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SIXTH DIVISION
November 18, 2011

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CITY OF MARKHAM, an Illinois Municipal Corporation; DAVID WEBB, JR., Individually as a Citizen and Taxpayer and In His Official Capacity as Mayor of the City of Markham; CITY COUNCIL of the City of Markham; BANCO POPULAR, ILLINOIS, as Trustee Under Trust Number 26735 Dated October 23, 1998; and COLUMBIA PROPERTIES, LTD., an Illinois Corporation,)	Appeal from the Circuit Court of Cook County.
Plaintiffs-Appellants,)	No. 09 COTO 2600
v.)	
JAMES HOULIHAN, In His Official Capacity as the Cook County Assessor; and MARIA PAPPAS, In Her Official Capacity as Cook County Treasurer and Tax Collector,)	The Honorable Edward P. O'Brien,
Defendants-Appellees.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Cahill and Garcia concurred in the judgment.

ORDER

¶ 1 *HELD:* Where ownership of the subject property was held privately, the property was not entitled to tax exempt status.

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¶ 2 The issue before us is whether a property's taxation exempt status was properly omitted. Plaintiffs, City of Markham (City), David Webb, Jr., City Council of Markham (City Council), Banco Popular, Illinois, and Columbia Properties, LLC, appeal the dismissal of their verified tax objection complaint pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2008)) in favor of defendants, James Houlihan and Maria Pappas. Defendants contend the trial court erred in dismissing their complaint where the facts alleged demonstrated that the subject property qualified for tax exempt status for the years at issue. Based on the following, we affirm.

¶ 3 **FACTS**

¶ 4 The subject property is located at 3204 West 159th Street, in Markham, Illinois, and is known as P.I.N. 28-14-431-04-0000. In 1992, the then-owners of the property were involved in a lawsuit for failure to register and remove three underground storage tanks located on the property. On January 18, 1995, Webb and the City Council approved a "no cash bid" for the subject property under the Cook County Board's program. Subsequently, on July 13, 1995, the property was the focus of a consent decree with the goal being the removal of the underground storage tanks. The consent decree provided that private developers, Howard Weitzman and Dan Kravetz, would obtain title to the subject property "with all taxes, prior and current, abated" once the City received the "certificate of Purchase and Tax Deed." Upon receiving title, Weitzman and Kravetz were to be assigned "any and all rights *** for collection of back rents due on the site."

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¶ 5 According to plaintiff's complaint, the City had entered into an agreement with Weitzman and Kravetz to remediate and redevelop the subject property. The complaint further alleged that, pursuant to the terms of the redevelopment agreement, the City assumed responsibility for the property's tax assessments during the redevelopment period immediately following transfer of title to trustee, Banco Popular, Illinois. The redevelopment agreement does not appear in the record. It is the appellant's burden to provide a complete appellate record and all doubts from an insufficient record are resolved against the appellant. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392, 459 N.E.2d 958 (1984). Affidavits attached to plaintiffs' complaint state that the redevelopment agreement could not be located. The affidavits of Webb, Weitzman and Kravetz, and William Elston, attorney for the City, attest that the City entered into the redevelopment agreement with Weitzman and Kravetz with the intention that the subject property would remain tax exempt for five years, from 1999 through 2003, while Weitzman and Kravetz cleaned and redeveloped the property. The affidavits further attested that the redevelopment agreement contained a reversionary provision such that the property would revert to the City in the event Weitzman and Kravetz failed to perform. The complaint alleged that Columbia Properties was in charge of the clean up and redevelopment of the subject property.

¶ 6 The City obtained title via a tax deed on August 30, 1996. On August 20, 1997, the City Council entered an ordinance authorizing the City to execute a quit claim deed for the subject property to Weitzman and Kravetz. On September 5, 1997, the Illinois Department of Revenue (IRS) exempted the subject property from 34% of its real estate taxes for 1996. On November 2, 1998, the City transferred title via a warranty deed to Banco Popular, Illinois. According to

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plaintiffs' complaint, on that same date, the City submitted an application for property tax exemptions for the years 1999, 2000, 2001, 2003, and 2004, and the "Illinois Department of Revenue determined that the Property was not legally liable to taxation for tax years 1997 to, and including, 2004."

