

**FOCUS:
REAL PROPERTY LAW**



Michael P. Guerriero

On June 16, 2022, the Court of Appeals issued its decision in *Matter of DCH Auto v. Town of Mamaroneck et al.*,¹ ruling that a net lessee has the right to challenge real estate tax assessments even though it leases, not owns, the property. The unanimous ruling held that the petitioner, a net-lease tenant, had the right to grieve the tax assessments levied by the Town and Village of Mamaroneck, overruling and finding the Appellate Division, Second Department, erroneously dismissed DCH Auto's assessment challenges based on its lessee status.²

DCH Auto settled a matter of statewide importance in reaffirming the rights of commercial tenants to file complaints pursuant to Real

Court of Appeals Sets the Record Straight For Commercial Tenants in *DCH Auto V. Town of Mamaroneck*

Property Tax Law ("RPTL") §524 where, pursuant to a net lease, they are contractually obligated to pay real estate taxes on the leased parcel of real property. Historically, a generally accepted tax certiorari principle is that net-lease tenants possess standing to maintain RPTL review proceedings as a party aggrieved by the assessment.³ However, in *DCH Auto*, the Second Department restricted the right to file RPTL §524(3) complaints to the property owner or an agent authorized in writing by the owner.⁴ As such, *DCH Auto* deprived a non-owner aggrieved party of standing to file the predicate administrative complaints necessary to obtain judicial review of the assessment.

The net lease agreement is common for many types of commercial properties and thousands of tax certiorari proceedings are annually filed by net lessees throughout New York State. The lower court decision, and the Second Department decision affirming it, threatened dismissal of the thousands of pending proceedings already commenced by net lessees in the years

preceding the decision, and cast doubt upon filings made in the years since.

Real Property Tax Law Assessment Review Proceedings

The Real Property Tax Law provides a scheme for fixing and reviewing tax assessments that involves both administrative and judicial review. The assessor bears the initial responsibility to investigate and establish the tax roll and, once completed, the tax roll is presumed to be accurate and free of error.⁵ If dissatisfied with an assessment, the RPTL provides a two-step process for administrative review under Article 5, followed by judicial review under Article 7. After the tentative assessment roll is published by the assessor, a complainant may file an RPTL §524(3) complaint for administrative review with the assessor or board of assessment review. Second, after all complaints have been heard and determined, the final assessment roll is established by the assessor and "any person claiming to be aggrieved by an assessment"

may seek judicial review of the assessment pursuant to RPTL §704(1), provided that the complainant has exhausted the remedies available at the administrative level under Article 5 by filing a complaint for review.

At the judicial level, an RPTL Article 7 assessment review proceeding by certiorari is a "special proceeding."⁶ RPTL §706(1) states a petition may challenge the assessment on the grounds that it is illegal, excessive, unequal and/or misclassified, so long as the basis for review was initially raised in the predicate RPTL §524(3) complaint. The proper filing of an Article 5 complaint is a crucial prerequisite for maintaining standing in an Article 7 proceeding.

DCH Auto concerned the statutory language that governs the first step: whether the initial complaints filed by a tenant failed to meet the requirements of RPTL §524(3) because DCH was not the owner of the property at issue and therefore, as a tenant, was not "the person whose property is assessed" pursuant to RPTL §524(3).⁷

YOU'RE INVITED! BBQ AT THE BAR

THURSDAY, SEPTEMBER 8, 2022
AT DOMUS
15TH & WEST STREETS, MINEOLA
5:30 PM TO 7:30 PM



NETWORKING • DRINKS • BARBECUE

MEMBERS AND PROSPECTIVE MEMBERS WELCOME!

RAIN DATE: FRIDAY, SEPTEMBER 9



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Events at events@nassaubar.org or (516) 747-4071.

***Please bring a non-perishable food item to be donated to local food banks!**

RPTL §524(3), provides, in pertinent part, that the complaint “must be made by *the person whose property is assessed*, or by some person authorized in writing by the complainant or his office or agent to make such statement who has knowledge of the facts stated” in the complaint. In contrast, RPTL §704(1), which governs step two, filing a petition for judicial review, provides that, “[a]ny person claiming to be aggrieved by any assessment of real property upon any assessment roll may commence a proceeding under this article by filing a petition...”.

