SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

L'ARCHE HOMES FOR LIFE, INC.	:	
Petitioner	:	
v.	:	Tax Docket No. 8515-04
DISTRICT OF COLUMBIA	:	
Respondent	:	

MEMORANDUM AND ORDER

Before the Court are Respondent's Motion to Alter or Amend Judgment, and petitioner's response.[1]

L'Arche Homes argues that the Court has no jurisdiction to decide the motion. It contends that the motion was filed too late under Super. Ct. Tax R. 9(a), which requires any motion to alter or amend judgment no later than 30 days after entry of judgment. The order granting summary judgment was docketed from this Court's chambers on August 29, 2005. The instant motion was filed on September 30,

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[1] The Court hereafter will use the nomenclature used in its prior memorandum.

more than 30 days from the date on which the order was docketed. L'Arche Homes argues, therefore, that the motion is too late and the Court has no jurisdiction to decide it.

A judgment is "entered" when the clerk notes it on the case docket. Affordable Elegance Travel, Inc. v. Worldspan, L.P., 774 A.2d 320, 330 (D.C. 2001). In the present case, the clerk did not docket the judgment; the order was "docketed from chambers." Moreover, it was not mailed by the clerk; it was mailed from chambers. Accordingly, the time did not begin to run from the mailing of the order. Samuels v. United States, 435 A.2d 392, 394 (D.C. 1981) (mailing from chambers cannot serve as substitute for clerk's certification of mailing).[2]

Even if the judgment were considered to have been entered, the District's motion still is not late. L'Arche Homes acknowledges that three days are added when a judgment is entered outside the presence of the parties and mailed to them. Super. Ct. Civ. R. 6(e), made applicable to tax proceedings by Super.

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[2] The Court will order the clerk to docket the orders denying and granting summary judgment and mail them to the parties.

Ct. Tax Rule 3(a). Rule 6(e) is not limited to short time periods such as those found in Super. Ct. Civ. R. 59(e), as L'Arche Homes would suggest. Accordingly, the District's motion is timely, and the Court proceeds to the merits.

The District reiterates arguments already made, and adds authorities on which it did not rely the first time the Court considered the issues involved in this case. The Court considers these arguments in turn.

The District cites The Sisters of the Good Shepherd v. District of Columbia, 746 A.2d 310 (D.C. 2000), on which it relied in its memorandum in support of summary judgment. The issue in Good Shepherd involved interpretation of D.C. Code § 47-1002(10). That statute provides an exemption from real property taxation for

> [b]uildings belonging to and operated by schools, colleges, or universities which are not organized or operated for private gain, and which embrace the generally recognized relationship of teacher and student[.]

In Good Shepherd, the entity that operated the property, Levine School of Music, was a school. The entity that owned the property and leased it to Levine, Sisters of the Good Shepherd, was not a school, college or university; it was a religious institution.

The District, arguing that the meaning of the statute was unambiguous, contended that to qualify for exemption the property had to be both owned and operated by a school, college or university. The Court found the language of the statute ambiguous, and consulted other provisions of the statute and the legislative history. It noted that both Levine and Good Shepherd would qualify for exemption if they either owned the property and leased it to another entity, or leased the property from another entity, so long as the other entity was the "same type of non-profit." Id. at 314. If found anomalous and contrary to legislative intent a conclusion that either would lose the exemption it leased to or from a different type of non-profit. Id. In the legislative history, it found "nothing . . . which

would show that Congress intended to deny a tax exemption where the property is both owned and used by the types of entities exempt from taxation under the statute simply because the owner and user would qualify ordinarily under different sections of the statute." Id. at 313.

The District derives from Good Shepherd a holding that "concurrence of ownership and use is not a condition for real property tax exemption in the particular context of a nonprofit, charitable institution-owner of real property which leases that property to another charitable institution-user of the property with in the meaning of paragraph 8 [i.e., § 47-2002(8)]. Good Shepherd, however, did not construe § 47-2002(8). More specifically, it did not construe "institutions which are not organized or operated for private gain," which is the operative language in the present case. It is true that in Good Shepherd both the institutions involved would have qualified, under different subsections of the statute, if they both owned and operated the building. In divining legislative intent in using

the word "and" in D.C. Code § 47-1002(10), the Court reasoned that Congress did not intend to deny exemption to such an institution simply because it leased from or to another type of non-profit that would qualify under another section. The court in Good Shepherd did not hold, as the District argues, that for purposes of § 47-1002(8) a building does not qualify for exemption if it is owned by a non-profit the sole purpose of which is to lease the property to another non-profit for use "for purposes of public charity principally in the District of Columbia." Nor does Good Shepherd imply such a conclusion.

