

901, LLC

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IN THE

*

v.

MARYLAND TAX COURT

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SUPERVISOR OF ASSESSMENTS
OF BALTIMORE CITY

*

No. 19-MI-BA-0066

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MEMORANDUM AND ORDER

This case arises from a dispute between the Supervisor of Assessments for Baltimore City (“Supervisor”) and 901, LLC (“LLC”) regarding the LLC’s claim of entitlement to a property tax exemption for property located in Baltimore City in which it has a leasehold interest. The Supervisor denied the request for the exemption and the Property Tax Assessment Board for Baltimore City (“PTAB”) affirmed that denial. The LLC seeks a reversal of the PTAB decision in this Court.

The facts before this Court are articulated in the parties’ Joint Stipulation of Facts (“JSF”). The relevant facts for this Court’s decision, extracted from the JSF, are as follows.

In 2000 the LLC’s predecessor, Symphony Centre, LLC, leased from a State agency, the Mass Transit Administration, 5.98 acres of ground located at 901 North Howard Street in Baltimore City for approximately 91 years. The ground lease was assigned to the LLC in 2001. Pursuant to the ground lease the LLC, in relevant part, constructed on the leased land three multi-story office buildings and a parking garage. Operating pursuant to the lease as a business for profit, the LLC leased, as a sublessor, office space and parking spaces in these improvements. Portions of the office space and

parking spaces were sub-leased to the State or federal government or non-profits.¹ The LLC argues these portions of the sub-leased properties are exempt from property taxation.

The Supervisor relies on the Tax-Property (“TP”) Article of the Annotated Code of Maryland, § 6-102 (e) to justify the requested exemption’s denial. That section provides:

(e) Unless exempted under § 7-211, § 7-211.1, § 7-244, or § 7-501 of this article, the interest or privilege of a person in property that is owned by the federal government, the State, a county, a municipal corporation, or an agency or instrumentality of the federal government, the State, a county, or a municipal corporation is subject to property tax as though the lessee or the user of the property were the owner of the property, if the property is leased or otherwise made available to that person:

(1) by the federal government, the State, a county, a municipal corporation, or an agency or instrumentality of the federal government, the State, a county, or a municipal corporation; and

(2) with the privilege to use the property in connection with a business that is conducted for profit.

The Supervisor argues that as the LLC is exercising its “...privilege to use the property in connection with a business that is conducted for profit,” property tax is levied as if LLC “...were the owner of the property.” The Supervisor asserts this liability of the LLC for property tax is inescapable if the plain meaning of the statute is honored.

The LLC relies on TP §§ 7-202 and 7-210 to justify the exemption it seeks. Those sections exempt from property tax property titled to a non-profit or government, which is used for non-profit or government purposes, respectively. It argues the focus for

¹ More detail with specific references to the relevant portions of the JSF are found in the Supervisors Memorandum of Law at pages 2 to 4 and are incorporated herein.

property taxation is the ultimate user, specifically the governments and non-profits sub-leasing from the LLC.

The Court finds the Supervisor's position more convincing. While TP § 6-102 (e) levies a property tax on government property leased for "a business...conducted for profit," specific sections of the Tax Property Article, i.e. §§ 7-211, § 7-211.1, § 7-244, or § 7-501, are referenced as providing exemptions from this taxation. Those exemptions include property used for national defense purposes or military housing and for a concession located in a public park or airport available for use by the general public. *Id.* § 7-211 (a) (3) & (b) (2), respectively.² The enumeration of specific exemptions mandates rejection of non-enumerated exemptions. (*Expressio unius est exclusio alterius* case). As there is no exemption specified for sub-lessees using the property for government or non-profit purposes, the LLC's assertion fails and the plain meaning of TP § 6-102 (e) must prevail. *Kranz v. State*, 459 Md. 456, 474 (2018).

While the Court finds adherence to the plain meaning of TP § 6-102(e) mandates a denial of the exemption, consideration of the section's intent provides a further foundation for that plain meaning.

In discussing the predecessor to TP § 6-102 (e), the Court of Appeals noted "...we have interpreted such a provision to be a function of convenient, efficient tax collection..." *Cordish v. Supervisor*, 427 Md. 1, 11 (2012) The Court then explained that "...hypothetical ownership is attributed to the lessee in order to identify the lessee as the taxpayer for the convenience of the tax collector..." *Id.* at 12. See TP § 8-113.

² A concession envisions a leasehold interest for a business conducted for profit and the Court takes judicial notice that public parks and airports available for "...use by the general public..." are generally owned by governments. *SDAT v. MNCPP*, 348 Md. 2, 14-15 (1997)

The LLC's assertion requires the tax collector to not just consider the LLC's status as a government lessee, but also the specific uses of the many offices and parking spaces the LLC sublets. Once that analysis is undertaken, those individual sublets have to be separately valued in the context of the sublets proportional value to the aggregate valuation of the leasehold. This required undertaking is inconsistent with TP § 6-102(e)'s "intent to promote ...convenient, efficient tax collection."

