

## APPELLATE COURT REJECTS NYC PROPERTY TAX CHALLENGE

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In late February, the Appellate Division (1st Department) dismissed a lawsuit filed by an association of property owners and renters known as Tax Equity Now New York (TENNY) seeking a declaration that the NYC property tax system was unconstitutional (Tax Equity Now NY LLC v. City of New York). The court's decision came at a time of much scrutiny over New York City's property tax system. The anticipated fallout from the current COVID-19 pandemic and its eventual impact on the New York City real estate tax base will likely further complicate these matters.

TENNY had argued that the city's property tax system was racially discriminatory, in that taxes as a percentage of fair market values (FMV) were higher in minority neighborhoods than in predominantly white areas. TENNY also claimed that the law requiring residential co-operatives and condominiums be valued like rental buildings favors co-ops and condos at the expense of rentals.

After upholding TENNY's standing to maintain the lawsuit, the appeals court methodically rejected each of its claims on the merits, determining that unless there was "palpable" arbitrariness or "invidious discrimination" in the city's property tax system, tax statutes must be upheld by courts so long as there is a rational relationship between the tax system and a legitimate stated purpose.

The court rejected TENNY's challenge of the

assessment caps that apply to tax class 1 (and some class 2) properties, even while acknowledging that these caps — which limit the city's ability to increase assessed values while allowing market values to rise without restriction — have resulted in dramatic disparities in taxes paid by people owning similar properties. The court concluded that since the assessment caps apply uniformly to all Class 1 taxpayers, the caps do not violate the state or federal Equal Protection Clauses.

The court also rejected TENNY's argument that the law requiring residential co-ops and condos be valued for property tax purposes as though they were rental properties violated the Equal Protection Clauses. TENNY argued that valuing co-ops and condos built before 1974 by comparing them to comparable rental buildings that are subject to rent regulation undervalues the co-ops and condos in comparison to rentals. The court found there was a "rational basis" for this law, which was to "insure that owners of condominium and cooperative properties would be taxed fairly compared to rental properties held in single ownership and not penalized because of the type of ownership involved." The court found that the law was consistent with the legitimate governmental purposes of encouraging home ownership and placing homeowners on a level playing field with owners of rental buildings for tax purposes.

Finally, the court rejected TENNY's argument

that the NYC tax system unconstitutionally apportions the overall tax burden among its four classes of property without regard to the relationship of the market value of each class to the total market value of all properties. While accepting TENNY's observation that Class 1 properties (one-, two- and three-family homes) represent 47% of total NYC property value but pay only 15% of total property taxes and comparing that to Class 2 properties that constitute 24% of value but pay 37% of tax, the court observed that the law was intended to preserve the share each class paid as of the time the system was enacted, and was, as such, serving a legitimate governmental purpose.

In sum, the court acknowledged that it affords deference to the legislature in the context of "classifications made by complex tax laws," and that even though NYC's property tax system "does, in many respects, result in unfairness," it is up to the legislature "to implement a fair and equitable property tax system."

It will be interesting to see if either a further appeal to the N.Y. Court of Appeals or action taken pursuant to an anticipated Final Report from the Property Tax Reform Advisory Commission will result in actual changes to the property tax system or whether financial troubles resulting from the COVID-19 pandemic will diminish any appetite for significant reform of the system.