

The Normand and Priscilla Robidoux Irrevocable Trust, II¹

v.

City of Manchester

Docket No.: 27004-13EX

DECISION

The “Taxpayer” appeals, pursuant to RSA 72:34-a, the “City’s” 2013 denial of the Taxpayer’s request for an RSA 72:39-a elderly exemption on Map 139, Lot 4A, 63 Eugene Street (the “Property”). For the reasons stated below, the appeal is granted.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the Property was entitled to the statutory exemption for the year under appeal. See RSA 72:34-a; RSA 72:39-a; and Tax 204.05.

The Taxpayer, represented by Attorney Stephanie Burnham (the drafter of the relevant Trust and other documents), argued the Property was entitled to the elderly exemption because: (1) Normand and Priscilla Robidoux have owned and lived in the house on the Property for over thirty-eight (38) years and, prior to 2007 (see fn. 1), transferred the Property into an “Irrevocable

¹ The board has re-captioned the title of this appeal to conform to the name of the Taxpayer stated in the “Trust” document submitted as Taxpayer Exhibit No. 1, referenced below. This instrument transferred the Property, on or about November 13, 2006, from a prior trust dated October 20, 2005. (See also Municipality Exhibits A and B, referenced below.) The change in name is not material to the substance of this appeal.

Trust to protect [their home] from any creditors” (as stated in the “Attachment” to the appeal document) and are named as the “Trustors” (grantors);

(2) the City granted an elderly exemption for tax years 2007 through 2012 after the Trust was established as the legal owner of the Property;

(3) the sole basis of the City’s denial of the elderly exemption in tax year 2013 pertains to whether or not the “ownership” requirement in the statute is satisfied for an elderly exemption;

(4) while the Trust is the legal owner of the Property, Mr. and Mrs. Robidoux have a ‘beneficial interest for life’ sufficient to satisfy this requirement;

(5) the Trust documents provide Mr. and Mrs. Robidoux with the unfettered right to live on the Property “rent free” (unlimited in time) and they have the obligation to pay the taxes and all other expenses associated with ownership and occupancy of the Property;

(6) the City does not dispute Mr. and Mrs. Robidoux meet all of the other requirements of the elderly exemption statute (including the income and asset limitations); and

(7) as stated in the Attachment to the appeal document, this elderly exemption appeal should be granted based on the board’s prior Decisions in “Stolte,” “Damon” and “Zielinski.”

The City, represented by its board of assessors (Robert J. Gagne and Michael Hurley), argued the denial of the elderly exemption in tax year 2013 was proper because:

(1) when it undertook a review of all exemptions in 2013, the City discovered the Property did not qualify (based on the “ownership” requirement in the statute) and therefore the exemption was denied for that year;

(2) when the City examined the two deeds evidencing the transfer of the Property into the Trust (Municipality Exhibits A and B), the assessors noticed that neither deed mentions that Mr. and Mrs. Robidoux have a beneficial interest or life estate in the Property;

(3) the City's policy (as reflected in Municipality Exhibit D, dated July 22, 2013) is that a "DEEDED life estate" is necessary and therefore the conveyancing document (the deed) must state this fact;

(4) Stolte and other prior decisions where the board found property owned by trusts could qualify for tax credits or exemptions are distinguishable from the facts presented in this appeal and do not qualify the Property for an elderly exemption in this appeal;

(5) the 2011 statutory amendment to RSA 72:29, VI (highlighted in Municipality Exhibit C) supports the City's interpretation and decision to deny the elderly exemption; and

(6) the appeal should be denied.

Board's Rulings

Based on the evidence and arguments presented, the board finds the Taxpayer met its burden of proving the Property was entitled to a tax year 2013 elderly exemption. The appeal is therefore granted for the following reasons.

A. Issue Presented

This appeal involves the trust form of ownership of a residence and the interpretation of several statutes: RSA 72:39-a, II, which states the ownership requirement in the elderly exemption statute; and RSA 72:29, VI, which provides further guidance regarding what is required to qualify for this exemption (as well as other types of exemptions and credits). The

relevant wording in these statutes is set forth below.²

There is no dispute the Trust is the legal owner of the Property or that Mr. and Mrs. Robidoux would qualify for the exemption if they still held the Property in their own name. The parties disagree, however, regarding whether the Property can qualify for the exemption because of the Trust Mr. and Mrs. Robidoux created to hold legal title to the Property for estate planning and other purposes. As noted above, the City granted the exemption for six prior years (2007 through 2012), but denied the exemption in 2013 when it reviewed the Trust document and the deeds discussed below.

B. Prior Decisions

In deciding this appeal, the board carefully reviewed all of the documents presented, as well as the applicable statutory language and earlier decisions addressing similar issues pertaining to whether property held in a trust can qualify for a tax exemption or credit. The board will briefly summarize three of these decisions below.

