

At an IAS Part of the Supreme Court of the State of New York, held in and for the County of Westchester, at the Courthouse, White Plains, New York, on the ~~Su~~ day of March 2005.

PRESENT: HON. THOMAS A. DICKERSON

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

In the Matter of the Foreclosure of Tax Liens by Proceeding In Rem pursuant to Article Eleven of the Real Property Tax Law by TOWN OF MOUNT PLEASANT

2004

Index No. 03-11004

Tax Parcels:

Section 112.12, Block 1, Lot 1.1 (the "Office Building")

Section 112.16, Block 1, Lot 1 (the "Vacant Parcel")

ORDER

The petitioner, Legion of Christ, Inc. (the "Legion"), by its attorneys Shamberg Marwell Hocherman Davis & Hollis, P.C. and Bleakly Platt & Schmidt, having moved by order to show cause for an order seeking to stay all tax lien enforcement proceedings by the Town of Mount Pleasant (the "Town") against property owned by the Legion pending a final adjudication of the following actions: (a) with respect to tax parcel Section 112.16, Block 1, Lot 1 (the "Vacant Lot"), *In the Matter of the Legion of Christ, Incorporated v. The Town of Mount Pleasant, et al.*, Index No. 15524/97 (Supreme Ct. Westchester Cty.) and Docket No. 2001-10123 (2d Dep't) (the "Vacant Lot Litigation"); and (b) with respect to tax parcel Section 112.12, Block 1, Lot 1.1 (the "Office Building Lot"), *In the Matter of the Legion of Christ, Incorporated v. The Town of Mount Pleasant, et al.*, Index Nos. 16316/99,

15849/00, 16306/01, 17076/02, 16853/03 and 16650/04 (Supreme Ct. Westchester Cty.) (the "Office Building Litigation"); and the Town having duly opposed the Legion's motion, and having regularly come on to be heard:

NOW, upon reading and filing the Legion's motion for a stay of all the Town's tax lien enforcement by order to show cause dated November 24, 2004, the Affirmation of John S. Marwell, Esq., with exhibits annexed thereto, in support of motion, dated November 18, 2004, the Affidavit of Fr. Juan Sabadell, L.C. in support of motion, sworn to on November 18, 2004, the Affirmation of Kevin J. Plunkett, Esq., with exhibits annexed thereto, in opposition to motion dated December 9, 2004, the Town's memorandum of law in opposition to motion dated December 9, 2004, the Reply Affirmation of John S. Marwell, Esq., with exhibit annexed thereto, in further support of motion, dated December 15, 2004, and the Court having heard the parties at oral argument on March 4, 2005, and after due deliberation having been held thereon,

NOW, it is

ORDERED that the Legion's motion for a stay of all tax lien enforcement by the Town, as well as other relief, be and the same is denied in its entirety. "It is well established that one challenging a tax assessment must continue to pay his taxes." *W. T. Grant Company v. Srogi*, 52 N.Y.2d 496, 515-516, 438 N.Y.S.2d 761, 770 (1981)(emphasis added). Taxpayers are required to pay a disputed tax prior to challenging the propriety of the tax in a court proceeding. *Welch Foods, Inc. v. Wilson*, 262 A.D.2d 949, 692 N.Y.S.2d 873 (4th Dep't 1999); *Dimovich v. Talev*, 248 A.D.2d 951, 670 N.Y.S.2d 290 (4th Dep't 1998); *Herzog v. Town of Thompson*, 251 A.D.2d 917, 674 N.Y.S.2d 830 (3d Dep't 1998). This has been called the "pay first, litigate later" rule. Commencement of a proceeding under this article shall not stay the proceedings of the assessors or

other persons against whom the proceeding is maintained or to whom the assessment is delivered, to be acted upon according to law. RPTL § 704(3) (emphasis added). The commencement of an assessment review proceeding does not stay the collection of taxes or enforcement procedures instituted by the taxing authority. *W. T. Grant Company*; see also *Matter of the Foreclosure of Tax Liens by Proceeding in Rem Pursuant to Article Eleven of the Real Property Law by the County of Orange*, 278 A.D.2d 416, 717 N.Y.S.2d 375 (2d Dep't 2000); and it is further

ORDERED that the restraint imposed by this Court on November 24, 2004 which stayed the Town's enforcement of its tax liens is hereby lifted, and it is further

ORDERED that the Town may enforce its tax liens on the Vacant Lot and the Office Building Lot to recover all taxes, interest and penalties, and it is further

ORDERED that the time for Petitioner to redeem the tax liens on the property designated as the Office Building Lot (Section 112.12, Block 1, Lot 1.1) and the Vacant Parcel (Section 112.16, Block 1, Lot 1) shall be and hereby is extended to that date which is 45(forty-five) days after service upon Petitioner of a copy of this Order together with Notice of Entry.

ENTER:



Hon. Thomas A. Dickerson, J.S.C.