SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

The George Washington University and Potomac Electric Power Company,	*	
Petitioners,	*	
v.	*	Tax Docket No. 3512-85
District of Columbia	*	
Respondent.	*	

ORDER

This matter came before the Court for hearing on Motion for Reconsideration, filed by respondent, the District of Columbia (hereafter "the District") and opposition thereto, filed by petitioners, the George Washington University (hereafter "GWU") and Potomac Electric Power Company (hereafter "PEPCO"). Respondent seeks this Court's Order dated February 4, 1987, granting petitioners a partial refund of real property taxes for Tax Year 1985, be reconsidered and set aside. Petitioners oppose reconsideration and seek denial of the same.

The subject property involved in this action is an eight-story office building known as the Thomas Edison Building located at 1900 Pennsylvania Avenue, Northwest and identified as Lot 26, Square 119. Petitioner, GWU, is the owner of the subject property. Petitioner, PEPCO, is the primary tenant under a fixed thirty (30) year lease expiring March, 2002. Under the terms of the Lease Agreement, PEPCO pays GWU a fixed annual rent of $1,600,000 and PEPCO is responsible for all utilities, maintenance, taxes and insurance attributable to the operation of the Building.

In their Petition for Tax Refund, petitioners challenged the District's assessed value of the subject property for Tax Year 1985, in the amount of $50,576,000.[1] As a basis fortheir challenge, petitioners asserted respondent had no authority to determine an estimate of market value for real property tax purposes by valuing the fee simple interest of the real property as if unemcumbered.

At trial, petitioners came forth with expert appraisal testimony to substantiate use of the stream of income approach for determination of the subject property's assessment value. Further, petitioner argued no statutory authority exists for taxation of a leasehold interest pursuant to this jurisdiction's real estate taxation scheme because a leasehold interest is personalty and as such, not properly taxable as real estate. Thus in petitioner's view, use of the stream of income approach (actual rents received) which takes into account the encumbrance resulting from the long-term lease, is a proper and lawful method for determining an estimate of the market value of the subject property.

Contrariwise, respondent maintained at trial, that the <u>all</u> interests in property must be valued for real estate taxation purposes in order to determine the fee simple interest as is required by statute. Accordingly, respondent's assessor testified that he utilized the income approach premised upon not the actual rents produced by the

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1. This figure represents the original assessment of the estimated market value of the subject property as determined by respondent's Department of Finance and Revenue. Following petitioner's timely appeal to the Board of Equalization and Review, the valuation was reduced from $50,576,000 to $40,750,000. At trial, respondent's introduced evidence of market value of the subject property in excess of the Board's valuation of $40,750,000.

lease, but rather, upon the income-producing potential of the subject property. On the basis of seven downtown office rent leases cast in 1983, selected as typical in the marketplace for similar accommodations, he determined the subject property's income-producing potential. In addition, respondent's assessor also employed a comparable sales analysis as an added precaution. He referenced four major office building sales in the downtown area sold in late 1983.

Following trial, the Court issued its ruling in favor of petitioner and granted to them, a partial refund of property tax paid for Tax Year 1985 by Order dated February 4, 1987. Respondent timely filed a Motion for Reconsideration and petitioners filed their opposition to the same.

Based upon the hearing held on the Motion for Reconsideration and opposition thereto, the arguments of counsel and the pleadings filed, the Court has determined respondent's motion should be granted and this Court's earlier Order dated February 4, 1987, be set aside. Respondent convincingly maintained that this Court's ruling in this action is at variance with earlier decided cases. Accordingly, the Court is persuaded the instant case must be decided in a manner consistent with earlier rulings involving the same legal issue.

In Green, this Court upheld the assessor's authority to value a fee simple estate, including both the leased fee and the leasehold estate. Green v. District of Columbia, Tax Docket No. 3561-85 (D.C. Super. Ct. June 12, 1986) at p. 11, (appeal filed, July 12, 1986). This Court's memorandum opinion in Green stated: "It is not axiomatic that the assesssment is to be reduced because of a long-term lease. The value of all interests in the property must be evaluated and the existance of a favorable or unfavorable lease does

not limit the ability of the tax assessor to compare the encumbered properties with similar properties not so encumbered." Id.

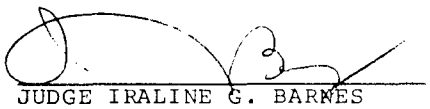
In Safeway Stores, the District of Columbia Court of Appeals recently pronounced the Department of Finance and Revenue is justified in adopting a presumption against recognizing leases as a measure of value in sale and leaseback arrangements. Safeway Stores, Inc. v. District of Columbia, Nos. 84-1639, 85-675, 85-676, 85-677, 85-678, 85-1024, 85-1025, 85-1026 (D.C. May 1, 1987) slip op. at 10. Although the instant case does not involve a sale and leaseback arrangement, the Court's reasoning in Safeway Stores is applicaable here as well. In both cases there is a legitimate concern that a property owner can enter into a lease arrangement to reduce their property tax obligation to the community.[2]

Accordingly, it is on this 30th day of July, 1987,

Ordered that respondent's, the District of Columbia, Motion for Reconsideration of this Court's earlier Order dated February 4, 1987, is hereby granted; and it is

Further Ordered that this Court's earlier Order dated February 4, 1987, granting petitioners a partial refund of real property taxes for Tax Year 1985, be set aside; and it is

Further Ordered that respondent's, the District of Columbia, assessment of the subject property in the amount of $46,000,000 is hereby affirmed.



JUDGE IRALINE G. BARNES

2. As in Safeway Stores, this Court does not assume petitioners herein entered into the existing lease arrangment in the hope of reducing property taxes. Safeway Stores, supra at 10-11. The Court's concern is simply, motive aside, the implications of such transaction for property tax purposes.

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