

DOCKET NO. HHB-CV-21-6067052-S

SUPERIOR COURT

THE WILLIAM W. BACKUS HOSPITAL

JUDICIAL DISTRICT
OF NEWBRITAIN

VS.

ADMINISTRATIVE AND TAX
APPEALS

TOWN OF STONINGTON

OCTOBER 7, 2022

MEMORANDUM OF DECISION

OFFICE OF CLERK
SUPERIOR COURT
2022 OCT - 7 2 11 11
JUDICIAL DISTRICT
NEW BRITAIN
CONNECTICUT

INTRODUCTION:

This matter is a property tax appeal by The William W. Backus Hospital (plaintiff) concerning the valuation and taxation by the Town of Stonington (defendant) of certain personal property owned by the plaintiff and located at 100 Perkins Farm Drive, Suite 201, in Mystic, Connecticut. The parties have each filed motions for summary judgment which the court has ruled on through this memorandum of decision.

UNDISPUTED FACTS:

The following facts are undisputed and are relevant to a decision of these summary judgment motions. The plaintiff is a general hospital and is licensed as such by the Connecticut Department of Health. The plaintiff is a 26 U.S.C. § 501 (c) (3) charitable entity and is registered as such with the Connecticut Department of Consumer Protection. The plaintiff is not entirely

financially self-supporting and relies on government subsidies and private charitable donations. The sole member of the plaintiff is Hartford HealthCare Corporation, which itself is a 26 U.S.C. § 501 (c) (3) charitable organization.

The plaintiff provides health care to individuals without regard to their ability to pay for such services. The plaintiff adheres to a financial assistance policy that is consistent with 26 U.S.C. § 501 (r) (4). In 2020 and 2021, approximately ten percent of the plaintiff's services were provided to Medicaid patients. The plaintiff provides approximately \$5 million per year in charitable care to financially eligible members of the public and writes off approximately \$12 million per year in bad debt for the provision of medical services.

The plaintiff leases real property located at 100 Perkins Farm Drive, Suite 201, in Mystic, Connecticut (the "Premises").¹ At the Premises, the plaintiff provides outpatient medical services which consist of medical rehabilitation services including physical therapy, occupational therapy, speech therapy, and specialized therapies to address neurological conditions, movement disorders, musculoskeletal conditions and sports medicine (collectively, "Rehabilitative Services"). Located at the Premises, the plaintiff owns certain personal property which the plaintiff uses at the Premises to deliver the Rehabilitative Services ("Personal Property"). The

¹The Premises and the provision of medical services offered there by the plaintiff are registered in the plaintiff's hospital license issued by the Connecticut Department of Health. The Premises is designated as a satellite hospital location in the license.

plaintiff delivers the Rehabilitative Services using the Personal Property at the Premises pursuant to the plaintiff's license as a hospital. The Personal Property is used exclusively for the purpose of delivering Rehabilitative Services at the Premises.

On or about October 28, 2020, the plaintiff filed a Tax Exemption Application and Personal Property Declaration with the defendant's tax assessor requesting that the Personal Property at the Premises be exempt from taxation on the October 2020 grand list. On November 12, 2020, the defendant denied the plaintiff's Tax Exemption Application for the Personal Property asserting, as the reason for denial, that the Premises was a clinic and had no certificate of need. The plaintiff timely appealed the denial to the defendant's Board of Assessment Appeals, but the board maintained the denial of the plaintiff's Tax Exemption Application. The plaintiff subsequently timely brought action in this court challenging the taxation of the Personal Property by the defendant by asserting claims pursuant to General Statutes §§ 12-117a, 12-119, and 12-89. Both the plaintiff and the defendant have filed motions for summary judgment on the foregoing claims.

STANDARD OF REVIEW:

A trial court hears tax appeals pursuant to §§ 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 party claiming an exemption from taxation bears the burden of proving entitlement to the exemption. Exemptions, no matter how meritorious, are of grace and therefore embrace only what is within their terms. Provisions granting tax exemptions are strictly construed against the party claiming the exemption. See *St. Joseph's Living Center, Inc. v. Windham*, 290 Conn. 695, 707, 966 A. 2d 188 (2009).