¶ 7 On December 7, 2004, the City submitted a letter to the county assessor requesting that the subject property be removed from tax exemption for tax year 2005 as a result of a change in ownership. The accompanying form indicated that ownership changed to Columbia Properties located at 2109 S. Wabash Avenue, Chicago, IL 60616. On June 27, 2007, the assessor's office sent Columbia Properties a letter notifying "the owner" of the intent to list omitted assessments for tax years 1999, 2000, 2001, 2002, 2003, 2004, and 2005 in the amount of \$104,143 per year because the property or improvements were not assessed during those years. The City filed an appeal, arguing the assessments were inaccurate because the City held ownership of the property for the tax years of 1999 through 2003. In addition, the City filed a complaint with the Cook County Board of Review arguing that the subject property was overassessed. The result of the appeal and complaint do not appear in the record.

¶ 8 Plaintiffs filed the underlying complaint on March 11, 2009. Defendants filed a responsive section 2-619 motion to dismiss arguing that there were no set of facts upon which plaintiffs could recover because the property no longer qualified for a real estate tax exemption once it was transferred to the Banco Popular trust in 1998. On January 28, 2010, the trial court granted defendants' motion and dismissed plaintiffs' complaint "based upon the pleadings and arguments made in open court." No transcript appears in the record.

¶ 9

DECISION

¶ 10 Plaintiffs contend the trial court erred in dismissing their complaint because there was a genuine issue of material fact, namely, whether the subject property was entitled to tax exemptions for the years at issue.

¶ 11 A section 2-619 motion to dismiss admits as true all well-pled facts and inferences drawn therefrom. *Magnetek, Inc. v. Kirkland & Ellis, LLP*, 2011 IL App (1st) 101067, ¶ 22. We review a trial court's dismissal *de novo*, considering all pleadings and supporting documents in a light most favorable to the nonmoving party. *Id.*

¶ 12 The supreme court has succinctly provided the relevant law:

"Under Illinois law, taxation is the rule. Tax exemption is the exception. All property is subject to taxation, unless exempt by statute, in conformity with the constitutional provisions relating thereto. Statutes granting tax exemptions must be strictly construed in favor of taxation [citation], and courts have no power to create exemption from taxation by judicial construction [citation].

The burden of establishing entitlement to a tax exemption rests upon the person seeking it. [Citation.] The burden is a very heavy one. The party claiming an exemption must prove by clear and convincing evidence that the property in question falls within both the constitutional authorization and the terms of the statute under which the exemption is claimed. [Citation.] A basis for exemption may not be inferred when none has been demonstrated. To the contrary, all facts are to be construed and all debatable questions resolved in favor

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of taxation [citation], and every presumption is against the intention of the state to exempt property from taxation [citation.] If there is any doubt as to applicability of an exemption, it must be resolved in favor of requiring that tax be paid.

[Citation.]" *Provena Covenant Medical Center v. Department of Revenue*, 236 Ill. 2d 368, 388, 925 N.E. 2d 1131 (2010).

¶ 13 Plaintiffs argue that the tax exemptions were proper where the City maintained ownership of the subject property despite the 1998 transfer of title to the Banco Popular trust, in that control of the property rested with government entities and the property was being used for the public purpose of redeveloping previously undesirable and environmentally hazardous land.

¶ 14 Section 15-60(c) of the Property Tax Code (Code) provides that "all property owned by any municipality located within its incorporated limits" are exempt. 35 ILCS 200/15-60(c) (West 1994). Additionally, section 15-75 of the Code provides that "[a]ll market houses, public squares and other public grounds owned by a municipal corporation and used exclusively for public purposes are exempt." 35 ILCS 200/15-75 (West 1994). The parties agree that holding title to a property does not necessarily equate to ownership; rather, ownership is defined as control and the right to enjoy the benefits of the property. *People v. Chicago Title & Trust Co.*, 75 Ill. 2d 479, 489, 389 N.E.2d 540 (1979). Whether a property is used for public purposes within the definition of the Code depends on whether "the primary use of the property is for public purposes and any private use of the property is merely incidental." *Metropolitan Water Reclamation District of Greater Chicago v. Department of Revenue*, 313 Ill. App. 3d 469, 475, 729 N.E.2d 924 (2000).

