

At a Special Term of the Supreme Court, Niagara
County, held at 50 Delaware Avenue, Buffalo, New
York, on the 4th day of Jan., 2024

PRESENT: HON. DEBORAH CHIMES, J.S.C.
Presiding

STATE OF NEW YORK
SUPREME COURT : COUNTY OF NIAGARA

IN THE MATTER OF THE APPLICATION UNDER
ARTICLE 7 OF THE REAL PROPERTY TAX LAW

BY

LOCKPORT PROFESSIONAL PARK REALTY A/K/A
ROCK 1234 LLC A/K/A JMBB 2014-C21 A/K/A
LOCKPORT PROFESSIONAL PARK LLC A/K/A 19 SBLS,
Petitioner,

And

CANCER CLARITY LLC,
Petitioner,

v.

CITY OF LOCKPORT,
Respondent,

And

LOCKPORT CITY SCHOOL DISTRICT,
Intervenor,

And

COUNTY OF NIAGARA,
Intervenor.

ORDER AND JUDGMENT

Index No.: E175440/2021
E177813/2022
E180414/2023

And

Index No.: E177769/2022
E180416/2023

FOR REVIEW OF THE 2021 – 2022, 2022-2023 and 2023-2024 TAX ASSESSMENT
OF CERTAIN PROPERTY IN THE SAID CITY OF LOCKPORT, NEW YORK

The Petitioner, Lockport Professional Park Realty, et. al., by and through its attorneys, Wolfgang & Weinmann, Peter Allen Weinmann, Esq. and Ryan K. Parisi, Esq., of counsel, having moved this Court for an Order,

NOW UPON READING AND FILING of the Petitioner's Notice of Motion dated January 19, 2022, and filed January 20, 2022, with exhibits attached thereto, and the Affidavit of Michael Wick, sworn to January 14, 2022, and the Affidavit of Tony Yousif, sworn to January 19, 2022, and the Affidavit of Joseph Rowley, Jr., sworn to January 10, 2022, and the Affidavit of Ryan K. Parisi, Esq., sworn to January 20, 2022, and the accompanying Memorandum of Law, and the Notice of Motion or Cross-Motion to Dismiss of the City of Lockport and the supporting Affirmation of Deputy Corporation Counsel Patricia McGrath, with exhibits thereto, both dated January 20, 2022, and upon reading the Memorandum of Law in Opposition of Patricia McGrath, Esq., Deputy Corporation Counsel for the City of Lockport, dated February 18, 2022, and filed on the same day, along with the Affidavit of Tracy Farrell, City Assessor of Lockport, sworn to on February 17, 2022 and filed on February 18, 2022, and the Affidavit of Ronald J. Rubino, Real Estate Appraiser, sworn to on February 17, 2022 and filed on February 18, 2022, and the Notice of Cross-Motion to Dismiss of the Lockport City School District, and the Affirmation of Michael B. Risman, Esq. for the Lockport City School District with Exhibits thereto, dated February 18, 2022 and filed on the same day, and the Notice of Cross-Motion to Dismiss of the County of Niagara, and the Affirmation of Katherine D. Alexander, Esq., First Assistant Niagara County Attorney, dated February 18, 2022 and filed on the same day, and upon the Reply Memorandum of Law of Patricia M. McGrath, Esq., Deputy Corporation Counsel of the City of Lockport dated and filed on February 23, 2023, and upon oral argument held on June 2, 2022, and upon the **DECISION** of the court dated June 30, 2023 and filed July 3, 2023 and attached hereto, it is hereby,

ORDERED that Petitioner's Motion for Summary Judgment is Granted in all respects, and it is further

ORDERED that Respondent City of Lockport's Motion or Cross-Motion to Dismiss is Denied in all respects, and it is further

ORDERED that the Intervenor Lockport City School District's Cross-Motion to Dismiss is Denied in all respects, and it is further

ORDERED that the Intervenor County of Niagara's Cross-Motion to Dismiss is Denied in all respects, and it is further

