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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

SECOND GENESIS HOMES, INC. Petitioner	)	
v.	)	Tax Docket No. 8354-04 Judge José M. López
DISTRIC OF COLUMBIA Respondent	)	

ORDER

The Court has considered Petitioner's Motion for Summary Judgment and Memorandum of Points and Authorities filed on February 8, 2006, and Respondent's Opposition filed on February 23, 2006. The petitioner sought tax exemption status of the real property located at 1318-1320 Harvard Street, NW, square 2855, lot 79 ("Property"). For the reasons below, the Court grants Petitioner' motion for summary judgment.

FACTUAL SUMMARY AND PROCEDURAL POSTURE

Second Genesis, Inc. ("SGI") previously owned the Property to conduct a nonprofit substance abuse treatment program that served mainly D.C. residents and affected primarily the District. The Internal Revenue Service ("IRS") granted SGI a federal income tax exemption status under the Internal Revenue Code ("IRC") section 501(c)(3), and the District of Columbia granted SGI a real property tax exemption status for the Property under D.C. Code § 47-1002(8).

In 1999, Second Genesis Homes, Inc. ("SG Homes") acquired the Property from SGI, and leased the building back to SGI to continue running its substance abuse treatment program. The IRS exempted SG Homes under IRC § 501(c)(2) as an organization holding title to property that transfers all the income from the property to another organization that itself is exempted under § 501(c). SG Homes neither operated nor organized its business for private gain. By its

articles of incorporation, SG Homes cannot carry on any activity that a corporation exempt under IRC § 501(c)(3) cannot carry on. In 2000, SG Homes sought real property exemption status for the Property under D.C. Code § 47-1002(8) as SGI previously had. In 2004, however, the District's Office of Tax and Revenue ("OTR") denied the request on the ground that SG Homes was not and is not a public charity. SG Homes timely petitioned this Court for review.

STANDARD OF REVIEW

Summary judgment is proper when neither party shows a genuine issue of material fact. Super. Ct. Civ. R. 56(c). The moving party has the burden of demonstrating both the absence of a genuine issue of material fact and the entitlement to judgment as a matter of law. *Griva v. Davidson*, 637 A.2d 830, 836 (D.C. 1994) (citing *Holland v. Hanna*, 456 A.2d 807, 815 (D.C. 1983)). To overcome summary judgment, the opposing party must provide admissible evidence demonstrating the existence of a genuine issue of material fact. *Nader v. de Toledano*, 408 A.2d 31, 48 (D.C. 1979), *cert. denied*, 444 U.S. 1078 (1979).

The parties do not dispute the facts of the case, but disagree on the legal conclusions from those facts. Thus, summary judgment is appropriate.

ANALYSIS

The D.C. Code § 47-1002(8) (Supp. 2000) governed exemptions from real property taxation of the property at issue. This section of the statute exempt real property taxation for

> [b]uildings belonging to and operated by institutions which are not organized or operated for private gain, which are used for purposes of public charity principally in the District of Columbia.

D.C. Code § 47-1002(8) (Supp. 2000). Concurrence of ownership and use is not required. *Catholic Home for Aged Ladies for Life, Inc., v. District of Columbia*, 82 U.S. App. D.C. 195,

161 F.2d 901 (1947); *L'Arche Homes for Life, Inc., v. District of Columbia*, Tax Docket No. 8515-04, at 4 (D.C. Super. Ct. August 30, 2005).

In a Joint Statement of Stipulated and Undisputed Material Facts filed on February 8, 2006 ("Stipulated Material Facts"), the parties agree that SGI's "use" of the Property is for purpose of public charity principally in the District of Columbia and satisfies the second prong of D.C. Code § 47-1002(8). (Stipulated Material Facts ¶ 2.) However, the parties disagree on whether SG Homes' ownership of the Property qualifies section 47-1002(8) exemption.

The District argues that the owner of a property under section 47-1002(8) not only has to be organized not for private gain but also be a public charity. (Resp't Opp. at 2.) Under federal income tax law, charitable organizations are classified under IRC § 501(c)(3), distinguishing from section 501(c)(2) that exempts corporations holding title to property from which the corporation collects income and turns over the entire after-expense-income to an organization that is exempt under section 501(c). (Resp't Opp. at 1.) Since SG Homes has been classified under IRC § 501(c)(2) (Stipulated Material Facts, Ex. G), the OTR ruled SG Homes not a public charity and denied the Property section 47-1002(8) status. (Stipulated Material Facts, Ex. O; Resp't Opp. at 2.)