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 nonmoving party. *Brooks v. Sweeney*, 299 Conn. 196, 210, 9 A.3d 347 (2010); *LaFlamme v. Dall'essio*, 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 April 14, 2022. The complaint contains four counts challenging the taxation of the Personal Property by the defendant on the 2020 and 2021 grand lists. Count one presents a claim pursuant to §§ 12-117a and 12-89,

challenging the taxation of the Personal Property by the defendant on the 2020 grand list. Count two presents a claim pursuant to §§ 12-119 and 12-89, challenging the taxation of the Personal Property by the defendant on the 2020 grand list. Count three presents a claim pursuant to §§ 12-117a and 12-89, challenging the taxation of the Personal Property by the defendant on the 2021 grand list. Count four presents a claim pursuant to §§ 12-119 and 12-89, challenging the taxation of the Personal Property by the defendant on the 2021 grand list. The primary issue to be decided here for all of the claims is whether the Personal Property is tax exempt pursuant to either General Statutes §§ 12-81 (7) or 12-81 (16). The plaintiff is aggrieved, given the court's findings and analysis below, because it appeals from a decision of the defendant to tax Personal Property that the plaintiff asserts is tax exempt.

Section 12-81, the potentially applicable statutory tax exemptions statute, 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. . . .

(16) Property of hospitals and sanatoriums. Subject to the provisions of section 12-88, all property of, or held in trust for, any Connecticut hospital society or corporation or sanatorium, provided (A) no officer, member or employee thereof receives or, at any future time, shall receive any pecuniary profit from the operations thereof, except reasonable compensation for services in the conduct of its affairs, and (B) in 1967, and quadrennially thereafter, a statement shall be filed by such hospital society, corporation or sanatorium 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.

The court notes that it is undisputed that the Personal Property is (i) owned and held by an entity organized exclusively for charitable purposes, namely the plaintiff,² (ii) no officer, member or employee of the plaintiff receives any pecuniary profit from the operations of the plaintiff, except reasonable compensation for services in effecting one or more of such purposes, (iii) the Personal Property is owned and held by a Connecticut hospital, namely the plaintiff, and (iv) a

² It is undisputed that the plaintiff is a 26 U.S.C. § 501 (c)(3) entity and that the plaintiff is registered with the Department of Consumer Protection as a charitable entity. The plaintiff's organizational documents and filings confirm that it is organized exclusively for charitable purposes. The defendant has asserted some uncertainty as to the ownership of the Personal Property, however, the affidavits submitted by the plaintiff are very clear in asserting that the plaintiff owns the Personal Property and uses it exclusively for the delivery of the Rehabilitative Services. Further, the defendant has taxed the plaintiff based upon its ownership of the Personal Property, and accordingly cannot now effectively argue that it is unsure whether the plaintiff owns the Personal Property while at the same time arguing that the defendant was correct in taxing the plaintiff based upon its ownership of the Personal Property.

tax exemption application was timely filed by the plaintiff asserting that the Personal Property was tax exempt pursuant to the foregoing statutes.

A. Charitable Exemption:

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). The only factor that is even potentially at issue here is whether the Personal Property is used exclusively for charitable purposes.

It is undisputed that the Personal Property is being used exclusively to deliver the Rehabilitative Services and is required for the provision of the foregoing services. The plaintiff's use of the Personal Property to deliver Rehabilitative Services at the Premises is consistent with

the plaintiff's charitable purpose as defined in its organizational documents.³ Further, the provision by the plaintiff of the Rehabilitative Services lessens the obligation of the State to provide or pay for such services for indigent people. It is undisputed that the plaintiff accepts and provides Rehabilitative Services to people without regard for their ability to pay.⁴ The plaintiff has written off (i.e., charitably provided) a substantial value in Rehabilitative Services and, thereby, clearly lessened the burden on the State. Clearly, the plaintiff's provision of these services, without reference to the ability to pay, tends to promote the well-being of the individuals served, the community in general and the State.

The court finds that there are no material facts in dispute concerning the application of § 12-81 (7) to the Personal Property. The Personal Property is exempt from taxation pursuant to § 12-81 (7) because it is owned by an entity organized exclusively for charitable purposes, namely the plaintiff, and it is used by that entity exclusively for charitable purposes, namely the delivery of the Rehabilitative Services.⁵ See *Rainbow Housing Corp. v. Cromwell*, 340 C01m. 501, 524,

³ The plaintiff's organizational documents broadly define its charitable purposes to include the provision of medical health services, of which the Rehabilitative Services are clearly a subset.

⁴ Only to the extent available does the plaintiff seek third party reimbursement for the services it provides. To the extent that the plaintiff obtains payment for its services, such payments are used exclusively to fund and provide services for people who cannot pay.

⁵ The other factors to be considered in connection with the application of this exemption from taxation are not applicable in this situation. It is clear that the Personal Property is used to deliver the Rehabilitative Services, and there is no evidence to indicate otherwise.