The District relies on District of Columbia v. Catholic University of America, 397 A.2d 915 (D.C. 1979) for the proposition that the statute must be interpreted "in light of the gloss that case law has place upon it." The Court does not disagree with this basic proposition. The Court disagrees with the District's argument that Good Shepherd puts a "gloss" on the specific issue in this case that arises under D.C. Code § 47-1002(8). In Catholic University of America, by contrast, the analogous cases involved

the issue of concurrent ownership, though raised in the context of a subsection different from that at issue in Catholic University of America.

The regulation the District now cites, D.C. MUN. REGS. tit. 9, § 322.1(b)(1)(2001), according to the District, embodies the holding of Good Shepherd. The pertinent parts of the regulation are as follows:

> Real property shall meet the following conditions to be eligible for exemption from real property taxation under D.C. Official Code § 47-1002(4) through (19):
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> * * * *
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> (b) Concurrence of ownership and use of the real property shall be required of the owner seeking exemption from real property taxation, except in the following situations and subject to the applicable limitations of the relevant subsections of D.C. Official Code § 47-1002:
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> (1) Under 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; or

(2) Under D.C. Official Code § 47-1002(10) a school, college or university owns the real property and a school, college or university 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.

(c) The phrase "not organized or operated for private gain" shall mean a corporation organized under the District of Columbia Nonprofit Corporation Act (D.C. Official Code § 29-301.01, et seq.), or such similar provision of a foreign jurisdiction.

* * * *

The District argues that the Court must give deference to this regulation and the agency's interpretation of it. District of Columbia v. Pearce Associates, Inc., 440 A.2d 325, 330 (1981). This argument is not open to the District on this motion to alter or amend judgment because the District did not make it in connection with the Court's consideration of the motions for summary judgment.

Dist. No. 1 v. Travelers Casualty and Surety Co., 782 A.2d 269, 278-279 (D.C. 2001).

In any event, however, the regulation does not change the result in this case. First, as L'Arche Homes argues, L'Arche Homes would qualify if it used the property for purposes of public charity principally in the District of Columbia. L'Arche Homes is "not organized or operated for private gain," D.C. MUN. REGS. tit. 9 § 322.1(b)(1)(c), if it operated the property for purposes of public charity principally in the District of Columbia, it "would be eligible for exemption from real property taxation" pursuant to § 47-2002(8). Second, to the extent that the regulation is interpreted to support the District's position here, the Court, for the reasons already stated, is of the opinion that the regulation misinterprets the holding of Good Shepherd, and applies it to D.C. Code § 47-2002(8) in a manner that is inconsistent with the plain language of the statute. Dell v. Dept. of Employment Servs., 499 A.2d 102, 106 (D.C. 1985).

The District argues that the Court has adopted an "expansive construction" of the statute. The Court does not consider adherence to the meaning of the words of the statute an expansive reading. Moreover, the District has brought to the Court's nothing in the legislative history that argues against the Court's construction of the statute. It may be that the legislative history does not disclose that Congress had in mind the precise situation facing the Court here, where the owner itself conducts no activity except to lease property for use for charitable purposes in the District of Columbia. But, as illuminated in Catholic Home for Aged Ladies v. District of Columbia, 82 U.S. App. D.C. 195, 196, 161 F.2d 901, 902 (1947), Congress was concerned with ensuring that the property not be used for private gain, and it certainly is a fact in this case that the property is not used for private gain, either L'Arche Home's or L'Arch's, since both entities are not-for-profit organizations. The Court therefore sees nothing in the legislative history that would

cause it to depart from the meaning of the words used in the statute.

For the foregoing reasons, it is **ORDERED** that Respondent's Motion to Alter or Amend Judgment is **DENIED.**

It is **FURTHER ORDERED** that the clerk docket this Memorandum and Order, and the order granting summary judgment dated August 29, 2005, and cause those orders to be mailed to the parties by first class mail, noting on the docket the date of mailing.

SIGNED IN CHAMBERS

October 26, 2005

A. Franklin Burgess, Jr.
Judge

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