At a Term of the Supreme Court of the State of New York held in and for the County of Cortland at the Courthouse, in Cortland, New York on September 18, 2018.

PRESENT: HON. DAVID H. GUY
Acting Supreme Court Justice

STATE OF NEW YORK
SUPREME COURT : COUNTY OF CORTLAND

LAERTES SOLAR, LLC,

Plaintiff/Petitioner,

and

CORNELL UNIVERSITY,

Intervenor,

DECISION AND ORDER

-against-

THE ASSESSOR OF THE TOWN OF HARFORD, CORTLAND COUNTY, NEW YORK, IN HIS OFFICIAL CAPACITY; THE TOWN OF HARFORD, CORTLAND COUNTY, NEW YORK; AND THE DRYDEN CENTRAL SCHOOL DISTRICT,

Defendants/Respondents.

For a Judgement and Order pursuant to Civil Practice Law and Rules Article 78.

Index No. EF17-1018
RJI No. 2017-0739-M

APPEARANCES: Paul Goldman, Esq. for Laertes Solar, LLC
Jared Pittman, Esq. for Cornell University
James Hughes, Esq. for Defendants/Respondents

PROCEDURAL HISTORY

On October 27, 2017, Laertes Solar, LLC ("Laertes") filed a verified petition challenging the failure of Defendants, Dryden Central School District (the "District"), the Town of Harford and/or the Assessor of the Town of Harford, to exempt Plaintiff's property designated as SBL

No. 153.00-1-43.-2 in the Town of Harford, Cortland County, New York, which contains a solar energy system ("the System") constructed by Laertes on property owned by Cornell University ("Cornell"), from real property taxation for the 2017 assessment rolls of the Town of Harford. Plaintiff also requests a refund of the 2017 school taxes it paid to Defendant District. An amended petition was filed on October 31, 2017, and Defendants filed an Answer on November 28, 2017.

By stipulation of the parties dated April 5, 2018, Cornell intervened as a party in this matter. Defendants filed another Answer to the petition and the intervenor's pleading on July 18, 2018.

On July 18, 2018, Defendants filed a motion to dismiss the petition with supporting affirmations, affidavits, and exhibits, pursuant to CPLR 3211, 7804, and 409. Laertes and Cornell filed a joint opposition to the motion on September 4, 2018. Defendants replied to the opposition on September 17, 2018. The motion was returnable on September 18, 2018, at which time the parties were allowed oral argument on the motion. This Decision and Order confirms the findings and conclusions made on the record on September 18, 2018, at which time the Court denied the Defendants' motion to dismiss, granted the RPTL §487 exemption sought by Laertes, and directed the refund of the 2017 school tax paid by Laertes.

In their motion, Defendants argue that the petition should be dismissed on several grounds, including: the System is subject to taxation because it is "real property" as defined by the Real Property Tax Law (RPTL); the System is owned by Laertes, which is not an organization eligible for the RPTL §420-a exemption; the System is not owned by the State of New York and thus is not eligible for the RPTL §404 exemption; the System is not eligible for the RPTL §487 exemption for solar energy systems, because the District timely opted out of that

exemption, by resolution dated May 28, 2014, prior to the erection of the System; even if the District had not opted out, the exemption is not effective until a Payment in Lieu of Taxes ("PILOT") Agreement is entered into, and none was; Cornell and/or Laertes failed to exhaust their administrative remedies to pursue the applicable exemptions; and Plaintiff's claims are time-barred by the applicable statutes of limitation.

In opposition to the motion to dismiss, Laetes and Cornell make the following arguments: the System is exempt from taxation pursuant to RPTL §487, and the District failed to properly opt-out of that exemption; Defendants are not entitled to a PILOT Agreement and such Agreement is not a prerequisite to the qualification of the System as tax-exempt pursuant to RPTL §487; the System is exempt from taxes pursuant to RPTL §420-a because it is real property devoted to the beneficial use of and control by Cornell; the System is tangible personal property and not real property subject to taxation; the Plaintiff did not fail to exhaust its administrative remedies; and the suit was timely brought within the applicable statute of limitations.

The Court first rejected the argument by Laertes that the System is not an assessable, taxable improvement to real property. RPTL §102(12); *RCN Telecom Servs. Of New York, LP v Frankel*, 100 A.D.3d 538, 539 (1st Dept 2012); *KIAC Partners v Cerullo*, 260 A.D.2d 381 (2d Dept 1999). Therefore, the solar energy system is subject to taxation unless exempt by operation of law. *Lackawanna v State Bd. of Equalization & Assessment*, 16 N.Y.2d 222, 230 (1965).