264 A.3d 532 (2021). See also *Isaiah 61:1, Inc. v. Bridgeport*, supra, 270 Conn. 85. The fact that the plaintiff collects some funds for the delivery of the Rehabilitative Services does not detract from the conclusion that the delivery of the services is a charitable endeavor for three reasons. First, the entity delivering the services is a charitable entity. Second, as noted above, Rehabilitative Services can be charitable⁶, and the plaintiff delivers the services to individuals without regard to ability to pay.⁷ Lastly, the plaintiff and the delivery of the Rehabilitative Services are not self-sustaining and require both governmental grants and private donations to continue.

B. Hospital Property

It is undisputed that the plaintiff is a hospital licensed as such by the State. It is also undisputed that the plaintiff owns the Personal Property.⁸ It is also undisputed that no officer,

⁶ Charitable purposes include activities which are not in themselves self-supporting, and which are intended to improve the physical, mental and moral condition of the recipients and make it less likely that they will become burdens on society and more likely that they will be productive citizens. Thus, charity embraces activities that tend to promote the well-doing and the well-being of people and society. The Rehabilitative Services clearly fit the foregoing.

⁷ The payments collected by the plaintiff for delivery of the Rehabilitative Services are used to subsidize the delivery of services to people who cannot pay or cannot pay in full.

⁸ The court notes that the plaintiff's affidavits are clear that the plaintiff owns the Personal Property. The defendant has also impliedly admitted that the plaintiff owns the Personal Property by taxing the plaintiff for its ownership of the Personal Property and by continuing to assert in this litigation that its taxation of the plaintiff for the Personal Property is appropriate, particularly when the only basis for taxation of the plaintiff for the Personal Property is the plaintiff's ownership thereof. The mere provision of signage outside of the Premises indicating the plaintiff's parent

director or employee of the plaintiff receives compensation from the use of the Personal Property other than ordinary wages or salary. It is undisputed that the plaintiff uses the Personal Property exclusively for the provision of medical services, namely the Rehabilitative Services, which are hospital services. Lastly, it is undisputed that the plaintiff timely filed an application asserting this tax exemption. Accordingly, the Personal Property is exempt from taxation pursuant to § 12-81 (16).

There can be no doubt that the plaintiff (The William W. Backus Hospital) is a hospital. It is undisputed that the plaintiff is licensed as a hospital. There is no evidence indicating that the plaintiff conducts business other than as a hospital. When the court applies the definition of a hospital proffered by the plaintiff as "an establishment for the lodging, care and treatment of persons suffering from disease or other abnormal physical or mental conditions and includes inpatient psychiatric services in general hospitals," it is undisputed that the plaintiff is a hospital and the provision of the Rehabilitative Services at the Premises is included in the plaintiff's hospital functions.⁹ The plaintiff's operations clearly fit the foregoing definition. While the

corporation name does not raise a genuine issue concerning the ownership of the Personal Property when considered in connection with the foregoing.

⁹ The Premises and the provision of Rehabilitative Services at the Premises are included in the plaintiff's hospital license. The billing for the Rehabilitative Services provided at the Premises is for hospital outpatient services. Medicare and Medicaid recognize the Premises and the provision of Rehabilitative Services there as "provider based" and an integral part of the plaintiff. Further, the employees delivering the Rehabilitative Services at the Premises are employees of the plaintiff hospital.

plaintiff does not offer lodging at the Premises, the plaintiff does offer lodging in connection with its care in general to the extent required and the provision of the Rehabilitative Services is the care and treatment of persons suffering from disease or other abnormal physical or mental conditions. Universal common experience dictates that hospitals provide both inpatient and outpatient medical services. The provision of outpatient services does not detract from the conclusion that the plaintiff is a hospital as licensed and outpatient services are within the ambit of hospital services.¹⁰ It is also finally undisputed that the Personal Property is used by the plaintiff exclusively in providing medical services, namely the Rehabilitative Services. Accordingly, the Personal Property is exempt from taxation pursuant to § 12-81 (16).

C. Application of General Statutes § 12-66a

The defendant argues that General Statutes § 12-66a takes the Personal Property outside of the purview of § 12-81 entirely. Section 12-66a provides as follows in pertinent part:

Notwithstanding any provision of this chapter or chapter 201 or 204 or any special act that provides an exemption from taxation of real or personal property held by or on behalf of a health system, as defined in section 19a-508c, the following real and personal property shall be taxable by a municipality in accordance with the provisions of

¹⁰ The court notes that the plaintiff's hospital license includes the Premises and the provision of Rehabilitative Services. It also appears that the defendant's reason for denying this tax exemption, namely that the Premises was a clinic without a certificate of need was mistaken. As noted, the Premises and the provision of medical services at the Premises was included in the plaintiff's hospital license. It also appears, in any regard, that the provision of outpatient Rehabilitative Services does not require a certificate of need. See General Statutes § 19a-638 (b)(8).