² RSA 72:39-a (Conditions for Elderly Exemption) provides in relevant part:

- II. Additional requirements for an exemption under RSA 72:39-b shall be that the property is:
- (a) Owned by the resident; or
 - (b) Owned by a resident jointly or in common with the resident's spouse, either of whom meets the age requirement for the exemption claimed; or
 - (c) Owned by a resident jointly or in common with a person not the resident's spouse, if the resident meets the applicable age requirement for the exemption claimed; or
 - (d) Owned by a resident, or the resident's spouse, either of whom meets the age requirement for the exemption claimed, and when they have been married to each other for at least 5 consecutive years.

RSA 72:29 (Definitions) provides in relevant part:

- VI. For purposes of RSA 72:28, 29-a, 30, 31, 32, 33, 35, 36-a, 37, 37-a, 37-b, 38-a, 39-a, 62, 66, and 70, the ownership of real estate, as expressed by such words as "owner," "owned" or "own," shall include those who have placed their property in a grantor/revocable trust or who have equitable title or the beneficial interest for life in the subject property.

An amendment, effective April 1, 2011, added the words "who have placed their property in the grantor/revocable trust or" to this statute. (See the official annotation for the 2011 amendment of RSA 72:29.)

Anita R. Stolte Irrevocable Trust v. City of Concord, BTLA Docket No. 22569-07EX (October 12, 2007) (hereinafter, “Stolte”) involved a claim for a veteran’s tax credit on property owned by a trust. The municipality argued the trust provisions in Stolte did not establish the surviving spouse of a veteran, who placed the property in the trust, had “equitable title or the beneficial interest for life in the subject [p]roperty” under RSA 72:29, VI (the prior version of the statute quoted in fn. 2). (Id., p. 2.) The board acknowledged the appeal presented a “close question of law” and concluded, after examining the trust provisions, the surviving spouse “does have a beneficial interest for life” and granted her appeal for the tax credit. (Id.)

In Earl A. Damon Irrevocable Trust v. City of Nashua, BTLA Docket No. 24806-10EX (November 24, 2010), the municipality denied a veteran’s tax credit because it did not agree with the board’s holding in Stolte. (Id., p. 2.) The board granted the appeal finding “the trust documents, fairly read, support the conclusion that the veteran (Mr. Damon) retained a beneficial interest in the Property sufficient to maintain eligibility for the veteran’s credit.” (Id., p. 5.) The board noted the “plain and ordinary meaning” of the words used in the statute are important for interpreting it correctly [citing Appeal of Thermo-Fischer Scientific, Inc., 160 N.H. 670 (2010)] and found the accepted “definition of ‘beneficial interest’ includes (in trust law, at least) the interest of a beneficiary and right to income or principal of the trust funds, in contrast to the trustee who holds legal title (but has no beneficial interest.” (Id., p. 5.) Considering the estate planning motivations (including Medicaid concerns) of property owners who choose to place their homes in a trust, Damon noted “there is nothing inherently wrong” with such planning and it need not result in loss of eligibility for the veteran’s tax credit under state law. (Id., pp. 5-6.)

A third decision of some relevance is Zielinski v. Department of Revenue Administration, BTLA Docket No. 239944-07LM (May 13, 2009). That appeal involved denial

of an application for “Low and Moderate Income Homeowner’s Property Tax Relief” under RSA 196:56, IV by the department of revenue administration (“DRA”), rather than a veteran’s credit or an elderly exemption. The board found Stolte was applicable to the facts and law presented and granted the appeal even though the claimant had placed the property in an “irrevocable trust” which contained some conflicting “boilerplate provisions.” (Id., pp. 1, 2 and 5-7.)

The Stolte, Damon and Zielinski Decisions were not appealed. For the reasons explained below, they remain valid precedents, notwithstanding the 2011 amendment to RSA 72:29, VI emphasized by the City.³

C. The Board’s Findings

In this appeal, the City places great emphasis on the wording of RSA 72:29, VI, as amended effective April 1, 2011. [See fn. 2.] The provision at issue in this appeal is in the disjunctive and states owners, for purposes of various exemption statutes, shall include: (1) “those who have placed their property in a grantor/revocable trust”; (2) those who have “equitable title”; or (3) those who have “the beneficial interest for life in the subject property.” As noted in the footnote, the 2011 amendment added the first as a separate criterion and did not change the wording of the second and third criteria that were in effect when the board decided the Stolte, Damon and Zielinski appeals.

