Solar Photovoltaic Electrical System: New York Appellate Court Addresses Cornell University's Challenge to Tax Assessment

Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

08/24/2020

The Supreme Court, Appellate Division (Fourth Department), New York ("Court") in an August 20th Memorandum and Order ("Order") addressed Cornell University's ("Cornell") challenge to a tax assessment on a solar photovoltaic electrical system ("System"). See I*n the Matter of Cornell University v. Board of Assessment Review and Shana Jo Hilton, As Assessor of Town of Seneca*, 2020 WL 4876486.

Cornell challenged a tax assessment imposed on the System by the Town of Seneca, New York ("Seneca").

The Court states that Cornell and a nonparty for-profit corporation Argos Solar, LLC ("Argos") entered into an agreement. Argos was granted an exclusive license to use certain agricultural research land owned by Cornell:

. . . for the sole purpose of constructing, installing, owning, operating, and maintaining the [s]ystem. . .

Cornell was required to purchase from Argos the energy output generated by the System for an initial term of 20 years. Additional extensions of 5-year periods were available and subsequent to the conclusion of the agreement could be extended on a month-to-month basis.

Argos was required to remove the system following termination of the agreement. However, Cornell could exercise an option to purchase the System. Removal of the System was an alternative remedy in the event of termination resulting from the default of either party.

Cornell applied to renew its real property tax exemption pursuant to RPTL 420-a. The land was deemed tax exempt by Seneca. However, Seneca created a separate tax parcel to assess taxes on the System.

The Board of Assessment review denied Seneca's challenge to the assessment. The lower court then reversed the decision and determined that the System did not constitute real property. Further, the lower court held that even if the System constituted real property, it would be exempt because of Cornell's beneficial ownership.

Seneca appealed to the Court.

The Court reversed the lower court and held that the system constituted taxable real property under RPTL 102(12)(b). It noted that under the statute real property is defined as:

. . . [b]uildings and other articles and structures, substructures and superstructures erected upon, under or above the land, or affixed thereto.

The Court then reviewed the common law relating to fixtures for guidance. The common-law definition of a fixture addresses personalty, stating that it must:

1. be actually annexed to real property or something appurtenant thereto;
2. be applied to the use or purpose to which that part of the realty with which it is connected is appropriated; and
3. be intended by the parties as a permanent accession to the freehold.

The Court, in reversing the lower court, noted:

1. As to annexation, Cornell's submissions are stated to have indicated that the System consisted of nearly 1,600 piles driven directly into the ground and nearly 400 piles set on footings of concrete poured into tube forms in the ground, bolted on top of a racking system housing the solar panels that are attached by nuts and bolts, as well as an inverter and associated equipment installed on a poured concrete slab. (Such characteristics were stated to establish that the System is annexed to real property or appurtenant thereto.)
2. The System applies to the purpose of the land to which it is connected because Cornell devoted the land to generating solar energy as part of its sustainability efforts and in support of its educational mission.
3. The purported ease of physical removal was deemed not determinative in evaluating permanency.

Citing the purpose and duration of the agreement and noting the options to extend, the Court concluded that Cornell and Argos intended the System to be permanent over the life of the agreement.

As a result, the Court concluded that the System constituted taxable real property.

A copy of the Opinion can be downloaded here.