ORDERED, that in accordance with RPTL §726, that the fiscal officers of the City of Lockport, the County of Niagara, the Lockport City School District and any other taxing unit affected by the above assessment reduction shall apply such adjusted assessments and determine any overpayment of taxes for tax years 2021-2022 and each subsequent tax year, and in the event of overpayment, refund the overpayment without statutory interest if paid within 45 days by official check payable to the order of Wolfgang & Weinmann, as attorneys and agents for Petitioner, accompanied by a calculation sheet, such attorneys to hold the proceeds as trust funds for appropriate distribution, and are to remain subject to the further jurisdiction of this Court relative to their attorney's lien pursuant to Judiciary Law Section 475, or in the event that any such tax payment has not been paid, issue corrected tax bills which reflect the proper reduced assessment for the property, with a copy of corrected tax bills sent to the attorneys for Petitioner, said corrected tax bills to be paid without interest or penalty if paid within 45 days of receipt of said corrected bills, with interest and/or penalties beginning to accrue on the new corrected balance after 45 days, and it is further,

ORDERED, that the full market value of the subject be set at \$1,400,000 equalized at 67% for tax year 2021-2022, and 100% for tax year 2022-2023 and 2023-2024, as allocated infra:

TAX YEAR 2021-2022 (EQ 67%)

Address	SBL Number	Assessed Value	Full Market Value
<u>16 Davison Court</u>	123.12-2-6	\$34,658	<u>\$51,729</u>
139 Professional Pkwy S	123.08-4-17	\$34,658	\$51,729
125 Professional Pkwy	123.08-4-19	\$34,232	\$51,092
26 Davison Court	123.12-2-7	\$34,658	\$51,729
<u>115 Professional Pkwy</u>	123.08-4-20	\$29,728	<u>\$44,370</u>
<u>90 Professional Pkwy</u>	123.08-4-14	\$27,771	<u>\$41,449</u>
70 Professional Pkwy	123.08-4-12	\$30,582	\$45,645
60 Professional Pkwy	123.08-4-11	\$52,746	\$78,726
<u>42 Professional Pkwy</u>	123.08-4-10	\$24,666	<u>\$36,815</u>
37 Professional Pkwy	123.08-4-21	\$34,041	\$50,807
<u>32 Professional Pkwy</u>	123.08-4-9	\$24,666	<u>\$36,815</u>
<u>140 Professional Pkwy S</u>	123.08-4-23	\$32,804	<u>\$48,961</u>
24 Professional Pkwy	123.08-4-8	\$25,887	\$38,638
130 Professional Pkwy S	123.08-4-15	\$33,349	\$49,774
64 Davison Court	123.12-2-13	\$83,946	\$125,292
734 Davison Road	123.08-4-3	\$28,212	\$42,108
<u>770 Davison Road</u>	123.08-4-6	\$159,502	<u>\$238,062</u>
792 Davison Road	123.12-2-5	\$28,212	\$43,096
<u>57 Davison Court</u>	123.12-2-9	\$183,020	<u>\$273,164</u>
TOTAL:			\$1,400,001

TAX YEAR 2022-2023 and 2023-2024 (EQ 100%)

Address	SBL Number	Assessed Value	Full Market Value
<u>16 Davison Court</u>	123.12-2-6	\$51,729	\$51,729
139 Professional Pkwy S	123.08-4-17	N/A	N/A <i>Sold</i>
125 Professional Pkwy	123.08-4-19	\$51,092	\$51,092
26 Davison Court	123.12-2-7	\$51,729	\$51,729
<u>115 Professional Pkwy</u>	123.08-4-20	\$44,370	<u>\$44,370</u>
<u>90 Professional Pkwy</u>	123.08-4-14	\$41,449	<u>\$41,449</u>
70 Professional Pkwy	123.08-4-12	\$290,000	\$290,000
60 Professional Pkwy	123.08-4-11	\$78,726	\$78,726
<u>42 Professional Pkwy</u>	123.08-4-10	\$36,815	<u>\$36,815</u>
37 Professional Pkwy	123.08-4-21	\$50,807	\$50,807
<u>32 Professional Pkwy</u>	123.08-4-9	\$36,815	<u>\$36,815</u>
<u>140 Professional Pkwy S</u>	123.08-4-23	\$48,961	\$48,961
24 Professional Pkwy	123.08-4-8	N/A	N/A <i>Sold</i>
130 Professional Pkwy S	123.08-4-15	N/A	N/A <i>Sold</i>
64 Davison Court	123.12-2-13	\$427,000	\$427,000
734 Davison Road	123.08-4-3	\$99,620	\$99,620
<u>770 Davison Road</u>	123.08-4-6	\$315,000	<u>\$315,000</u>
792 Davison Road	123.12-2-5	\$180,000	\$180,000
<u>57 Davison Court</u>	123.12-2-9	\$273,164	<u>\$273,164</u>

