victims of domestic violence; (iv) housing for ex-offenders or for individuals participating in a program sponsored by the state Department of Correction or Judicial Branch; and (v) short-term housing operated by a charitable organization where the average length of stay is less than six months. The operation of such housing, including the receipt of any rental payments, by such charitable organization shall be deemed to be an exclusively charitable purpose."

Thus, in order to be entitled to a tax exemption pursuant to § 12-81 (7), the plaintiff must establish that the Property at issue: (1) is owned by a corporation organized exclusively for charitable purposes; (2) is being used exclusively for carrying out such charitable purposes; (3) is not leased, rented or otherwise used for a purpose other than the furtherance of its charitable purposes; (4) is not housing subsidized by the government; and (5) does not constitute low or moderate income housing. See *Isaiah 61:1, Inc. v. Bridgeport*, 270 Conn. 69, 76-77, 851 A.2d 277 (2004). See also *St. Joseph's Living Center, Inc. v. Windham*, 290 Conn. 695, 707-08, 966 A.2d 188 (2009).

It is not disputed that the Property (1) is owned by a corporation organized exclusively for charitable purposes; (2) is being used exclusively for carrying out such charitable purposes; and (3) is not leased, rented or otherwise used for a purpose other than the furtherance of its charitable purposes. The charitable use of the Property is consistent with the mission of the

plaintiff, as reflected in its by-laws.² See *St. Joseph's Living Center, Inc. v. Windham*, supra 290 Conn. 715.

It is undisputed that the Property is exclusively used to assist and treat indigent or disabled veterans to foster their spiritual growth, improve their living skills and treat medical conditions, such as psychiatric and substance abuse disorders.³ The intent of the plaintiff's program is to improve the physical, mental and moral condition of participants. Housing is provided only in connection with the foregoing program and treatment, and once the program and treatment is completed, the provision of housing ceases. Thus, housing is provided exclusively to enable participation in the program and patient treatment. The foregoing facts clearly meet the following provisions of § 12-81 (7) (B): "(ii) a drug or alcohol treatment or rehabilitation facility; (iii) housing for persons who are homeless, persons with a mental health disorder, persons with intellectual or physical disability . . . and (v) short-term housing operated by a charitable organization where the average length of stay is less than six months."

The facts of this matter are materially indistinguishable from the facts in *Rainbow Housing Corporation v. Cromwell*, 340 Conn. 501, 264 A.3d 532 (2021). In *Rainbow Housing*, the property at issue was used to deliver psychiatric treatment for mental illness and co-occurring substance abuse disorders to indigent patients with the goal of re-introducing the patients into independent living within the community. Housing was provided to the patients on the property

² The court notes, as is not too surprising, that the by-laws of this Christian church provide that its mission is the promotion of the Christian Gospel. The activities involved here clearly fit within the foregoing mission.

³ In connection with the program, the plaintiff provides participants with spiritual advice, counseling, transportation, assistance with scheduling appointments, gift cards for food, clothing, and access to dedicated licensed substance abuse and mental health counseling.

for the purpose of delivery of the mental health services. Our Supreme Court determined that the housing provided was temporary⁴ in nature and for the purposes of providing mental health services, and, accordingly, met the conditions of § 12-81 (7) (B) (iii). It is clear that the same reasoning applies to the materially identical facts of this matter. Not surprisingly, a textual reading of the statute as applied to the undisputed facts of this matter yields the same conclusion.

The defendant has tried to raise an issue concerning the temporary nature of the housing provided. Our Supreme Court in *Rainbow Housing* determined that "temporary" does not have an inflexible or fixed duration but instead will vary based upon the charitable purpose and only requires that the housing be transitional or impermanent. In this matter there is no genuine dispute concerning the temporary nature of the housing. The affidavit of the pastor of the plaintiff states: (i) client veterans go through an intake process which requires physical and mental health evaluations, (ii) client veterans are only admitted if it is determined that their needs can be addressed by the program, (iii) an employment, school or treatment schedule must be established for the client veteran within 30 days after initial admission, (iv) stays are for a minimum of 90 days, (iv) the housing provided is transitional, impermanent and only provided in connection with rehabilitation services, and (v) the housing is represented by the plaintiff to the client veterans as temporary, connected to the program and with the ultimate goal of obtaining gainful employment, obtaining permanent housing and transitioning back into society. The defendant has introduced no facts which place the foregoing matters in genuine dispute. The

⁴ Housing in this matter is also temporary in nature in that: (i) the housing is only provided in connection with delivery of the services, (ii) the provision of housing ceases when the services are complete, and (iii) at no point is the housing represented as permanent.

assertion that one single client veteran has stayed for five years, without anything further, does not itself create a genuine issue of material fact concerning whether the housing is temporary.⁵

The defendant argues that § 12-81 (7) is completely inapplicable to the plaintiff because the plaintiff is a church or religious organization. The defendant argues that because the plaintiff is a church or religious organization, the only tax exemption available to it is the exemption provided in § 12-81 (14) and that no other subsection of § 12-81 can apply, regardless of the facts. The tax exemptions provided for in § 12-81 are provided to all citizens on an equal basis with the only criteria being that specified in each subsection. The fact that a citizen may qualify for tax exemption under one subsection does not itself disqualify the citizen from potentially being eligible under other subsections. The plaintiff here, as is frequently the case, is both a church and a non-profit charitable organization. Accordingly, both § 12-81 (7) and § 12-81 (14) may apply to it if it meets the criteria of each section. To find otherwise would be to discriminate against the plaintiff by summarily disqualifying it for tax exemptions merely because it is a church. Further, although not directly at issue here, the Property could be held to be exempt from taxation pursuant to § 12-81 (14) because it is property owned by a religious organization and exclusively used as "a reformatory or an infirmary."

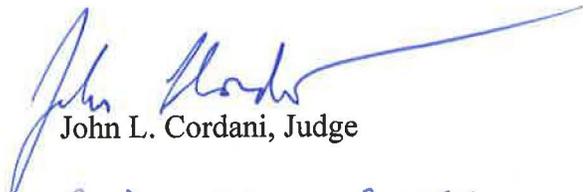
In view of the foregoing, the court determines that there is no genuine issue of material fact and that applying § 12-81 (7) to the undisputed facts of this matter yields a conclusion that the Property is tax exempt. Accordingly, the taxable assessment made by the defendant is both

⁵ The court notes that this assertion is contained within an affidavit of Attorney Daley, an attorney of record in this matter. Generally, attorneys of record should not act as factual witnesses except potentially in the narrow categories of issues provided for in the applicable Rules of Professional Responsibility which narrow categories are not applicable to the affidavit at issue. The affidavit also notes that other residents were "there for less time", gives no indication or evidence of an average stay, and does not account for the plaintiff's initial acquisition of the Property in 2018.

inconsistent with the applicable statute and excessive. As a result, the court will grant the plaintiff's motion for summary judgment and enter judgment in favor of the plaintiff on the single count of the complaint. The defendant's motion for summary judgment is respectfully denied.

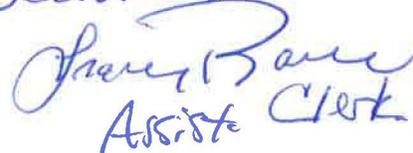
ORDER:

Judgment enters for the plaintiff on the single count complaint. The property was exempt from taxation on the October 1, 2018 grand list.


John L. Cordani, Judge

3-1-2023

Decision entered in accordance with the foregoing, T.D.N.O. sent regarding its availability for viewing in the electronic file. Copy emailed to the Reporter of Judicial Decisions.


James B. Bane
Assistant Clerk