this chapter and chapters 201 and 204: (1) Real property that is acquired by a health system on or after October 1, 2015, that, at the time of such acquisition, is subject to taxation under the provisions of this chapter and chapters 201 and 204, provided such acquiring health system had, for the fiscal year ending September 30, 2013, net patient revenue from facilities located within the state of one billion five hundred million dollars or more, and (2) any personal property incident to the rendering of health care services at the real property described in subdivision (1) of this section. The provisions of this section shall not apply to any real or personal property that is within a campus, as defined in subparagraph (A) of subdivision (2) of subsection (a) of section 19a-508c. All taxes on real and personal property imposed pursuant to this section shall be liabilities of, and paid by, the health system, and shall not be paid by a hospital or other entity affiliated with such health system. [Emphasis added.]

With regard to the application of § 12-66a to the situation at hand, the following facts are undisputed. If applicable, § 12-66a applies to § 12-81. The plaintiff is part of a health system as defined. The plaintiff leases the Premises and does not own the Premises. The plaintiff is a hospital. The Premises are not part of the plaintiff's campus. The Personal Property is located on the Premises leased by the plaintiff.

In view of the foregoing, it is clear that § 12-66a does not apply to the Personal property for two reasons, each of which is independently sufficient to determine that § 12-66a does not apply. First, the Personal Property is not located at real property "acquired" by the plaintiff within the meaning of § 12-66a. The plaintiff leases the real property where the Personal Property is located. The word "acquired" in § 12-66a means purchased. The foregoing meaning

is made clear by the legislative history¹¹ of the statute and the purpose of the statute. As pointed out by the plaintiff, the legislative history used the word "purchased" when describing the function of the statute and the meaning of "acquired." **Fer**, the legislative history makes clear that the purpose of the statute was to ensure that municipalities were not deprived of taxes over real property, and personal property located on the foregoing real property, that was purchased by certain health systems. However, merely leasing the real property would not have resulted in the deprivation sought to be avoided since the owner of leased property bears the primary burden of paying taxes thereon. Accordingly, interpreting "acquired" as purchased is consistent with the meaning of the word used (acquired), is consistent with the purpose of the statute as made clear in the legislative history and the overall statute itself, and is consistent with the legislature's intention in using the word "acquired" as reflected in the legislative history. As a result, since the

Personal Property is not located on real property "acquired" within the meaning of the statute, § 12-66a does not apply.

Further, it is undisputed that the plaintiff is a hospital and that it owns the Personal Property. Section 12-66a is clear in requiring that hospitals not bear the cost of the tax⁹ established by § 12-66a. The defendant has directly taxed the plaintiff, a hospital, for the Personal Property. Section 12-66a expressly prohibits the defendant from taxing hospitals under

¹¹See in particular the fiscal notes for Senate Bill No. 1502, Spec. Sess., June, 2015.

this statutory section. Accordingly, § 12-66a does not apply to the Personal Property, at least in connection with an attempt to directly tax the plaintiff.

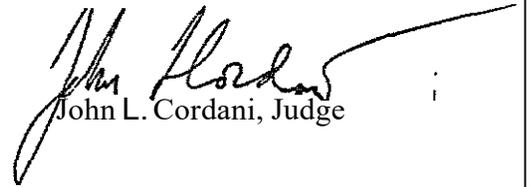
D. Conclusion

There is no principled difference between the personal property owned and used by the plaintiff in its main operations on its campus and the Personal Property owned and used by the plaintiff at the Premises, other than its physical location, and since § 12-66a does not apply, it is clear that the same tax treatment applies to both, namely that the tax exemptions provided for in § 12-81(7) and § 12-81(16) apply. In view of the foregoing, the court finds that there are no disputed material facts that prevent the court from determining that the Personal Property is exempt from taxation by the defendant pursuant to §§ 12-81 (7) and 12-81 (16). Further) the plaintiff has met its burden of proof on summary judgment in establishing that the Personal Property is exempt from taxation by the defendant pursuant to §§ 12-81(7) and 12-81 (16). The court will therefore enter judgment for the plaintiff on counts one through four of the amended complaint.¹²

¹²The court notes that the plaintiff's motion requests judgment on counts two and four which are § 12-119 claims. However, upon a determination that the Personal Property is completely exempt from taxation, it is also apparent that any assessment of taxation is excessive when compared to zero. Accordingly, it is clear that the court should enter judgment on counts one and three which are corresponding § 12-117a claims.

JUDGMENT:

The court grants the plaintiff's motion for summary judgment and denies the defendant's motion for summary judgment. The court enters judgment for the plaintiff on all counts. The Personal Property may not be taxed on the grand lists for 2020 and 2021. The court declines to award interest or costs.


John L. Cordani, Judge