Pursuant to RPTL §706(2), to maintain an Article 7 petition, the aggrieved party “must show that a complaint was made in due time to the proper officers to correct such assessment.” The Court of Appeals has recognized that a “protest is a condition precedent to a proceeding under [RPTL] article 7” and that a complainant must timely file a §524(3) complaint that identifies the property, the grounds for review of the assessment, and the extent of the relief sought.⁸

The Appellate Division, Second Department, held in *DCH Auto* that the required condition precedent was not met because the property owner did not file the predicate §524(3) complaints and *DCH Auto* was not identified in the grievances as an agent of the owner.⁹ Thus, the owner’s failure to file the complaint precluded judicial review of the assessment. The Second Department reached this conclusion notwithstanding that the owner authorized DCH Auto to challenge the assessments in the lease, which also obligated DCH Auto to make property tax payments. In effect, the Second Department declared the complaints a nullity because they were filed by the tenant, not the owner, and in doing so, found the term “person whose property is assessed” under §524(3) to be mutually exclusive of the term “aggrieved party” under §704(1).

In support of its restrictive interpretation that “person whose property is assessed” in §524(3) is limited to “owner,” the Second Department relied solely on two of its recent cases in *Matter of Circulo Hous. Dev. Fund Corp. v. Assessor of City of Long Beach, Nassau County*¹⁰ and *Matter of Larchmont Pancake House v. Board of Assessors and/or the Assessor of the Town of Mamaroneck*.¹¹

Second Department Precedent in *Circulo Housing and Larchmont Pancake House*

In *Circulo*, petitioner sought a non-profit exemption pursuant to RPTL §420-a, whereby only an

owner of real property is statutorily entitled to, and may apply for, such exemption.¹² The Assessor for the City of Long Beach denied the exemption application since it was made by an entity that was not the property owner.¹³ The non-owner entity filed an Article 5 complaint for review of the exemption denial on the grounds that it was unlawful,¹⁴ and upon the denial of that complaint, filed an Article 7 petition on the same grounds.¹⁵ The Court granted the City’s motion to dismiss the Article 7 petition on the basis that the underlying Article 5 complaint was not filed by the owner, thus, “the petition did not ‘show that a complaint was made in due time to the proper officers to correct such assessment,’ as required by RPTL §706(2).”¹⁶

While not expressly stated by the Court, the Article 5 complaint was, in fact, defective because it was not filed by the owner, the only party statutorily entitled to apply for and receive the RPTL §420-a exemption. In effect, *Circulo* misinterpreted RPTL §524(3) by conflating it with RPTL §420-a, stated that §524(3) contained an ownership requirement that did not previously exist and erroneously declared that the potential pool of Article 5 complainants is restricted to property owners.

In *Larchmont*, the Second Department extended *Circulo* beyond exemptions to matters involving other general grounds for assessment review including excessiveness and inequality. *Larchmont* involved a related, family-owned business that operated the property and filed the Article 5 complaints.¹⁷ The business was not the record owner and no lease agreement existed contractually obligating it to pay the property taxes.¹⁸ Rather, pursuant to an informal agreement with the owner, the business paid the property taxes and occupied the property rent-free.¹⁹ The Second Department dismissed the proceedings, adopting *Circulo* for its finding that the RPTL §706(2) condition precedent was not met because the §524(3) complaints were not filed by the owner, thereby depriving the lower court of subject matter jurisdiction.²⁰

The Court of Appeals affirmed *Larchmont* but on alternative grounds, finding the business was not an “aggrieved party” under RPTL §706(2) since it had no legally defined obligation to pay real property taxes and therefore lacked standing to maintain Article 7 proceedings.²¹ The Court did not find that subject matter jurisdiction was lacking, nor did it adopt the *Circulo* reasoning that only a property owner may file

the predicate complaints, declining to reach the issue of the proper interpretation of RPTL §524(3).

