

Trinity Baptist Church

v.

City of Concord

Docket No.: 24505-08EX

ORDER AND HEARING NOTICE

At the beginning of the noticed hearing of the “Taxpayer’s” partial denial of an RSA 72:23, III religious exemption on February 11, 2010, the Taxpayer’s attorney, Bryan K. Gould, Esq., made a verbal “Motion” that the “City’s” evidence be subject to the doctrine of collateral estoppel on the issues litigated in the prior 2006 appeal. The board had issued a “Decision” in Docket No. 22564-06 on April 8, 2008 and an “Order” responding to the city’s motion for reconsideration on July 21, 2008. The issue raised by Attorney Gould as being subject to collateral estoppel was the board’s rulings in both the Decision and Order that occupancy of residences adjacent to the Taxpayer’s church and school by pastors, teachers, interns and visiting missionaries was “consistent with the mission of the Taxpayer and [the residence] is owned, used and occupied for religious purposes and is entitled to a religious exemption....” Decision at 4. After hearing both parties’ arguments and considering the City’s offer of proof as to any factual differences between the 2006 and 2008 tax years, the board granted the Taxpayer’s Motion. This order memorializes the board’s ruling and the basis for it.

The concept of collateral estoppel and the conditions to be satisfied for it to control are summarized in the recent supreme court's decision.

“Spurred by considerations of judicial economy and a policy of certainty and finality in our legal system, the doctrine[] of . . . collateral estoppel [has] been established to avoid repetitive litigation so that at some point litigation over a particular controversy must come to an end.” Cook v. Sullivan, 149 N.H. 774, 777 (2003) (quotation omitted). Thus, “[t]he doctrine . . . bars a party to a prior action . . . from relitigating any issue or fact actually litigated and determined in the prior action.” Id. at 778 (quotation omitted). The burden of proving estoppel is on the party asserting it. Appeal of Stanton, 147 N.H. 724, 730 (2002). We will uphold the trial court's ruling unless unsupported by the evidence or legally erroneous. Cardinal Dev. Corp. v. Town of Winchester Zoning Bd. of Adjustment, 157 N.H. 710, 715 (2008).

Three basic conditions must . . . be satisfied before collateral estoppel will arise: the issue subject to estoppel must be identical in each action, the first action must have resolved the issue finally on the merits, and the party to be estopped must have appeared as a party in the first action

Cook, 149 N.H. at 778 (quotation omitted).

In re Zachary G., 159 N.H. 146, 151 (2009).

The board finds all three conditions of collateral estoppel have been met in this appeal. The issue of whether use and occupancy of certain church owned residential properties by pastors, teachers, interns and missionaries qualified as a religious use was fully litigated and ruled upon by the board in the Decision and Order. The differences the City noted in its offer of proof between the evidence presented at the 2006 hearing and what it intended to present in the 2008 appeal were not different in kind from the testimony and evidence presented at the 2006 hearing. Rather, it appears to be simply an attempt by the City to “sharpen the pencil to a finer point” and to relitigate the same issues heard and decided earlier. Because the City had filed a motion for reconsideration of the 2006 Decision, it could have appealed, pursuant to RSA 541:6 and RSA 71-B:12, to the supreme court but chose not to. Thus, the board concludes the issue the City wishes to raise in defending its 2008 partial denial of the Taxpayer's exemption is the same as that raised in the 2006 action.

The City argues that each tax year gives rise to a “separate” action. While that may be generally true, the board concludes that fact does not negate the application of collateral estoppel because collateral estoppel inherently entails two separate actions. (See In re Zachary G. distinguishing actions as: “prior action,” “first action,” “each action.”) Further, as the board noted in its verbal bench ruling, the “separate action” concept in taxation is generally applicable in the determination of proportionality in ad valorem taxation where the property rights may be identical from one tax year to the next but the issue to be determined is proportionality relative to market value which can and commonly does vary from year to year. Thus, a finding of a certain assessed value in a prior year is not binding on a subsequent year. Appeal of New Realty Holding Trust, 128 N.H. 795 (1986). Here, however, the City’s assessing determination is not one of market value proportionality but determination of whether the Taxpayer’s property is owned, used and occupied for religious purposes based on the criteria contained in RSA 72:23, III. Thus, barring an appeal to the supreme court, the ruling by the board in a prior action should bind the parties in subsequent tax years if the exemption statute remains the same and the Taxpayer’s eligibility as a religious entity and its use of the Property remains the same from one tax year to the next. The board recognizes RSA 72:23-c requires religious organizations (and educational and charitable institutions) to annually file with the taxing jurisdiction a list of all real estate that such organizations claim should be exempt. However, the board does not infer from such annual filing that the concept of collateral estoppel is not applicable in exemption appeals. Rather, the annual application is the process for municipalities to receive information from such exempt taxpayers as to their continued or changed ownership, use or occupancy status of the property.

The second condition of collateral estoppel relates to whether “the first action... resolved the issue finally on the merits.” Even after considering the City’s offer of proof as to differences

it perceives between the 2006 and 2008 actions, the board finds that its Decision and Order resolved the legal issue of whether certain church related individuals occupying residential properties adjacent to the Taxpayer's church and school fulfilled the Taxpayer's religious mission. As Attorney Gould noted, the Decision and Order contained sufficiently specific findings and rulings on the issue that the City used as the basis for partially denying the Taxpayer's 2008 religious exemption request and now wishes to reargue.

The third condition is clearly met because the City, "the party to be estopped," was a party to the 2006 appeal.

As a result of the board's verbal bench ruling, the City argued it was prejudiced if it were to proceed with the February 11, 2010 hearing and requested a continuance to allow it time to prepare a defense consistent with the board ruling.

The parties have conferred and indicated to the board's clerk that they would be available on March 24, 2010 at 9:00 a.m. To the extent they are consistent with the board's ruling, the exhibits pre-marked at the February 11, 2010 hearing can be introduced as part of the record during the rescheduled hearing.

The board intends to incorporate this order in its final decision in this appeal after the close of its reconvened hearing. Thus, any motion for rehearing must be filed within thirty (30) days of the clerk's date of the decision.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

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CERTIFICATION

I hereby certify a copy of the foregoing Order and Hearing Notice has this date been mailed, postage prepaid, to: Bryan K. Gould, Esq., Brown, Olson & Gould, P.C., 2 Delta Drive - Suite 301, Concord, NH 03301, counsel for the Taxpayer; Chairman, Board of Assessors, City of Concord, 41 Green Street, Concord, NH 03301; and Adele M. Fulton, Esq., Gardner, Fulton & Waugh, PLLC, 78 Bank Street, Lebanon, NH 03766, counsel for the City.

Date: 2/19/10

Anne M. Stelmach, Clerk