

NO. CV 04 0072963S : SUPERIOR COURT
ST. JOSEPH LIVING CENTER, INC. : JUDICIAL DISTRICT OF
v. : WINDHAM AT PUTNAM
TOWN OF WINDHAM : FEBRUARY 23, 2007

MEMORANDUM OF DECISION

The plaintiff, St. Joseph Living Center, Inc. (Living Center) brings this tax appeal challenging the decision of the town of Windham (town) denying the Living Center's 2003 application for property tax exemption for its property consisting of a skilled nursing home facility located at 14 Club Road. The plaintiff filed a six-count, second revised amended complaint challenging the assessor's valuation of the real estate for the tax years 2003, 2004 and 2005.

The Living Center owns and operates a 120-bed skilled nursing facility that is licensed by the state of Connecticut for both long-term chronic care and short-term rehabilitative services. It was organized in 1987 as a non-stock, non-profit corporation exempt from federal income tax under Internal Revenue Code (IRC) § 501 (c) (3) in order to develop, operate and maintain a skilled nursing home facility in the town. The Living Center is affiliated with the Roman Catholic Diocese of Norwich (diocese). The bishop of Norwich (bishop) is the corporation's chairman and appoints the other three members of the corporation's board of directors.

The facility was constructed with funds provided by a for-profit partner (partner) on church cemetery land that was quit-claimed by the diocese to the Living Center. During the period 1987 through 1993, while operating with its partner, the Living Center paid local property taxes to the town. In 1994, the Living Center bought out its partner after the Connecticut Health and Education Facilities Authority (CHEFA) financed the issuance of tax-exempt bonds maturing between 1996 and 2019 in the amount of \$13,385,000. The Living Center applied for an exemption from property taxes previously in 1994 which the town denied and the plaintiff did not appeal.

The Living Center pays the principal and interest on the CHEFA bonds by setting aside approximately \$950,000 each year for debt service. Under its agreement with CHEFA, the Living Center is required to set aside money in various trust funds that cannot be used for operational expenses in order to maintain a debt service ratio of 1.25%. This debt service ratio requires the Living Center to maintain a surplus of revenue over expenses of 25% greater than the amount required to pay the yearly principal and interest on the CHEFA bonds. See, e.g., Plaintiff's Exhibit 29, p. 21.

The Living Center derives its revenue from payments made by Medicare, Medicaid and private pay patients for the patient care services it provides.¹ In 2000, the Living Center's census was roughly one-third private patients, half Medicaid patients and

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“Medicaid is a federal program that provides health care funding for needy persons through cost sharing with states electing to participate in the program.” (Internal quotation marks omitted.) Corcoran v. Dept. of Social Services, 271 Conn. 679, 683 n.4, 859 A.2d 533 (2004).

the balance Medicare patients.² In 2005, the census was roughly two-thirds Medicaid patients, 20% private pay and the balance Medicare patients. See Plaintiff's Exhibit 50.

The Living Center covers the unreimbursed costs attributed to Medicaid patients by charging private pay patients not only for the actual cost of care, but an additional amount for losses incurred from Medicaid patient care. See Tr., pp. 62-66. In other words, patient care is covered by the patients themselves, not from the Living Center. The Living Center acknowledges that "St. Joseph's does not generally provide 'free' (i.e., without compensation from any source) care, although there are circumstances in which patients do not pay or there is some period of time in which there is no payment source. . . ." (Plaintiff's post-trial brief, pp. 9-10.) See also Plaintiff's Exhibit 7, assessor's letter dated February 3, 1995 explaining the rationale for the denial of the application for property tax exemption, namely, that the property is not used exclusively for a charitable purpose and the facility does not serve a charitable purpose by operating in competition with other nursing homes.

