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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY

Mala Sundar
JUDGE

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Re: Holy Trinity Baptist Church v. City of Trenton
Block 26802, Lot 4
Docket No. 015909-2014

Dear Counsel,

This letter is the court's opinion after trial in the above-captioned matter. Plaintiff appealed the judgment of the Mercer County Board of Taxation ("County Board") affirming an added assessment of $33,800 (and prorated for 12 months) for tax year 2014, as value of a portion of the improvements of the above-captioned property ("Subject"), specifically, the second floor.

Plaintiff argued that the assessment is void for two reasons. One is that the added assessment cannot apply because as required by N.J.S.A. 54:4-63.2; 4-63.3, there were no additions or improvements made to the Subject. The second is that as established by testimony, the second floor of the Subject was actually being used for religious/charitable purposes as of October 1, 2013 and during the tax year, therefore, should be exempt even if the Subject and the

three apartments on that floor were being prepared for being sale. By its letter of February 7, 2017, plaintiff withdrew its first argument.[1]

Defendant ("City") contended that its deputy assessor did not find any indicia of a religious or charitable use of the second floor of the Subject when he had inspected the same in September 2014. This, in addition to the undisputed evidence that plaintiff had acquired another building in another township on October 23, 2013, and had moved most of its religious activities there, showed that the second floor of the Subject was not being actually used for any tax-exempt purposes. Therefore, imposition of the assessment due to a loss of exemption for a portion of the Subject was proper.

For the reasons stated below, the court reverses the judgment of the County Board of Taxation because the evidence as a whole shows that the second floor was being used for the Church's youth and member meetings albeit on a declining level due to the plaintiff's acquisition of another property. The declining frequency of such events or the undisputed fact that the Subject was being offered for sale, and the second floor was being prepared for such sale, do not establish non-use or abandonment of use of the second floor for plaintiff's tax exempt purposes.

FACTS

The Subject is a two-story building on a corner lot located in the City. The first floor contains pews, a piano, an office, an altar, and a reverend's library. That floor is generally used for services, prayer meetings, and choir rehearsals. The second floor is accessed only by an exterior doorway and stairwell, since the interior stairwell was closed off when the altar was built shortly after purchase. The second floor was originally composed of three apartments connected

[1] The court invited both parties to write post-trial briefs, which would include addressing plaintiff's attack on the validity of using the added assessment procedure. Only plaintiff timely filed a post-trial brief. Subsequently, plaintiff filed a letter withdrawing its argument regarding the added assessment.

by a communal hallway. Each had a kitchen, bedroom, and bathroom. Plaintiff thereafter converted the apartments for various church uses. The first apartment was converted into a fellowship/auditorium hall where the congregation could conduct receptions with food and drinks, which were not allowed in the first floor services area. That apartment still has a functioning stove. The second apartment was designated for youth meetings, with no appliances other than an unconnected stove. The third apartment was used as a town pantry from roughly 1998 to 2011, after which the room has been unused and contains only bare shelves.

On October 23, 2013 plaintiff bought a new property in a different township, and moved its principal church operations to that property. However, the plaintiff continued to offer religious services at the Subject on the first floor portion.

In May 2014, the City's deputy assessor noticed a realtor's For Sale sign on the Subject. After a physical inspection and confirmation with plaintiff's Pastor, Reverend Jean Michaud, Sr., ("Pastor"), and due to plaintiff's purchase of the new property in another township, he determined that the apartments were completely vacant and unused since the assessment date of October 1, 2013. Therefore, the City's chief tax assessor imposed an added assessment for the second floor of the Subject of $33,800 prorated for twelve months, and allocated only to improvements.

The County Board affirmed the added assessment. Plaintiff timely appealed the judgment claiming, as a religious institution, the added assessment was void ab initio.

Plaintiff then filed a motion for summary judgment claiming that the Church's exemption applied to the entire building. In support, it included a certification of its Pastor that the Subject was used for church purposes "at all times during this appeal," and "[a]t no time during the appeal was the property abandoned or used for anything other than supporting the Holy Trinity's exempt purposes." The City opposed the motion with the chief tax assessor's certification that, based upon

the property inspections in September and December of 2014, and confirmation with the Pastor, the second floor of the Subject was vacant and not being used for any purpose since October 2013, and that the Subject was being advertised for sale.

The court denied summary judgment since it found that there was a dispute of material fact, namely, whether the Church's second floor was actually used for the tax-exempt purposes.

At trial, plaintiff provided testimony of the Pastor and his son, Rev. Michaud Jr., as evidence that as of October 1, 2013 and for all of 2014, the entire Subject was used for church purposes, and that the first and second apartments on the second floor were still being used in connection with church receptions and youth meetings. They produced copies of the Church Bulletins (from January 2014 to October 2015), which were announcements of monthly meetings (of the Executive Board and "Regular Members Meeting"). The Bulletins included announcements of the "weekly prayer meeting at the Church Annex" (the Annex being the second floor of the Subject) every Tuesday. The Bulletins for the month of August, October, and November 2014 noted that there was "no weekly prayer meeting at the Church Annex." All the 2014 Bulletins (except for the three months when there were no meetings at the Annex) asked members to "pray for," among others, "the sale of the annex." This request was absent in all of the 2015 Bulletins.