IT IS SO ORDERED



HON. DEBORAH CHIMES, J.S.C.

DATED: January 4, 2024

**STATE OF NEW YORK
SUPREME COURT : COUNTY OF NIAGARA**

**IN THE MATTER OF THE APPLICATION UNDER
ARTICLE 7 OF THE REAL PROPERTY TAX LAW**

BY

**LOCKPORT PROFESSIONAL PARK REALTY, A/K/A
ROCK 1234 LLC, A/K/A JMBB 2014-C21,
A/K/A LOCKPORT PROFESSIONAL PARK LLC,
A/K/A 19 SBLs**

Petitioner,

DECISION

vs.

INDEX NO.: E175440/2021

CITY OF LOCKPORT,

Respondent,

and

**CITY OF LOCKPORT SCHOOL DISTRICT and
COUNTY OF NIAGARA,**

Intervenors,

**FOR REVIEW OF THE 2021-2022 TAX
ASSESSMENTS OF CERTAIN REAL PROPERTY
IN THE SAID CITY OF LOCKPORT**

**HON. HENRY J. NOWAK, J.S.C.
Justice Presiding**

In this article 7 tax certiorari action challenging the assessment of 19 individual parcels comprising a business park in the City of Lockport (“the property”), petitioner moves for summary judgment, claiming that the fair market value must be set at the amount recently paid in an arms-length sale of the property. Respondent and intervenors oppose the motion and cross-move to dismiss the petition, alleging the petitioner did not have standing to file a grievance or maintain this action. The court has considered the documents filed in the New York State

Electronic Filing [NYSCEF] system as Documents 12-79, as well as petitioner's August 31, 2022 post-argument submission.

Factual Summary

The pertinent facts are not in dispute. On March 25, 2021, plaintiff and the former owner of the property executed an agreement for sale and purchase of the property for \$ 1,400,000.00 (NYSCEF Doc. No. 18). As set forth in the agreement for sale, the closing date was scheduled for April 15, 2021 (*id.*). The property was under contract but did not ultimately close until June 7, 2021 (NYSCEF Doc. No. 49).

In the years leading up to the execution of the agreement for sale, the property was in foreclosure and the appointed receiver filed tax assessment challenges.¹ On or about June 18, 2020, the seller took the properties pursuant to a deed in lieu of foreclosure (NYSCEF Doc. No. 61). Between the time that the seller acquired the property in June of 2020 and the execution of the agreement for sale in March of 2021, SVN Realty Performance Advisors (SVN) was retained as the exclusive broker for the property. SVN listed the property through Ten-X, a commercial real estate exchange, and an auction was held. Multiple groups registered to bid on the property and tours were given to multiple prospective buyers. At auction, the property received three bids, but did not meet the sellers reserve price and thus did not sell (*id.*)² Following the auction, the seller and petitioner negotiated for several months before ultimately agreeing to a purchase price of \$ 1,400,000.00 (NYSCEF Doc. No. 18).

¹ The receiver engaged in extensive, multi-year litigation between 2015 and 2021 regarding the assessed value of the property which was ultimately settled via a gouge year, whereby the property was assessed at \$ 1,192,200.00 for the 2020-2021 year without implicating RPTL § 727 (Index Nos. E156383/2015; E159155/2016; E162205/2017; E165495/2018; E169575/2019; E172563/2020).

