

## **Absence of Lease or Contract Provision Concerning Payment of Property Taxes Deemed Fatal in Tax Assessment Challenge**

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In New York, in order to be able to challenge real property assessments, one must be “aggrieved.” As interpreted by the courts, this means the assessments have a direct adverse effect on the petitioner. Typically, an owner is “aggrieved.” However, can a lessee who pays property taxes be “aggrieved” and therefore bring an assessment challenge? According to the Court of Appeals, not unless the lessee is legally obligated to pay the property taxes. *See Larchmont Pancake House v. Board of Assessors et al.*, 2019 NY Slip Op 02441, 2019 WL 1440810.

**Facts:** The Larchmont Pancake House (“LPH”) is a family-operated IHOP franchise that was owned, along with the real property it sat on, by Frank and Susan Carfora. Eventually, two of the Carforas’ daughters, Irene Corbin and Portia DeGast, became co-owners of LPH.

Mr. Carfora passed away, leaving the real property to Ms. Carfora, who later died in October 2009. In accordance with the provisions of her will, the real property was transferred to a revocable trust, the Carfora Trust, which remained the owner of the real property for nearly four years. The trust had no ownership interest in LPH. In June of 2013 (after all the grievance filings), the real property was transferred to Ms. Corbin and Ms. DeGast, in accordance with the terms of the trust. In the meantime, LPH continued to operate the franchise and pay all operating costs, including the property taxes.

Administrative grievance complaints challenging the property tax assessments were timely filed by LPH for the tax years 2010, 2011, 2012, and 2013. An authorization signed by Ms. DeGast as president or owner of LPH was attached to each complaint.

The assessments were confirmed by the board of assessment review, which prompted LPH to initiate tax certiorari proceedings, for each of the four tax years, pursuant to Article 7 of the Real Property Tax Law (“RPTL”), which were brought in Westchester County Supreme Court.

Respondents moved to dismiss the actions, claiming that: (1) The Supreme Court lacked jurisdiction since LPH was not the owner of the real property and therefore could not have filed a grievance challenging the assessment; and (2) LPH was not an “aggrieved party” under RPTL § 704(1).

The Supreme Court denied the motion and Respondents appealed. The Appellate Division reversed, agreeing with both of Respondents’ claims. Interestingly, the Appellate Division determined that Ms. DeGast was aggrieved because the tax assessments directly affected her pecuniary interests. However, the Appellate Division held that the Supreme Court lacked subject matter jurisdiction because the grievance must be filed by the owner. Since Ms. DeGast was not the owner, she was not authorized to file the grievance. LPH was granted leave to appeal to the Court of Appeals.

**Ruling:** The identity of an “aggrieved party,” according to the Court, can take two forms: the “quintessential aggrieved party” is the owner of the real property but so is a lessee “who is bound by his lease to pay an assessment.”

Under RPTL Article 7, a taxpayer is deemed “aggrieved” when the assessment has a “direct adverse affect [sic] on the challenger’s pecuniary interest.” In this case, the property tax assessment had only a “remote and consequential impact” on LPH and not the “direct adverse affect” [sic] needed to create standing. LPH did not own the property, the trust did. The Carfora Trust, as the owner, would suffer a “direct adverse affect” [sic] if the property taxes went unpaid.

Of crucial importance to the Court’s holding was the fact that LPH was not “*legally responsible*” (emphasis added) for paying the real estate taxes. The fact that LPH paid the operating costs did not rise to the level of a contractual obligation. Moreover, the Court noted (by way of footnote reference) that LPH never claimed that this “arrangement” ever “... imposed any sort of legal obligation with regard to payment of the real property taxes.”

Since LPH was a “non-owner with no legal authorization or obligation to pay the real property taxes,” it was not an aggrieved party under Article 7 of the RPTL.

The dissent, in a lengthy opinion, found the majority’s conclusion would prevent aggrieved taxpayers from judicial review. Here, the pancake proprietors made a clerical error naming the business and not the trust. Given the remedial nature of the tax law and that there was no prejudice, the technicality should have been overlooked. Correcting the clerical error is consistent with CPLR § 2001. Additionally, the trust, in an affidavit, indicated it would have authorized the proceedings.

**Conclusion:** The lessee must have a legal obligation to pay the real estate taxes in order to be deemed “aggrieved” and therefore have standing to bring an assessment challenge. Absent such an obligation, it is the owner that must bring the challenge. Alternatively, under RPTL § 524(3), an owner of real property may designate the lessee, or another individual, an agent with authority to file the grievance on the owner’s behalf. Such a designation must be in writing and signed, and attached to the grievance. In such an instance, the grievance should name the owner as the petitioner.