The Petitioner argues that the plain meaning of D.C. Code § 47-1002(8) is inconsistent with the OTR's ruling. (Pet'r Mem. of P. & A. at 4.) The Petitioner asserts that neither the statute or regulation nor the case law applicable in 2000 when the Petitioner sought exemption status required that the owner of the property be a "public charity". (*Id.* at 6.) SG Homes should qualify because it is a "charitable institution" that is "not organized or operated for private gain" and is a nonprofit institution with an IRC § 501(c) tax exempt status. (*Id.*)

The District relies on *Catholic Home* for support that "both the owner and user of the property were charitable organization and the court placed great weigh on that fact . . ." (Resp't Opp. at 2.) But the court's reading of the statute and its legislative history did not go as far as the District would like to infer. In that case the court said, "everything [in the legislative history] indicates that the *use* of the property by charity should be the controlling factor", *Catholic Home, supra*, 82 U.S. App. D.C. at 198, 161 F.2d at 902 (emphasis added), and "property belonging to and operated by institutions not organized or operated for private gain" was literally within its statutory language of D.C. § 47-1002(8) (Supp. 2000), formerly D.C. Code § 47-801a(h) (Supp. 1946). *Id.*; *District of Columbia v. Catholic University of America*, 397 A.2d 915, 920 (D.C. 1979). The *Catholic Home* court emphasized the charitable element only in the "use", it did not impose that requirement on ownership. The statute plainly reflects this reading. The first clause of section 47-1002(8) describes the buildings as belonging to and operated by institution not organized or operated for private gain, and the second clause of section 47-1002(8) describes the building as used for purposes of public charity principally within the District of Columbia. The Court is rather persuaded by *L'Arche Homes*, a recent case quite similar to the instant one, Judge Burgess unambiguously stated, "[t]he second clause does not require that the owner of the building be a 'charitable organization.'" Tax Docket No. 8515-04, at 5 (D.C. Super. Ct. August 30, 2005).

Perhaps the District took from the *Catholic Home* that "[a] more logical construction is that there must be use by a charitable organization and ownership by a charitable organization." *Supra*, 82 U.S. App. D.C. at 198, 161 F.2d at 902. Again in *L'Arche Homes*, the trial court convincingly discussed at length that the point that the District of Columbia Court of Appeal tried to make was to reject the District's idea that concurrence of ownership and operation was

necessary. Tax Docket No. 8515-04, at 6 (D.C. Super. Ct. August 30, 2005). *Catholic Home* did not introduce a new term in the statute, and it did not require a building for which an exemption is sought be owned by a "charitable institution." *Id.* Rather, the term "charitable institution" could "either be an institution that is not organized or operated for private gain, or an institution that uses a building to perform acts of public charity to benefit the District." *Id.* The fact that the petitioners in *Catholic Home* and *L'Arche Homes* both were incorporated charities did not somehow create a new gloss on the plain meaning of the statute. This is evident from the court's reasoning in both *Catholic Home* and *L'Arche Homes* that relied on the not-for-profit nature of the ownership and not on their charitable status.

The District urges the Court to give great deference to its agency's interpretation of the statute and the regulation. *See District of Columbia v. Pierce Associates, Inc.*, 440 A.2d 325 (D.C. 1981). The District's OTR was well within its reasonable authority to promulgate a regulation interpreting D.C. Code § 47-1002 (8) and should be recognized by this Court as controlling. (Resp't Opp. at 2.) The Court, however, finds no inconsistency between the statute and the regulation.

The District urges the Court to apply 9 D.C.M.R. § 322.1(b)(1) (2001) that provides,

> "[u]nder D.C. Official Code § 47-1002(8) a charitable institution owns the real property and a charitable institution uses the real property; provided that if each institution both owned and used the real property, the real property would be eligible for exemption from real property taxation."