The Living Center is a labor-intensive business with 200 employees operating the nursing home including an administrator, medical director, director of nursing, registered nurses, licensed practical nurses, certified nursing assistants, social workers, physical

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Medicare covers the actual cost of patient care, whereas Medicaid does not fully reimburse the plaintiff for actual patient care costs. See Plaintiff's post-trial brief, p. 11, referring generally to the testimony of Ms. Kolaczenko, the Living Center's administrator. See Transcript of September 6, 2006 (hereinafter referenced as Tr.), pp. 62-66.

therapists, occupational therapists, speech therapists, a chaplain, dietary staff and housekeeping staff and volunteers.

For the year ending September 30, 2000, the Living Center reported a gross revenue of \$8,960,700 and gross expenses of \$8,336,051 for an excess of revenue over expenses of \$624,649. See Plaintiff's Exhibit 24. Included in these financial statements is the payment of \$118,758 in property taxes and a depreciation deduction of \$411,271.

For the year ending September 30, 2001, the Living Center reported a gross revenue of \$9,434,893 and gross expenses of \$8,891,851 for an excess of revenue over expenses of \$543,042. See Plaintiff's Exhibit 25. Included in these financial statements is the payment of \$120,941 in property taxes and a depreciation deduction of \$436,979.

For the year ending September 30, 2002, the Living Center reported a gross revenue of \$9,703,052 and gross expenses of \$9,434,604 for an excess of revenue over expenses of \$268,448. See Plaintiff's Exhibit 26. Included in these financial statements is the payment of \$110,710 in property taxes and a depreciation deduction of \$482,090.

For the year ending September 30, 2003, the Living Center reported a gross revenue of \$9,692,753 and gross expenses of \$9,534,753 for an excess of revenue over expenses of \$158,000. See Plaintiff's Exhibit 27. Included in these financial statements is the payment of \$117,650 in property taxes and a depreciation deduction of \$500,682.

Although the Living Center held title to the land by virtue of the quit claim deed from the diocese, the financial statements showed the following payments to the diocese/St. Joseph's Church for the lease of real estate: year ending September 30, 2001 -

\$42,000; year ending September 30, 2002 - \$72,000. See Plaintiff's Exhibits 25, n.9 and 26, n.9.

For the year ending September 30, 2003, the court notes that the financial statements, under the category of related party transactions, recite that "[t]he Center made a voluntary, nonreciprocal transfer to St. Joseph's Church, an affiliated organization also sponsored by the Diocese. The amount charged to operations as contribution expense totaled \$84,000" (Plaintiff's Exhibit 27, n.9.) Unlike prior years, there was no mention of a payment for lease of real estate. A similar contribution of \$84,000 was made under the related party transaction category in 2004. See Plaintiff's Exhibit 28, n.9.

The Living Center claims that it is entitled to property tax exemption for the tax years of 2003, 2004 and 2005 pursuant to General Statutes § 12-81 (7), (12) and (13). See Plaintiff's post-trial brief, p. 1.

General Statutes § 12-81 provides in relevant part: "The following-described property shall be exempt from taxation:

* * *

"(7) **Property used for . . . charitable purposes.** . . . Subject to the provisions of sections 12-87 and 12-88, the real property of . . . a corporation organized exclusively for . . . charitable purposes . . . and used exclusively for carrying out . . . such purposes. . . . On and after July 1, 1967, housing subsidized, in whole or in part, by federal, state or local government and housing for persons or families of low and moderate income shall not constitute a charitable purpose under this section. . . .

* * *

“(12) **Personal property of religious organizations devoted to religious or charitable use.** Personal property within the state owned by, or held in trust for, a Connecticut religious organization, whether or not incorporated, if the principal or income is used or appropriated for religious or charitable purposes or both;

“(13) **Houses of religious worship.** Subject to the provisions of section 12-88, houses of religious worship, the land on which they stand, their pews, furniture and equipment owned by, or held in trust for the use of, any religious organization[.]”