Likewise, comments in the 1970 report of the Maryland Legislative Council, cited by the Supervisor, undermine the LLC's assertion. That report notes a concern with "...the use of exempt property for business purposes which compete with non-exempt business." *Id.* at 102. In this case, if the LLC receives an exemption for the portion of the property it subleases to governments, it realizes a benefit not available to a lessor whose interest in property is not secured from a government. It is thus logical to conclude a purpose of TP § 6-102 (e) is to preclude this unfair competition.

Further, the interpretation for which the LLC advocates creates, without specific statutory authority, a distinction by which lessees from the government, who engage in a for-profit real estate rental business, can realize a tax advantage not available to other for-profit businesses leasing from the government. This distinction is an absurd result which principles of statutory constructions direct is to be avoided: *Coerper v. Comptroller*, 265 Md. 3, 6-8 (1972); *Pan American Sulfur v. State Department of Assessments and Taxation*, 251 Md. 620, 626-627 (1969).

The LLC 's reliance on TP §§ 7-202 and 7-210 and two Court of Special Appeals cases considering those sections to justify the exemption it seeks is misplaced. As noted previously, those sections exempt from property tax property titled to a non-profit or

government which is used for non-profit or government purposes, respectively. These exemptions though are specifically abrogated by TP § 6-102 (e) subjecting the LLC's leasehold interest to taxation.³ The General Assembly's directive in both TP §§ 6-102 (e) and 8-113 that the lessee shall be considered the owner of the property for property taxation renders the underlying actual ownership irrelevant, whether of the lessor or a sublessee. *Cordish v. Supervisor*, *supra.* 9-12. This statutorily-rendered irrelevance undermines the foundation for the LLC's position.⁴

This Court rejects the LLC's assertion that TP § 6-102 (e)'s predecessor, Article 81 § (8)(8)(e), suggests for TP § 6-102 (e) to apply the lessee must be in actual possession of the leased property. The language referenced by the LLC provides the lessee must "...use or possess such property." (emphasis added.) See *Cordish v. Supervisor*, *supra.* at 10-11. Being in the disjunctive, using the property without possession would be sufficient for the predecessor statute to apply. (disjunctive case). And, there is no dispute that the LLC uses the property "...in connection with a business conducted for profit," rendering TP § 6-102 (e) applicable. It is noteworthy that the revisors struck "possess" from the successor provision, surely envisioning that "use" encompasses possession, but is not limited to it.

The Court of Special Appeals cases upon which the LLC relies are *Townsend v. Supervisor*, 215 Md.App.133 (2013) and *Supervisor v. GBMC*, 202 Md. App. 282 (2011).

³ It is noteworthy that TP § 7-210 specifically references TP § 6-102 (e) as an exception to the government property tax exemption it establishes. See *Baltimore v. Boitnott* 356 Md. 605, 612 (1999)

⁴ The LLC's argument that the subleased property used for non-profit purposes is exempt is further flawed as TP § 7-202 (b)(1)(ii)(2) conditions that exemption on the non-profit owning the property. In this case, a State entity, the MTA, not a non-profit entity, owns the property.

Those cases are not germane, as the Tax Court decisions considered by the Court were not premised on TP § 6-102 (e). In both cases the Tax Court's decisions were premised on a consideration of the ownership of improvements on the property subject to a lease and leaseback to the original lessor.

In *GBMC*, a hospital leased land it owned to a developer who built upon the leased land a parking garage and office building, which was leased back to the hospital. The Tax Court rejected the Supervisor's argument that provisions in the lease, providing the developer owned the improvements, should control the determination of ownership for purposes of the hospital exemption at TP § 7-202(b). The Tax Court decision to rely instead upon the land records, documenting the hospital as the owner, was affirmed by the Court of Special Appeals. *Supervisor v. GBMC, supra*.

In *Townsend*, the State leased land to a non-profit entity, which was subleased, in part, to two for-profit developers. The developers improved the property with an office building, which was subleased 85 percent to the State for state purposes, and a garage, which subleased 25 percent to the State for state purposes. The Supervisor, again relying on provisions in the lease providing the developers owned the improvements, argued the developer was not entitled to the government exemption at TP § 7-210. The Tax Court accepted this argument, ruling TP § 7-210 did not apply, as the improvements were owned by the developers and not the State. Consistent with its decision in *GBMC*, the Court of Special Appeals reversed, noting the ownership determination must rely on the land records documenting title to the State and not the developer. *Townsend v. Supervisor, supra*.

The Tax Court is an administrative body. *Shell Oil v. Supervisor*, 276 Md. 36 (1975). Unlike its review of a judicial decision, an appellate review of an administrative body's decision is limited to the reasoning and determinations stated by the administrative body. *USW v. Bethlehem Steel*, 298 Md. 665, 679 (1984). The Tax Court did not rely on TP § 6-102 (e) in either *GBMC* or *Townsend*.⁵ So, those cases do not provide guidance insofar as TP § 6-102 (e)'s application to this case.