There is no question that SG Homes would qualify. SG Homes is "not organized or operated for private gain" as defined by 9 D.C.M.R. § 322.1(c) (2001), and SG Homes may only carry on activities that only IRC § 501(c)(3) corporation may carry on. (Stipulated Material Facts ¶ 4, Ex. F.) If SG Homes were to operate and use the building directly, in place of SGI, as a substance

abuse treatment facility, SG Homes would have undoubtedly qualify for tax exemption just as SGI was qualified prior to transferring title of the Property to SG Homes. If SGI were to remain the entity that runs the substance abuse treatment services, SG Homes would still be "operating and using" the building for charitable purposes by "leasing" the building to SGI for charitable uses.

The District argues that only an IRC § 501(c)(3) organization performs charitable work, implying that SG Homes cannot because it is a section 501(c)(2) entity. (Resp't Opp. at 1.) The Court is of the opinion that to use federal 501(c) taxation status misrepresents the meaning of the statute and the intent of the legislature. It is true that SG Homes cannot qualify for section 47-1002(8) if its use were to lease the building to an organization that operates a business for non-charitable or for-profit purpose. However, a 501(c)(3) organization similarly cannot qualify for section 47-1002(8) if it were to lease a building or a portion of its building to a non-charitable or for-profit business. *See also Catholic University of America, supra*, 397 A.2d at 917 (the portion of the property leased to another non-profit school was held to be tax exempt, while the portion leased to a profit-making entity was disqualified). On this point Congress was clear, "where a rent or income of any character is derived from any building or any portion thereof, or grounds, belonging to such institutions or organizations for any activity contrary to that purpose for which exemption is granted then such property shall be assessed and taxed." *See* H.R. Rep. No. 2635, 77th Cong., 2d Sess. (1942)). Thus, it is not the literal reading of the federal income exemption classification of the owner of a District property that decides whether a District property is used for charity, rather it depends on what the owner of the property put it to actual use. This is what the legislature intended.

The bill leading to D.C. Code § 47-1002 "embraces four classes of property which would be exempt under its terms – property which is devoted to education, with respect to which no profit inures; property which is devoted to religious purposes, with respect to which no profit inures; property devoted to charity, with respect to which no profit inures; and property which is devoted to science." *Catholic Home, supra*, 82 U.S. App. D.C. at 196-97, 161 F.2d at 901-02 (quoting 88 Cong. Rec. 9485 (1942)). Congress was not so concerned about who should own the building, rather it was focused on how the building would be used – for charity without private enrichment. *See also L'Arche Homes for Life, Inc., v. District of Columbia*, Tax Docket No. 8515-04, at 10 (D.C. Super. Ct. October 26, 2005). It would seem to this Court that to insist on a more stringent requirement that the ownership be a charity, or a public charity for that matter, would contradict the legislative intent of embracing non-profit charitable works.

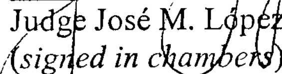
The court in *Catholic Home* captured the essence of the point when it said, "if we look through the shadow to the *substance* we find that both [institutions] are, except in name, one and the same, though separately organized to accomplish each its specific purpose- in both instances- not profit but only charity." *Supra*, 82 U.S. App. D.C. at 199, 161 F.2d at 902 (emphasis added). As here, the Court is not distracted by the IRC § 501(c)(2) classification that SG Home holds, but is of the opinion that it was organized to operate not for private gain and has been using the building for charitable purpose through SGI. Accordingly, SG Homes satisfies both clauses of section 47-1002(8) and should be exempted.

Lastly, the District argues that its interpretation of the statute is consistent with case law seeking "to avoid the situation in which a non profit organization that is exempt from federal income taxation, such as a business league (IRC § 501(c)(6)) or a social club (IRC § 501(c)(7)), owns a property, rents it to a public charity and claims a property tax exemption." (Resp't Opp.

at 3.) As the Court discussed, the federal income tax exemption status is not determinative of whether an institution owning a building and leasing it for charitable use may or may not qualify for the District's property tax exemption. If a business league or a social club were not organized or operated for private gain under the District of Columbia Nonprofit Corporation Act (D.C. Official Code § 29-301.01, *et seq.*) in compliance with 9 D.C.M.R. § 322.1(c), the Court sees no reason why it would not satisfy the first clause of D.C. Code § 47-1002(8) and could not be exempt if it were able to meet the public charity requirement of the second clause.

Accordingly, for the foregoing reasons, the Court hereby GRANTS the Petitioner's Motion for Summary Judgment.

It is so **ORDERED** on this 12 day of May 2006.



Judge José M. López
(signed in chambers)

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