Because this appeal contests the denial of a real estate property tax exemption, not an exemption for personal property, § 12-81 (12)-(13) is inapplicable to the issue in this case. The subject is a 120-bed skilled nursing home facility, not a house of religious worship. Although the nursing home has a large chapel on the premises, the Living Center is not a religion or church, and the use of the chapel is merely an adjunct to the main use of the subject property as a skilled nursing home facility.³

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No evidence supports the plaintiff’s claim that the use of the chapel for religious purposes exempts the chapel itself from taxation pursuant to § 12-81 (13). The chapel was apparently part of the skilled nursing home facility in 1987 when it operated with its partner and the Living Center paid real estate taxes on the whole facility without claiming any special exemption for the chapel use. In addition, no claim has been made that the chapel has a separate physical existence from the rest of the real estate, including the land.

The key issue here is whether a 120-bed skilled nursing home facility, operating as an independent corporation affiliated with the diocese, is organized and used exclusively for charitable purposes within the context of § 12-81 (7).

The Living Center's certificate of incorporation provides that the purpose of the corporation is as follows:

“(a) To operate exclusively for charitable, educational and scientific purposes, all for the public welfare consistent with activities permitted to be performed by a corporation classified under Section 501 (c) (3) of the Internal Revenue Code of 1986, as amended (the ‘Code’)

“(b) To develop, operate and maintain a chronic and convalescent [care] nursing home (i.e., skilled nursing facility) known as St. Joseph Living Center in Windham, Connecticut Notwithstanding the foregoing, however, the Corporation shall at all times be organized and operated exclusively for exempt purposes within the meaning of Section 501 (c) (3) [of] the Code.

“(c) The Corporation shall not carry on any activity not permitted to be carried on by a corporation exempt from federal income tax under Section 501 (c) (3) of the Code. No part of the income or net earnings of the Corporation is distributable to, or shall inure to the benefit of, any members, director or officer of the Corporation, or any private individual or organization organized for profit (except that reasonable compensation may be paid for services rendered to or for the Corporation), and no member, director, officer of the Corporation, or any private individual or organization organized for profit, shall be entitled to share in the distribution of any of the corporate assets upon dissolution. . . .”

(Plaintiff's Exhibit 1.)

Section 4 of the Living Center's By-Laws recites its corporate purposes:

“A. Primarily to fulfill the goals and aspirations of the Roman Catholic Church in its ministry and service to the elderly and to those who are ill located in the Diocese of Norwich, regardless of their race, color, creed or religion.

“B. To comply with the Ethical and Religious Directions for Catholic Health Care Services, as approved by the National Conference of Catholic Bishops (November 1994), and as may be revised from time to time.

“C. To operate and maintain a chronic and convalescent care nursing home (i.e., skilled nursing Facility) known as St. Joseph Living Center

“G. To engage in charitable, educational and scientific activities within the meaning of the Code in the course of which operations:

- (1) No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, any private shareholder or individual, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth herein.”

(Plaintiff’s Exhibit 2, pp. 1-2.)

The plaintiff’s mission statement reads as follows: “The mission of St. Joseph Living Center is to provide quality health care to our residents in a spirit of compassion, love and service, consistent with the Gospel of Jesus Christ.” (Plaintiff’s Exhibit 3.)

“The general rule of construction in taxation cases is that provisions granting a tax exemption are to be construed strictly against the party claiming the exemption. . . . Exemptions, no matter how meritorious, are of grace, and must be strictly construed. They embrace only what is strictly within their terms. . . . [Moreover] [w]e strictly construe such statutory exemptions because [e]xemption from taxation is the equivalent of an appropriation of public funds, because the burden of the tax is lifted from the back of the potential taxpayer who is exempted and shifted to the backs of [other taxpayers].”

(Internal quotation marks omitted.) DaimlerChrysler Services of North America, LLC v. Commissioner of Revenue Services, 274 Conn. 196, 203, 875 A.2d 28 (2005).

The court in Fanny J. Crosby Memorial, Inc. v. Bridgeport, 262 Conn. 213, 220-21, 811 A.2d 1277 (2002), stated that “[d]etermining whether a property is tax-exempt is a fact intensive inquiry. Under our statutes, there are three requirements for a tax exemption. The property must belong to . . . an organization exempt from taxation under the provisions of . . . § 12-81; it must be held for one of the purposes stated in that statute’s list of exemptions; and *it must produce no rent, profits or income.*” (Emphasis in original; internal quotation marks omitted.)⁴

Moreover, “in order for an organization to be granted tax-exempt status [i]t must be exclusively charitable, not only in the purposes for which it is formed and to which its property is dedicated, but also in the manner and means it adopts for the accomplishment of those purposes. . . . Thus, [w]hether the property for which exemption is claimed is actually and exclusively used for . . . [charitable] purposes must be determined from the facts of the case. . . . The extent to which an organization uses its property for purposes *not directly related to its charitable purpose*, therefore, is relevant to the determination of whether the organization’s property is entitled to tax-exempt status under § 12-81 (7).”

(Emphasis in original; internal quotation marks omitted.) Isaiah 61:1, Inc. v. Bridgeport,

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Isaiah 61:1, Inc. v. Bridgeport, 270 Conn. 69, 77, 851 A.2d 277 (2004) adds additional factors, namely, that the property: “(4) not be housing subsidized by the government; and (5) not constitute low or moderate income housing.” These additional factors are not pertinent here.

270 Conn. 84, quoting Fanny J. Crosby Memorial, Inc. v. Bridgeport, 262 Conn. 221.

Considering the first criteria that the Living Center must be an organization exempt from taxation, the defendant concedes that the plaintiff is a non-profit corporation and that there are no owners who own shares of stock or are entitled to the profits of the corporation. See Defendant's post-trial brief, p. 20.⁵

Although the Living Center claims an exemption from the payment of income taxes, and the defendant challenges its claim that it is an IRC § 501 (c) (3) corporation, this is irrelevant to the issue in this case. Section 12-81 (7) does not specifically exempt an IRC § 501 (c) (3) corporation from the payment of property taxes; only corporations organized exclusively for charitable purposes are exempt under the statute's terms.

Although property taxes in the amounts of \$120,941 and \$110,710 are listed in the schedule of expenses for the years ending September 30, 2001 and 2002, respectively, (see Plaintiff's Exhibit 26), it should be noted that property taxes are included in the reimbursement rate payable to the Living Center under Medicaid.

The central theme of the plaintiff's argument is that the subject property is entitled

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“Saint Joseph's Living Center, Inc. (the “Center”) is a nonstock, not-for-profit corporation which operates a 120 bed facility located in Windham, Connecticut which opened in 1988, and provides long-term skilled nursing care to its patients.

“The Center is a not-for-profit organization and is exempt from federal income taxes on exempt function income as a public charity under Section 501 (c) (3) of the Internal Revenue Code. Accordingly, no provision for income taxes has been made in the accompanying financial statements.”

(Plaintiff's Exhibit 26, n.1.)

to a property tax exemption from the town because the Living Center was organized exclusively to serve a charitable purpose and the services provided carry out such charitable purpose. In furtherance of this argument, the plaintiff relies principally on Isaiah 61:1 and cites to Camp Isabella Freedman of Connecticut, Inc. v. Canaan, 147 Conn. 510, 514, 162 A.2d 700 (1960). As discussed above, the resolution of the issue of charitable use is fact oriented with an analysis of “[w]hether the property for which exemption is claimed is actually and exclusively used for . . . [charitable] purposes” Isaiah 61:1, Inc. v. Bridgeport, 270 Conn. 84. However, it is the defendant’s position that the plaintiff’s reliance on Isaiah 61:1 is misplaced. See Defendant’s post-trial brief, p. 18.

In Isaiah 61:1, a non-profit corporation was organized to provide rehabilitation services to inmate residents completing the final months of their sentences. Ninety percent of the funding to the corporation for the rehabilitation process of the inmate residents came from the state department of correction. The Isaiah 61:1 court’s analysis of United Church of Christ v. West Hartford, 206 Conn. 711, 539 A.2d 573 (1988), is instructive. See Isaiah 61:1, Inc. v. Bridgeport, 270 Conn. 81.

In United Church of Christ, the church, a non-stock corporation, acquired land to construct an elderly housing complex of sixteen units which would provide the elderly with health services, pastoral counseling and the use of church facilities for cultural and recreational affairs. Ninety percent of the funding for the housing complex came from “gifts” by the residents of the complex in the amount of \$73,000 and the payment of a monthly maintenance fee of \$350 per unit. The court in United Church of Christ rejected

the church's claim that the property was being used exclusively for charitable purposes, affirmed the Appellate Court and noted that "the church was under no legal obligation to provide any services that would impose any significant financial burden on it" and that the monthly maintenance fee covered most of the expenses of the entire project. (Internal quotation marks omitted.) Isaiah 61:1, Inc. v. Bridgeport, 270 Conn. 82.

The Isaiah 61:1 court, in analyzing the United Church of Christ decision, commented that "all initial residents [were required to] pay \$73,000, that there were no income or wealth restrictions on applicants, and that [t]he project was open only to residents who [were] able to take care of themselves and live independently. We observed that the record did not demonstrate [h]ow th[e] project [kept the] elderly [residents] from becoming burdens on society Moreover, we recognized that the housing complex was inaccessible for those elderly who have no capital, no steady income and are unable to take care of themselves; and that it was [t]hese low-income elderly . . . [who were] much more likely to become burdens on society absent governmental or charitable intervention [rather] than those who qualify for [the housing complex]. The [church was] unable to claim that [the] government would have [had] to intervene in the public interest had the [church] not provided the [housing complex]. Thus, we affirmed the judgment of the Appellate Court denying the housing complex tax-exempt status under sec. 12-81 (7)." (Citations omitted; internal quotation marks omitted.) Isaiah 61:1, Inc. v. Bridgeport, 270 Conn. 82-83.

Although the Living Center is organized and operated as a non-profit corporation, its original purpose was not charitable.⁶ The defendant cites several cases demonstrating that non-profits have been denied tax exemptions. See Defendant’s post-trial brief, pp. 8-9, citing United Church of Christ v. West Hartford, 206 Conn. 711; Common Fund v. Fairfield, 228 Conn. 375, 636 A.2d 795 (1994); Fanny J. Crosby Memorial, Inc. v. Bridgeport, 262 Conn. 213.

The plaintiff argues that “[t]he delivery of health care to the elderly is a charitable purpose.” (Plaintiff’s post-trial brief, p. 25.) Although the plaintiff cites to Camp Isabella Freedman, Mitchell v. Reeves, 123 Conn. 549 (1938) and United Church of Christ, none of these cases support such a broad interpretation of a charitable purpose. In fact, the court in United Church of Christ, 206 Conn. 722-23, clearly distinguishes delivery of health care to elderly who have “no capital, no steady income and are unable to take care of themselves” from those that are financially able to provide for themselves. The mere fact that someone is elderly does not lead to the conclusion that this person is unable financially to provide for his or her needs.