The Pastor's son testified that the fellowship meetings taking place in the first apartment of the second floor of the Subject were integral for the church's mission, and that the meeting space in the second apartment was a "safe haven" for the youth. He conceded that after the new building was purchased in the latter half of October 2013, the services started to migrate away from the Subject, but noted that the new building did not have a "safe haven" room, as did the second floor of the Subject. Once the church began to shift operations to the second building, it moved furniture along with those operations such as the tables and chairs from the auditorium on

the second floor. However, he stated, the Subject still had pews, hymnals, books, and the altar in the lower level and still held some services in its lower level. Similarly, he stated, whenever the first floor sanctuary was in use, other meetings would have to take place on the second floor. For example, while the prayer meetings occurred weekly in the lower level, the youth meetings would be held in the second floor or the children of the congregation members gathered on the second floor rooms. He stated that he was aware of youth or other Church member activity on the second floor when he conducted music rehearsals on the first floor, but overall he was not physically present for most functions held on the second floor. The Pastor's son also testified that the last time he visited the second floor was during a walkthrough with a prospective buyer in late 2014, at which time the youth meeting room still had chairs but no tables.

The Pastor testified that the second floor was at all times used only for the Church's religious or charitable purposes. He confirmed that in 2014, weekly services continued to be held in the lower level of the Subject, and the second floor was still used for youth meetings, receptions, and storing books.

The City relied upon testimony of its deputy assessor who stated that he saw a realtor's "For Sale" sign on the Subject in May 2014, and set up an appointment with the Pastor for an inspection. That inspection occurred in September 2014 with the Pastor. He described the three apartments on the second floor, and that he saw no chairs, no books, no food, no cans of food, but only a ladder and some paint supplies. Based on his inspection and conversation with the Pastor, he determined that the second floor was vacant at that time and had been since October 2013. He reported his inspections and conclusions therefrom to the City's chief tax assessor, who imposed the added assessment.[2]

[2] The City did not produce the chief tax assessor as a witness.

ANALYSIS

N.J.S.A. 54:4-3.6 provides local property tax exemption for "all buildings actually used in the work of associations and corporations organized exclusively for religious purposes, including religious worship, or charitable purposes." However, "if any portion of a building . . . is otherwise used for purposes which are not themselves exempt from taxation, that portion shall be subject to taxation and the remaining portion shall be exempt from taxation." Ibid. "There can be no de facto granting of tax exempt status simply because" the property had enjoyed an exemption "in the past." Phillipsburg Riverview Org., Inc. v. Township of Phillipsburg, 26 N.J. Tax 167, 174 (Tax 2011), aff'd, 27 N.J. Tax. 188 (App. Div. 2013).

The only prong of the statute that is contested is the "actual use" of the second floor of the Subject. It is undisputed that plaintiff acquired the second building on October 23, 2013, after the assessment date. It is also undisputed that plaintiff started to migrate its operations to the new building, which included moving furniture from the second floor of the Subject. It is also clear from The Bulletins that starting January 2014, plaintiff desired to sell the second floor (aka the Church Annex). The testimony of the deputy tax assessor is credible that in September of 2014, the second floor was vacant and in the process of being prepared for its intended sale. However, his testimony of what the second floor looked like in September 2014 is not conclusive of the activities taking place prior to that date, or after that date. Rather, the testimony proffered by plaintiff was unrefuted that the two rooms on the second floor were used to hold prayer and youth meetings, but on a diminished scale due to acquisition of the new building. The Bulletins show that the Annex (the second floor of the Subject) was always available for, and had scheduled

weekly meetings. There was nothing to show that the Plaintiff shut its doors to future youth meetings or other gatherings in connection with its religious/charitable purposes.

Therefore, the court is unpersuaded by the City's argument that the second floor of the Subject was in a complete state of non-use as of October 1, 2013 and through 2014. Taking all of the evidence as a whole, the court finds that the Subject's second floor had some religious and/or charitable purpose related activities as of October 1, 2013 and thereafter through the 2014 calendar year, even if the same were declining progressively due to acquisition of another building by plaintiff. While an intention to use property in the future for a charitable or religious use does not warrant a tax exemption, see Holy Cross Precious Zion Glorious Church of God v. City of Trenton, 2 N.J. Tax 352, (Tax 1981), an intention to sell, or prepare a previously tax-exempt building for sale, does not necessarily destroy the tax exemption. See City of Hackensack v. Bergen County, 405 N.J. Super. 235 (App. Div. 2009) (building did not lose its tax-exempt status during the period it attempted to sell the property through a real estate broker and removed certain items to increase the property's marketability). Similarly, the declining amount of use of the second floor does not require a conclusion that this portion should not be tax-exempt. See Borough of Hamburg v. Trustee of Presbytery of Newton, 28 N.J. Tax 311, 319-20 (Tax 2015) (occasional use of building for storage of goods used in furtherance of religious and charitable purposes qualified the same for tax exemption).

CONCLUSION

Based on the testimony and evidence presented, the court finds that the use of the second floor of the Subject (the Church Annex) for charitable or religious purposes did not cease, and the second floor was not in a state of non-use as of October 1, 2013, or for any portion of 2014. The

judgment of the County Board is therefore reversed consistent with the accompanying order issued this day.

Very truly yours,

Mala Sundar, J.T.C.