² The various affidavits submitted by the petitioner refer to the auction taking place in December 2021; however, the court notes that petitioner formally closed on the property in June 2021 (NYSCEF Doc. No. 28).

On May 21, 2021, approximately two weeks before ultimately closing on the property, petitioner filed a grievance complaint with the City of Lockport Board of Assessment Review (BAR) pursuant to RPTL § 524 (NYSCEF Doc. No. 20). Petitioner closed on the property on June 7, 2021 (NYSCEF Doc. No. 19), and this action ensued.

The Instant Motions

Petitioner moves for summary judgment, arguing that it purchased the property in an arms-length transaction, and thus, fair market value must be set at the amount paid in a sale of the property. In support of that motion, petitioner submits the purchase sale agreement, closing statement, as well as affidavits the buyer, Michael Wick and brokers Joseph Rowley, Jr. and Tony Yousif. Principally, petitioner contends that the purchase price of \$ 1,400,000.00 is \$ 6,108,500.00 below the fair market value assessment of \$ 7,508,500.00. Petitioner contends that when it filed its grievance complaint with the BAR on May 21, 2021 it was a contract vendee and thus, had standing under RPTL § 524 to file a grievance and commence this action.

The City and the intervenors argue that this action must be dismissed *in toto*, as the petitioner was not the owner of the property at the time it filed its grievance thus lacked standing to commence this action pursuant to Real Property Tax Law § 524 (3) under *Larchmont Pancake House v Board of Assessors Town of Mamaroneck* (33 NY3d 228 [2019]). In the alternative, respondent and intervenors argue that questions of fact regarding the arms-length nature of the transaction exist, and thus, summary judgment is inappropriate. Given that the respondent and intervenors' motions to dismiss deal with threshold issues that would obviate the need to address petitioner's motion for summary judgment, the court will address these motions first.

Application of Law

I. Motions to dismiss for failure to comply with RPTL § 524 (3)

It is well-settled that the filing of a grievance pursuant to RPTL § 524 (3) is a condition precedent to commencing suit under article 7 of the RPTL (*Larchmont Pancake House*, 33 NY3d at 235). The strict language of the statute requires this initial grievance be made “by the person whose property is assessed” (RPTL § 524 [3]). Respondents and intervenors assert that as of May 21, 2021, petitioner was not the owner of the property, had no obligation to pay the taxes on the property, and thus had no standing to file a grievance as it was not “the person whose property is assessed” (*id.*).

In *DCH Auto v Town of Mamaroneck* (38 NY3d 278 [2022]), the Court of Appeals expressly rejected the contention that a “person whose property is assessed” had to be the “owner” of real property file a grievance as a condition precedent to commencing and article 7 action. In that action, the Court of Appeals held that a net lessee was “a person whose property is assessed” for the purposes of article 5 of the RPTL, and specifically explained that “[h]ad the legislature intended to require that only ‘owners’ (or agents of owners) could initiate a grievance under RPTL 524 (3)” it could have simply done so (*id.* at 293 [noting myriad instances where the term “owner” is used in article 5 of the RPTL]). The Court of Appeals explained that “[s]uch 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” (*id.* at 296).

Here, petitioners filed a grievance as a contract vendee—the property was under contract for sale, and while they did not yet own the property, they certainly had an interest in the tax assessment, insofar as they would ultimately be required to pay the tax assessment for the 2021-

2022 tax year (NYSCEF Doc. No. 18). Consistent with the Court of Appeals holding in *DCH Auto*, the court concludes that as a contract vendee, petitioner was the true party in interest in the tax assessment, and was contractually obligated to pay the tax levy once they closed on the property. To hold that the seller of the property—who had no interest in or obligation to pay the property taxes—is required to file a grievance as a condition precedent to the purchaser of real property challenging the tax assessment would be tantamount to punishing a net lessee where an “out-of-possession landlord that lacks economic incentive fails to file an administrative complaint” (*DCH Auto*, 38 NY3d at 296). Thus, the Court denies the respondent and intervenors’ motions to dismiss for failure to comply with RPTL § 524 (3).