The Court dismissed the argument that Laetes and/or Cornell failed to exhaust their administrative remedies. The argument advanced by Defendants regarding the administrative grievance process pertains to the procedures required to pursue a tax certiorari proceeding pursuant to RPTL Article 7. However, this suit was brought as a combined Article 78/declaratory

judgment matter and Laertes and/or Cornell were entitled to bring this plenary action to attack the assessment without following the procedures of Article 7. *Emunim v Fallsburg*, 78 N.Y.2d 194, 204-205 (1991); *Tricarico v County of Nassau*, 120 A.D.3d 658 (2d Dept 2014).

The Court also dismissed the Defendants' argument regarding the statute of limitations, finding that Laertes timely commenced this matter within the applicable four-month statute of limitations period, which began to run on September 1, 2017, when the Dryden School District issued the tax bill to Laertes. CPLR §217; *Adventist Home, Inc. v Board of Assessor of the Town of Livingston*, 83 N.Y.2d 878, 880 (1994); *East Temple of Melchizedek of House of Seltzer v Town Assessor of Town of Huntington*, 28 A.D.3d 662 (2d Dept 2006). Even if the limitations period commenced with the issuance of the final tax roll on July 1, 2018, the petition was filed on October 27, 2017, within the four-month limitations period.

The parties do not dispute that the exemption for "certain energy systems" in RPTL §487 applies to the System erected by Laertes. Their dispute centers on whether the District opted out of the exemption, pursuant to RPTL §487(8)(a), or if Laertes' failure to affirmatively pursue a PILOT agreement under RPTL §487(9) is a prerequisite to qualification for the exemption.

The Court dismissed Defendants' argument that a PILOT agreement is a condition precedent to Laertes being exempt from taxation pursuant to RPTL §487(8)(a). The statute clearly states that a taxing authority "that has not acted to remove the exemption . . . . may require" the owner of a solar energy system to enter into a PILOT agreement. RPTL §487(9) (emphasis added). The PILOT is not statutorily mandatory, nor is there any statutory duty imposed on the owner to notify the taxing authority of the project.

It is not disputed that the District's February 2017 resolution to opt-out of the solar exemption was not effective in regard to Laertes's System, which was completed in December

2016. RPTL §487(8)(a) (no exemption allowed when the energy system is "constructed subsequent to . . . the effective date of such local law, ordinance or resolution. . .").

On May 27, 2014, the District's board of education adopted a resolution electing to opt out of the RPTL §487 exemption. The District does not dispute that the board's resolution was not filed with the president of the New York State Energy Research and Development Authority ("NYSERDA") prior to the completion of Laertes' solar project in December 2016. The District's May 2014 resolution was not filed with NYSERDA until February 2017. The Court found that the plain language of the statute mandates that the District file its opt-out resolution with the president of NYSERDA in order complete the process of opting-out of the solar energy system tax exemption. RPTL §487(8)(a) (a "copy of any such local law or resolution shall be filed with the commissioner and with the president of the authority.") (emphasis added). The other statutorily required filing, with the Commissioner of the New York State Department of Taxation and Finance, was timely accomplished on or about July 1, 2014. *Id.*

Since there is no dispute on the essential facts surrounding the procedure undertaken by the District in its attempt to properly opt out of the RPTL §487 exemption, the Court found no issue of fact exists that would require the Court to conduct a hearing on the ultimate relief sought in the petition. *S.N.H.N.C.Y.I., Inc. v City of Mt. Vernon*, 5 A.D. 3d 495 (2d Dept 2004); *Storm King Art Ctr. v Tiffany*, 720 N.Y.S.2d 548 (2d Dept 2001).

Therefore, based on the failure of the District to adhere to the opt-out requirements of RPTL §487(8)(a), the Court found that Laertes is entitled to the exemption of RPTL §487 and granted the petition in favor of Laertes on this basis only. This determination renders moot, and the Court made no findings regarding, the arguments advanced regarding the possible RPTL §420-a or RPTL §404 exemptions available to Laertes and/or Cornell.

Based on the foregoing, it is hereby

ORDERED, that the motion to dismiss filed by Defendants is DENIED in its entirety; and it is further

ORDERED, that the petition of Laertes Solar, LLC is GRANTED; and it is further

ORDERED, that the 2017 tax bill levied against Laertes Solar, LLC is void and the tax payment made by Laertes Solar, LLC shall be refunded by the Dryden School District within ten (10) days of the date of the signing of this Order.

This Decision constitutes the Order of the Court.

Date: October 3, 2018

Hon. David H. Guy
Acting Supreme Court Justice