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Forsgate Ventures IX, LLC v. Township of South Hackensack

Superior Court of New Jersey, Appellate Division

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This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2943-15T2

FORSGATE VENTURES IX LLC,¹

Plaintiff-Appellant,

v.

TOWNSHIP OF SOUTH HACKENSACK,

Defendant-Respondent.

Argued March 6, 2018 – Decided April 6, 2018

Before Judges Reisner, Hoffman, and Mayer.

On appeal from Tax Court of New Jersey, Docket
Nos. 7671-2009, 6473-2011, and 2984-2012,
whose opinion is reported at 29 N.J. Tax 28
(Tax 2016).

Nathan P. Wolf argued the cause for appellant
(Raymond A. Koski & Associates, PC, and Law
Office of Nathan P. Wolf, LLC, attorneys;
Nathan P. Wolf and Chad E. Wolf, on the
briefs).

Donald J. Lenner argued the cause for
respondent (Gittleman, Muhlstock &
Chewcaskie, LLP, attorneys; Steven D.
Muhlstock, on the brief).

¹ We list plaintiff's name as it appears in the Tax Court judgments
and in plaintiff's briefs.

PER CURIAM

Forsgate Ventures IX LLC (plaintiff) appeals from three February 5, 2016 Tax Court judgments affirming the property tax assessments on its property in South Hackensack. The Tax Court judge set forth the reasons for those judgments in a published opinion, Forsgate Ventures IX, LLC v. Twp. of South Hackensack, 29 N.J. Tax 28 (Tax 2016). We affirm.

On this appeal, plaintiff presents the following points of argument:

I. HIGHEST AND BEST USE

II. STANDARD OF REVIEW OF TAX COURT DECISIONS
PREDICATED ON APPROVALS GRANTED BY THE
MUNICIPAL PLANNING BOARD AND RELATED ERRORS

III. THE FINDING THAT THE HIGHEST AND BEST USE
WAS RETAIL IS A QUESTION OF LAW OR APPLICATION
OF LAW TO PROVEN FACTS AND THE TAX COURT'S
RULING IS ENTITLED TO NO DEFERENCE

IV. THE TAX COURT'S FINDINGS OF FACT ARE
ARBITRARY, NOT SUPPORTED BY SUBSTANTIAL
CREDIBLE EVIDENCE, AND OVERLOOK AND UNDER
EVALUATE CRUCIAL EVIDENCE PRECIPITATING A
MANIFESTLY UNJUST RESULT

While presented in multiple points, plaintiff's argument is limited to one central contention: that the Tax Court judge erred in his determination of the highest and best use of the property. Accordingly, we limit our review of the Tax Court's decision to that issue.

To put the issue in context, both sides presented real estate experts, who agreed that the highest and best use for the property as improved was its current use. However, they disagreed on how to characterize that use for valuation purposes. Plaintiff's expert characterized the use as an industrial warehouse. As a result, in his valuation, he chose comparable properties that were used strictly as warehouses, resulting in a relatively low valuation. Defendant's expert opined that the use was a "warehouse discount store," which was more analogous to a large discount retail store than to a warehouse. In his analysis, he used large discount stores as comparable properties, resulting in a higher valuation.

The Tax Court judge concluded that plaintiff's expert was not credible and had "turned a blind eye to the actual use of the property." As a result, plaintiff failed to carry its burden of proof in the tax appeals.

The judge considered that the property was not merely used to store merchandise, as a warehouse would be.² Rather, the property housed a cash-and-carry wholesale operation called Restaurant Depot, which sold food and equipment to restaurants and

² The interior was also entirely air-conditioned, which was not typical of a warehouse.

other customers.³ The operation served about 800 customers a day. The judge found that "[c]ustomers drive their vehicles to the subject property, park, enter the premises, load their carts or dollies with goods, pay for them at checkout counters, and remove them from the premises with their own vehicles." The judge reasoned that those were "retail characteristics that are typically found in a large discount retail facility, not industrial/warehouse properties."

The court also considered that the premises had considerably more parking than a warehouse would need, although somewhat fewer spaces required for a traditional retail property. The property had both indoor and outdoor parking. The judge noted that the "increased levels of consumer traffic" associated with the use necessitated amended site plan approval to address the additional need for parking. The additional customer traffic also caused the local fire official to reclassify the building and require it to meet more stringent safety standards.

The judge concluded:

The increased levels of consumer traffic and the concerns stemming therefrom leads this court to believe the subject property's highest and best use as improved is tantamount to a large discount retail store. While the

³ On cross-examination, the company's chief operating officer admitted that the company website sometimes described the facility as a "store."

number of parking spaces is one valid consideration, it does not hold enough weight to persuade the court.

The judge also reasoned that for zoning purposes, the property was in the "C District," which permitted both wholesale and retail sales of restaurant supplies and equipment. The judge credited defendant's expert's opinion "categorizing the actual use of the subject property as a large discount retail store"

By contrast, the judge found that, in looking for comparable sales, plaintiff's expert improperly focused only on industrial warehouses, which were "not comparable to the subject property." He concluded that, "[p]laintiff's industrial/warehouse leases are not substantially similar to the subject property because they do not share the same highest and best use. This is a fatal difference that cannot be overcome by any number of adjustments."

Our review of the Tax Court's decision is limited. "In reviewing a Tax Court decision, we take into account the special expertise of Tax Court judges in matters of taxation." Dover-Chester Assocs. v. Randolph Twp., 419 N.J. Super. 184, 195 (App. Div. 2011). "The findings of the Tax Court will not be disturbed if supported by 'adequate, substantial and credible evidence' in the record." Ibid. (quoting Rova Farms Resort, Inc. v. Inv'rs Ins. Co., 65 N.J. 474, 484 (1974)). However, we review legal issues de novo. Ibid.

After reviewing the record, we find that the Tax Court's decision as to the highest and best use of the property is entitled to our usual deference, because it is supported by substantial credible evidence. With the exception of the following brief comments, defendant's appellate arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Plaintiff contends that, in evaluating the property's actual use, the Tax Court should have given greater consideration to the local planning board's characterization of the property when it issued land use approvals for the facility. We find this unpersuasive. Like the Tax Court, the planning board recognized that the facility was not being used as a storage warehouse, but rather was being used as a wholesale facility open to the public. We review a trial court's evidentiary rulings for abuse of discretion, and we find no abuse of the Tax Court judge's discretion in declining to review the transcripts of the board hearings. See Griffin v. City of E. Orange, 225 N.J. 400, 413 (2016). The board's function was to determine whether the property's site plan conformed to the local zoning code, not to determine the property's valuation for tax purposes.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION