

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1070

CA 17-00224

PRESENT: CARNI, J.P., LINDLEY, NEMOYER, CURRAN, AND TROUTMAN, JJ.

IN THE MATTER OF LAPC LOFTS, LLC,
PETITIONER-PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

CITY OF BUFFALO DEPARTMENT OF ASSESSMENT
AND TAXATION, CITY OF BUFFALO AND COUNTY
OF ERIE, RESPONDENTS-DEFENDANTS-RESPONDENTS.

GROSS, SHUMAN, BRIZDLE & GILFILLAN, P.C., BUFFALO (JOHN K. ROTTARIS OF
COUNSEL), FOR PETITIONER-PLAINTIFF-APPELLANT.

TIMOTHY A. BALL, CORPORATION COUNSEL, BUFFALO (MELISSA
SANCHEZ-FERNANDEZ OF COUNSEL), FOR RESPONDENTS-DEFENDANTS-RESPONDENTS
CITY OF BUFFALO DEPARTMENT OF ASSESSMENT AND TAXATION, AND CITY OF
BUFFALO.

LIPPES MATHIAS WEXLER FRIEDMAN LLP, BUFFALO (JAMES P. BLENK OF
COUNSEL), FOR RESPONDENT-DEFENDANT-RESPONDENT COUNTY OF ERIE.

Appeal from a judgment (denominated order) of the Supreme Court,
Erie County (E. Jeannette Ogden, J.), dated October 7, 2016 in a CPLR
article 78 proceeding and declaratory judgment action. The judgment
denied the relief sought in the petition/complaint.

It is hereby ORDERED that the judgment so appealed from is
unanimously modified on the law by vacating the declaration and as
modified the judgment is affirmed without costs.

Memorandum: Petitioner-plaintiff (petitioner) purchased an
historic building in Buffalo and converted it into a mixed-use
residential/commercial facility. Petitioner then applied to
respondent-defendant City of Buffalo (City) for a partial property tax
exemption under RPTL 485-a, which incentivizes mixed-use development
(485-a exemption). Petitioner simultaneously applied to respondent-
defendant County of Erie (County) for a partial property tax exemption
under RPTL 444-a, which incentivizes the restoration and adaptive
reuse of historic buildings (444-a exemption). Under the terms of
petitioner's applications, the proposed 444-a exemption would be
applied against the property's County tax obligations; the proposed
485-a exemption, on the other hand, would be applied against the
property's City tax obligations. In accordance with local practice,
both applications were referred to respondent-defendant City of
Buffalo Department of Assessment and Taxation (Department) for review

and determination.

The Department granted petitioner's application for a 485-a exemption, but it later denied petitioner's application for a 444-a exemption. The Department cited RPTL 485-a (4) (d) to justify its determination denying petitioner's 444-a exemption application. Petitioner thereafter commenced the instant hybrid CPLR article 78 proceeding and declaratory judgment action. In the petition/complaint, petitioner sought, inter alia, declaratory relief and an order compelling the Department to grant its 444-a exemption application. Supreme Court declared in favor of respondents-defendants and denied the remaining relief sought by petitioner. Petitioner now appeals.

Preliminarily, we note that, with certain limited exceptions inapplicable here, "the proper vehicle for challenging an allegedly wrongful denial of a partial [property tax] exemption is a tax certiorari proceeding pursuant to RPTL article 7, and not a CPLR article 78 proceeding" (*Matter of Laurel Hill Farms, Inc. v Board of Assessors of Nassau County*, 51 AD3d 794, 795 [2d Dept 2008]; see generally *Hewlett Assoc. v City of New York*, 57 NY2d 356, 364 [1982]). A declaratory judgment action is likewise an inappropriate procedural vehicle for challenging the denial of a partial property tax exemption (see *Cablevision Sys. Dev. Co. v Board of Assessors of County of Nassau*, 49 NY2d 866, 867 [1980]). We therefore convert this hybrid CPLR article 78 proceeding and declaratory judgment action into an RPTL article 7 tax certiorari proceeding, and we modify the judgment by vacating the declaration (see CPLR 103 [c]; see generally *Guthrie v Mossow*, 145 AD3d 1495, 1496 [4th Dept 2016]).

We turn now to the merits of the converted proceeding. RPTL 485-a (4) (d), the provision upon which the Department relied to deny petitioner's application for a 444-a exemption, states in relevant part that a 485-a exemption may not be "granted concurrent with or subsequent to any other real property tax exemption granted to the same . . . real property." Throughout this proceeding, petitioner has advanced only a single ground for invalidating the Department's denial of its 444-a exemption application. Specifically, petitioner contends that subdivision (4) (d) applies only when the taxpayer receives multiple tax exemptions "for taxes in the same taxing jurisdiction -i.e., if the application sought both tax exemptions for City taxes only." Thus, according to petitioner, the Department erroneously denied its 444-a exemption application on the authority of RPTL 485-a (4) (d) because the 444-a application applied only to County taxes, whereas the 485-a application applied only to City taxes.

We reject petitioner's contention. Even assuming, arguendo, that petitioner's construction of subdivision (4) (d) is " 'plausible,' " it is not " 'the only reasonable construction' " of that provision (*Matter of Charter Dev. Co., L.L.C. v City of Buffalo*, 6 NY3d 578, 582 [2006], quoting *Matter of Federal Deposit Ins. Corp. v Commissioner of Taxation & Fin.*, 83 NY2d 44, 49 [1993]). An equally plausible construction is that subdivision (4) (d) bars a 485-a exemption whenever the property has concurrently or previously received another

tax exemption from *any* taxing jurisdiction. Petitioner "has thus failed to sustain its burden of unequivocal entitlement to the exemption it seeks" (*id.* at 583).

Finally, we note that even though RPTL 485-a (4) (d), by its own terms, limits *only* the availability of the 485-a exemption, petitioner does not contend that subdivision (4) (d) is categorically irrelevant to a taxpayer's entitlement to a 444-a exemption and thus could not have justified the Department's denial of its 444-a exemption application. We therefore express no view on that issue.