The Taxpayer’s attorney argued Mr. and Mrs. Robidoux satisfy the third criterion because they have a beneficial interest for life in the Property. This argument is supported by several express provisions in the Trust document. For example, page 7 of the Trust document gives Mr. and Mrs. Robidoux “the right to live rent-free” on the Property (with no time limitation

³ At the hearing, the City’s assessor stated he did not know the ‘legislative intent’ for the 2011 amendment and no relevant legislative history was presented by either party. Thus, the board has relied on the plain meaning of the amendment, which is additive of the class of persons meeting the “ownership” requirement.

whatsoever) and they are obligated to “pay for all maintenance and repairs, water and sewer charges, insurance and taxes relating to” the Property, which conflicts with some language in the deeds. There are also provisions in the Trust document (pp. 2 and 4 that indicate no distribution of the assets (including the Property) will occur until after the deaths of Mr. and Mrs. Robidoux. While the Trust documents could have been clearer in confirming the intent to give Mr. and Mrs. Robidoux a beneficial interest for life in the Property, the board finds merit in the Taxpayer’s position that the documents and other evidence, considered as a whole, support the finding that they do have a beneficial interest for life in the Property.⁴

The board does not agree with the City’s argument that, in order to qualify for an exemption, the documentation must include a “DEEDED life estate” and that provisions to a similar effect in a trust document are not sufficient. This view (embodied in the City’s “policy” reflected in Municipality Exhibit D) is not supported by any language in the exemption statutes, including RSA 72:29, VI. The board notes that similar arguments were made in Damon (pp. 3 -4): in that appeal, the municipality argued the operative documents (including the deed) did not contain “express words” stating the claimant had “reserved a ‘life estate’ in the [p]roperty” as ground for denial of the appeal, but the board found these facts were not sufficient to support a denial of the tax credit at issue in Damon. While deeds may, and often do, contain such wording, there is nothing in RSA 72:29, VI, as amended, that requires someone seeking an elderly exemption to place any specific language or provision in a deed transferring real property into a trust in order to confirm the existence of a life estate.

⁴ The Taxpayer’s attorney represented at the hearing that, because of their beneficial interest, Mr. and Mrs. Robidoux would have to consent in writing (on the deed) to any transfer of the Property, as a matter of ‘probate law’ and also referenced title standards and registry of deeds policies. The City did not dispute these representations.

The board therefore finds the City's reliance on the lack of such language in the deeds presented as Municipality Exhibits A and B is misplaced. In the board's experience, it is not uncommon for property rights to be established through documents other than a conveyancing deed, such as in a trust document, as in this appeal, or in a property lease, to mention another example.

In brief, the board finds a beneficial interest for life can exist, such as when grantors establish a trust for their family home to accomplish estate planning or other purposes, even if the deed placing property in such a trust does not say so in so many words. Additionally, and as noted above, having a beneficial interest for life is only one of three separate methods of satisfying the "ownership" requirements stated in RSA 72:29, VI.

To the extent the City is concerned (as stated in its written policy) that a "Life Estate within a trust can be relinquished . . . at any time without notice to the Assessor's Office," the board finds the City has adequate remedies to address this concern. The elderly application form is stated to be "permanent" in nature. A municipality can, however, review eligibility requirements on an annual basis if it deems such review is reasonably necessary; a municipality may find, in the course of that review, that an elderly exemption previously granted should be denied based on the facts presented. In this respect, the City's assessing website specifically states "existing" elderly and other exemptions "are **subject to an annual requalification or audit.**"⁵ (Emphasis in original.)

In summary, the board finds that, while there are some arguably conflicting provisions in the Trust and deed documentation, a fair reading of the Trust document and a careful weighing

⁵ See <http://www.manchesternh.gov/Departments/Assessors/Exemptions-and-Credits> (accessed by the board on March 17, 2014).

of the other evidence presented indicate Mr. and Mrs. Robidoux have retained a sufficient beneficial ownership interest in the Property to satisfy the requirements of the statute and establish the right to an elderly exemption on the Property for tax year 2013. The board knows of no policy argument that justifies denying them an exemption on the Property for which they have an obligation, under the Trust documents, to continue to pay taxes (as well as all of the other expenses of ownership), where relief from such taxes is such an integral purpose of the elderly exemption statute.⁶ For all of these reasons, the appeal is granted.

If the taxes have been paid, the amount paid without application of the elderly exemption shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively “rehearing motion”) within thirty (30) days of the clerk’s date below, not the date this decision is received. RSA 541:3; Tax 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; Tax 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board’s decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule Tax 201.37(f). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion,

⁶ Cf. GGP Steeplegate, Inc. v. City of Concord, 150 N.H. 683 (2004) (based upon “our well-established rule,” the legal system should “ensure that tax abatement proceedings remain free from technical and formal obstructions”).

an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Chair

Albert F. Shamash, Member

Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Stephanie K. Burnham, Esq., PO Box 926, Raymond, NH 03077, counsel for the Taxpayer; and Chairman, Board of Assessors, City of Manchester, One City Hall Plaza-West Wing, Manchester, NH 03101.

Date: 3/21/14

Anne M. Stelmach, Clerk