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¶ 15 It is undisputed that, on November 2, 1998, the City transferred title to the subject property via warranty deed to the Banco Popular trust. The warranty deed appears in the record and does not include any language reserving rights of control or use to the City. Rather, the warranty deed provided:

"[f]ull power and authority *** to [the Banco Popular trust] to improve, manage, protect and subdivide said premises or any part thereof, **** to contract to sell, to grant options to purchase, to sell on any terms, to convey either with or without consideration, to convey said premises or any part thereof to a successor or successors in trust and to grant to such successor or successors in trust all of the title, estate, powers and authorities vested in said trustee, to donate, to dedicate, to mortgage, pledge or otherwise encumber said property, or any part thereof, to lease said property, or any part thereof, ***."

The warranty deed does not refer to or incorporate the redevelopment agreement. We find that the evidence clearly demonstrated that the Banco Popular trust, and not the City, owned the subject property as of November 2, 1998. Our conclusion is supported by the consent decree, which evinced the City's original intent to convey title to the subject property to Weitzman and Kravetz with the goal being the removal of the underground storage tanks and redevelopment of the property. The consent decree further provided Weitzman and Kravetz with "control" of the property, such that they were entitled to collect back rents once title was transferred. To the extent the affidavits attested that the redevelopment agreement provided reversionary rights to the City, the event under which those reversionary rights would be triggered never occurred,

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namely, Weitzman and Kravetz never defaulted. Therefore, the Banco Popular trust maintained control and use of the property since 1998. Plaintiffs fail to cite to any statutes or cases providing exempt status to property after title has been transferred from a municipality to private ownership. Consequently, the subject property was not eligible as an exempt property as of November 2, 1998, because it was neither owned by a municipality nor municipal corporation as required by sections 15-60 and 15-75 of the Code.

¶ 16 The property's purpose pursuant to section 15-75 of the Code is of no import because the property was not owned by a municipal corporation. Nevertheless, it is clear that the purpose of the property was not public where the goal was the redevelopment of the parcel for private use. The affidavits attached to plaintiffs' complaint demonstrate that the property was to become a commercial development. The fact that Weitzman and Kravetz had to comply with federal, state, and county laws to comply with the remediation and redevelopment does not establish governmental control or use for purposes of ownership. Such a result is unreasonable where it would cause every property to be government-owned as all properties must comply with federal, state, and county laws.

¶ 17 We further find the assessor had the authority to issue the omitted assessments for the subject property pursuant to section 15-20 of the Code (35 ILCS 200/15-20 (West 1994)).

¶ 18 Section 15-20 provides:

"Notification requirements after change in use or ownership. If any property listed as exempt by the chief county assessment officer has a change in use, a change in leasehold estate, or a change in titleholder of record by purchase,

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grant, taking or transfer, it is the obligation of the transferee to notify the chief county assessment officer in writing within 30 days of the change. ***. If the failure to give such notification results in the assessment officer listing the property as exempt in subsequent years, the property shall be considered omitted property for purposes of this Code." 35 ILCS 200/15-20 (West 1994).

¶ 19 There is no evidence nor any allegations that Banco Popular notified the assessor of the change in title in 1998. Not until 2004 did the City notify the assessor that the title of the subject property had been transferred. The property, therefore, improperly retained exempt status beginning in 1999 and was considered omitted pursuant to the statute. Contrary to plaintiffs' argument, the consent decree did not constitute notice that title had been transferred where the consent decree merely discussed the intent to transfer title. Once title was actually transferred, there is no evidence that the assessor was provided notice.

¶ 20 In response to plaintiffs cursory due process arguments, we note that plaintiffs were able to file two appeals and the notice was sent to the "owner" as named by the City in its 2004 letter, *i.e.*, Columbia Properties. We find no due process violations.

¶ 21 The issue of whether the valuation of the assessments was accurate is not properly before this court where plaintiffs failed to comply with section 23-5 of the Code on the issue of valuation. 35 ILCS 200/23-5 (West 1994).

¶ 22 We, therefore, conclude the trial court properly dismissed plaintiffs' complaint where there was no genuine issue of material fact entitling them to relief.

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¶ 23

CONCLUSION

¶ 24 Because the facts clearly demonstrate plaintiffs did not own the subject property, the property's tax exempt status was properly omitted from 1999 going forward.

¶ 25 Affirmed.