II. Plaintiff’s motion for summary judgment.

“The property valuation by a tax assessor is presumptively valid, and in challenging the assessment, a petitioner must come forward with substantial evidence to the contrary” (*Matter of Reckson Operating Partnership, L.P. v Assessor of Town of Greenburgh*, 289 AD2d 248, 249 [2d Dept 2001]). Such evidence may include a recent sale, and “the purchase price set in the course of an arm’s length transaction of recent vintage, if not explained away as abnormal in any fashion, is evidence of the ‘highest rank’ to determine the true value of the property at that time” (*Plaza Hotel Assoc. v Wellington Assoc.*, 37 NY2d 273, 277 [1975], quoting *Matter of F.W. Woolworth Co. v. Tax Commn. of City of N.Y.*, 20 N.Y.2d 561, 565 [1967]; see also *Rice v Srogi*, 70 AD2d 764, 764 [4th Dept 1979]).

Here, in support of this motion, petitioner submits the purchase sale agreement, closing statement, as well as affidavits the buyer, Michael Wick and brokers Joseph Rowley, Jr. and Tony Yousif (NYSCEF Doc. Nos. 18-35). To that end, petitioner established that the property was listed for sale through Ten-X, a commercial real estate exchange, and an auction was held.

Multiple groups registered to bid on the property and tours were given to multiple prospective buyers. At auction, the property received three bids, but did not meet the seller's reserve price and thus did not sell (NYSCEF Doc. Nos. 21, 28, 35). Following the auction, the seller and the petitioner negotiated for several months before ultimately agreeing to a purchase price of \$ 1,400,000.00 (NYSCEF Doc. Nos. 18, 21, 28, 35). The affidavits of the brokers establish that they were fiduciaries obligated to ensure the property returned the maximum purchase price. Mr. Rowley's affidavit confirms that another buyer was negotiating to purchase the property at the same time as the petitioner herein, and that the seller agreed to the petitioner's offer because it was the higher of the two (NYSCEF Doc. No. 35). Thus, the court concludes that the petitioner has met its burden and adduced prima face evidence—through this recent arms-length transaction—that the full market value of the property is \$ 1,400,000.00.


In opposition to the motion, the City submits the expert affidavits of Tracey Farrell, the assessor for respondent City of Lockport, and Ronald Rubino, a real estate appraiser (NYSCEF Doc. Nos. 66 and 67). These experts opine that the transaction at issue was not arms-length, insofar as the property was only on the market for four months, while typical transactions are marketed for a year or more. Both experts note that the prior transfer was a deed in lieu of foreclosure (*id.*). Mr. Rubino claims that the property was sold as part of an auction sale with no reserve price, and with no counter-offers (NYSCEF Doc. No. 67 at ¶ 7). Ms. Farrell noted that the price per square foot for this transaction was \$ 8.73, while “the fair market value sales of comparable professional office properties in the area around the City of Lockport average \$ 92.34” (NYSCEF Doc. No. 66 at ¶ 13).

The court rejects these arguments. First, Mr. Rubino misstates the nature of the transaction at issue; the court does not find that the property was sold at auction without counter

offers, but was negotiated for months after it failed to sell at auction (*see* NYSCEF Doc. Nos. 18, 21, 28, 35). For its other bases, respondent does not scrutinize *this* transaction or the process by which the petitioner purchased the property or the competing bids in this case. Rather, Ms. Farrell states that the purchase price is less than the purchase price for other pieces of commercial property in the eight years leading up to the COVID-19 pandemic. Moreover, the recent history or receivership and prior transfer of the property via deed in lieu of foreclosure underscores the distressed nature of the asset—commercial office space—in light of the COVID-19 pandemic. Thus, the court concludes that the respondent and intervenors have not raised a triable issue of fact with respect to the arms-length nature of this transaction, and grants petitioner’s motion for summary judgment.

Submit order on notice.

Dated: June 30, 2023



HON. HENRY J. NOWAK, J.S.C.