Meanwhile, the Second Department again adopted *Circulo* in *DCH Auto*, declaring that a net-lease tenant authorized to challenge the tax assessment did not satisfy Article 5 standing.²² DCH Auto leased the subject property from the owner pursuant to a “net lease” obligating DCH to pay, in addition to rent, all the real estate taxes associated with the property.²³ The lease also granted DCH the right to contest tax assessments in place of the owner.²⁴ Based on the lease terms, the Court of Appeals disagreed, rejected the Second Department’s interpretation that RPTL §524(3) does not confer standing upon non-owners, and reinstated the lower court proceedings commenced by net-lease tenant DCH Auto.²⁵

Court of Appeals Reaffirms Established Precedent in *DCH Auto*

In *DCH Auto*, the Court of Appeals reaffirmed that a net lessee contractually obligated to pay the real estate taxes on the leased real property is included within the meaning of “the person whose property is assessed” under RPTL §524(3) and, as such, may properly commence an Article 7 proceeding.²⁶ The Court rejected the *Circulo* interpretation of RPTL §524(3) once and for all, declaring that “to the extent that *Circulo* is inconsistent with our holding today, it should not be followed.”²⁷

DCH Auto restored the generally accepted principle that a net lessee possesses standing to file the predicate Article 5 complaint and may obtain Article 7 judicial review of the assessment as a party aggrieved thereby. In so holding, the Court explained:

“That interpretation is not only in keeping with the legislative history, but it construes the RPTL “as a whole,” with “its various sections ... considered together and with reference to each other” (*Matter of Anonymous v. Molik*, 32 NY3d 30, 37 [2018], quoting *People v. Mobil Oil Corp.*, 48 NY2d 192, 199 [1979]).

Interpreting the RPTL such that a net lessee may both file the RPTL 524(3) complaint and (as is undisputed) the RPTL 704(1) petition, given that the complaint is a prerequisite to filing a petition, harmonizes the two statutory steps of our tax assessment scheme. Such a result ensures that the party with the economic interest and legal right to challenge an assessment will not be unable to raise a

challenge because an out-of-possession landlord that lacks economic incentive fails to file an administrative complaint. It also avoids an inequitable result by which a net lessee may be precluded from obtaining full review of its assessment if the complaint was brought by an owner with different interests, because a petitioner in an RPTL article 7 proceeding may not add grounds for review beyond those specified in the original RPTL 524(3) complaint (*see Matter of Sterling Estates, Inc. v. Board of Assessors of Nassau County*, 66 NY2d 122, 127 [1985]).”²⁸

By abrogating *Circulo*, the Court cast aside the Second Department’s disruption of settled precedent that non-owners who are contractually obligated to pay real property taxes can maintain assessment review proceedings because they are the persons aggrieved or injured by the excessive, unequal, or unlawful assessment. Commercial tenants challenging real property tax assessments may continue to pursue assessment review unimpeded, without the risk of dismissal on the basis of their lessee status. ⚖️

- 2022 NY Slip Op. 03929 (2022).
- 178 A.D.3d 823 (2nd Dept. 2019).
- See, *Matter of Burke*, 62 N.Y. 224, 227-228 (1875).
- 178 A.D.3d at 825.
- See, *Matter of Sterling Estates, Inc. v. Board of Assessors*, 66 N.Y.2d 122, 124-125 (1985).
- See, RPTL §704(1); and see Civil Practice Law & Rules Article 4.
- 2022 NY Slip Op. 03929 at 5.
- 66 N.Y.2d at 125 (1985).
- 178 A.D.3d at 825.
- 96 A.D.3d 1053 (2d Dept. 2012).
- 153 A.D.3d 521 (2d Dept. 2017), *aff’d on other grounds* 33 N.Y.3d 228 (2019).
- 96 A.D.3d at 105; and see, RPTL §420-a(1)(a) & §420-a(11).
- 96 A.D.3d at 1056-1057.
- 96 A.D.3d at 1055; and see, RPTL §522(1)(a).
- 96 A.D.3d at 1055; and see, RPTL §701(9)(a).
- 96 A.D.3d at 1057.
- 153 A.D.3d at 521.
- Id.*
- Id.*
- Id.* at 522.
- 33 N.Y.3d at 236.
- 178 A.D.3d at 825.
- Id.* at 824.
- Id.*
- 2022 NY Slip Op. 03929 at 13.
- Id.* at 14.
- Id.* at 13.
- Id.* at 12.



Michael P. Guerriero is a Tax Certiorari and Condemnation Partner at Farrell Fritz, P.C., Uniondale, and current Chair of the Condemnation Law and Tax Certiorari Committee of the Nassau County Bar Association.