While not considered by the Tax Court in its *Townsend* decision, the Supervisor did urge application of TP § 6-102 (e) before the Court of Special Appeals. In response the Court of Special Appeals observed "...[n]or is it at all clear that the assertion withstands scrutiny." *Townsend v. Supervisor*, supra. at 142. The LLC asks this Court to accept this observation as a rejection of TP § 6-102 (e) in *Townsend* and the matter now before this Court.

This Court views the cited observation as *dicta* and will not rely upon it. "[T]he Tax Court's decision was not based upon TP § 6-102 (e); instead the Tax Court concluded as a matter of law that the appellants were the *owners* of the improvements the appellants constructed upon the State's land," noted the Court of Special Appeals, surely alluding to its review being limited to the reasoning and determination of the Tax Court. *Id.* at 143

Also, as noted previously, the land that was ultimately developed, was leased by the State to a non-profit corporation that then subleased the land to two for-profit developers. In its single paragraph discussion, the Court of Special Appeals did not consider the relevance of the initial sublease by the State to the non-profit from whom the

⁵ TP § 6-102 (e) could not be a relevant consideration in *GBMC* as the lessor was not a government entity.

for-profit developers leased. Consideration of this intervening non-profit sublessor could obviate application of TP § 6-102 (e), which applies only to leases from government.⁶ So, a full consideration of TP § 6-102 (e)'s applicability would have required a discussion of the impact of this intervening lease to the non-profit corporation.

Guidance for the appropriate analysis of this case is offered in *Grand Lodge v. Baltimore*, 157 Md. 542 (1929). Grand Lodge was an organization entitled to property tax exemption as a non-profit. The Lodge had a building commission, acting as a trustee for the Lodge, acquire land and construct a building on that land solely for the benefit of the Lodge. The land and building were conveyed to the Lodge, but before the conveyance there was a levy of property tax on the building commission, as the property's owner. In rejecting an argument that the levy was inappropriate, as the ultimate tax burden would be borne by the non-profit, the Court of Appeals held:

"To reach this conclusion it is, however, necessary to abandon a principle of taxation without any sanction from the Legislature, and to ignore a construction of the tax laws of the state which the court has consistently applied. It would, moreover, enlarge the exemption to include a class of taxpayers which are not within the language of the statute, and which can only be held to be within its meaning by a broad and liberal construction, which would be equivalent to a legislative act. If the court would entertain such a purpose because of equitable considerations, the Legislature has barred the way by concluding the exemptions created by the explicit command that 'each and every one of said exemptions from taxation shall be strictly construed.'" *Grand Lodge of Maryland v. Mayor*

⁶ The Court of Special Appeals suggests in a footnote an anomaly arising from the State sublessees having to reimburse the sublessor for property tax borne by the sublessor in accordance with lease provisions. *Id.* at p. 143 f.3. This provision in the lease suggests the parties were aware of potential liability pursuant to TP § 6-102 (e). A similar provision was in the concession agreement considered by Court of Appeals in *SDAT v. MNCPP*, *supra*. While the Court noted the provision, it was not a factor in its holding. *Id.* at 7. See also *Meade Heights v. Tax Commission*, 202 Md. 20, 29 (1953) ("The government cannot complain if the tax, otherwise sustainable, increases government costs by its economic incidence.")

and City Council of Baltimore, 157 Md. 542, 546 (1929) Cited in *Baltimore v. Boitnott, supra.* at 615-616. ⁷

TP § 7-202 (b)(3) addresses the concern raised by Grand Lodge by providing a property tax exemption for the trustee of a non-profit that “holds... property for the sole benefit..” of the non-profit. Consistent with *Grand Lodge*, this Court declines to provide the exemption the LLC seeks, finding, as did the Court of Appeals in *Grand Lodge*, there is no statutory authority for the exemption. Hence, the only recourse to realize the exemption would be an act of the General Assembly.

Accordingly, it is this 11th day of Dec, 2020, by the Maryland Tax Court **ORDERED** that the decision of the PTAB is affirmed and the exemption requested by the LLC is denied. ⁸

CC: Brandon N. Mourges, Esq.
William K. Hammond, Esq.
Kent Finkelsen, Administrator

CERTIFIED TRUE COPY
TEST: John T. Hearn, Clerk

NOTICE: You have the right of appeal from the above Order to the Circuit Court of any County or Baltimore City, wherein the property or subject of the assessment may be situated. The Petition for Judicial Review **MUST** be filed in the proper Court within thirty (30) days from the date of the above Order of the Maryland Tax Court. Please refer to Rule 7-200 et seq. of the Maryland Rules of Court, which can be found in most public libraries.