In Camp Isabella Freedman of Connecticut, Inc. v. Canaan, 147 Conn. 512-13, a Connecticut corporation, without capital stock, acquired a 400-acre camp site having a

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The plaintiff claims that it obtained its IRC § 501 (c) (3) designation from a 1946 ruling of the IRS that determined that all charitable institutions operated, supervised or controlled in connection with the Roman Catholic Church in the United States and listed in the *Official Catholic Directory* are entitled to exemption from federal income tax. In 1987, the application of the Living Center for listing in the *Official Catholic Directory* was approved. See Plaintiff’s post-trial brief, p. 7.

maximum capacity for ninety-six campers with an average stay per person of ten days. Five hundred campers attended during each of the first two seasons and of these campers, only two suffered physical handicaps. Most campers were referred to the camp by social welfare, psychiatric and sociologic agencies. Following an interview by camp staff, only campers who were found to have social adjustment problems and in need of guidance were selected. Admission to the camp was not based on race, creed or color. The campers were economically underprivileged and single, eighteen to twenty-four years-old paying approximately half of the cost of care. Any deficit in camp operations was covered from a grant by the Federation of Jewish Philanthropies. No officer, camp member or employee received any pecuniary profit from the camp. The camp was not a religious organization nor operated for religious purposes.

The Living Center has the following characteristics that distinguish it from the Camp Isabella Freedman and Isaiah 61:1 cases:

- 1) The Living Center is a 120-bed skilled nursing home facility licensed as such by the state of Connecticut.
- 2) The Living Center has three types of patients: Medicare patients; Medicaid patients and private pay patients. There are no income or wealth restrictions on admission to the Living Center.
- 3) There was no financial burden from the operation of the facility either on the Living Center or on the diocese.
- 4) The Living Center generates an excess of operating income over operating expenses and for several years made payments to the diocese that are related to lease payments although the Center is in possession of the subject property by virtue of a quit claim deed, not a lease.

5) The Living Center provides skilled nursing care to all of its patients in the same manner as any other skilled nursing home, whether operated for profit or non-profit motives.

6) If the Living Center did not provide the skilled nursing services that it does, the alternative is not for the government to take over this obligation, but rather other similar facilities.

7) Some of the services provided by the Living Center as a skilled nursing home facility are rehabilitative in nature, and therefore, not used exclusively for the elderly or for long-term care.

8) The Living Center does not receive, nor is it in need of, outside financial support in the operation of the skilled nursing home facility.

9) The Living Center does not admit indigent patients at the expense of the Living Center since all patients at the Center are either supported by Medicare, Medicaid or self-supporting

10) The operation of the Living Center does not lessen the burden on society or taxpayers since it receives compensation for services rendered.

11) If the property tax exemption being sought by the Living Center were granted, not only would the town lose the benefit of the tax, but also the plaintiff would not be entitled to claim the payment of the tax as part of its reimbursable costs under Medicaid. See General Statutes § 17b-340 (f) (1).

The plaintiff also argues that so long as the money received from Medicare, Medicaid and private pay patients is spent for charitable purposes, then this establishes the criteria in Isaiah 61:1 “that the key inquiry in determining tax exempt status is whether the property in question is being used exclusively for a charitable purpose. . . .” (Plaintiff’s post-trial brief, p. 27.)

As discussed above, the Living Center receives a substantial amount of money from private pay patients and provides services to patients for rehabilitative services,

regardless of the patients' ages. Services provided to private pay patients and to those patients requiring rehabilitative services are simply not charitable services and are not the type of services that meet the criteria, set out in Isaiah 61:1 and Fanny J. Crosby Memorial. The Living Center's services are not used exclusively for charitable purposes.

Although the plaintiff pleaded that it was exempt from property taxation pursuant to § 12-81 (75), in its post-trial brief, the plaintiff concedes that this statutory provision does not apply to the Living Center since the Living Center was taxable on the Grand List of October 1, 1999.⁷

In summary, the requirements for a tax exemption under § 12-81 (7), as set forth in Fanny J. Crosby Memorial, provide that the property must belong to a tax exempt organization organized exclusively for a charitable purpose and used exclusively for that charitable purpose. Under the facts in this case, the Living Center, although operated efficiently and with the best of intentions, is simply not a charity nor are its uses charitable.

Accordingly, the plaintiff's appeal for property tax exemption from the town is denied without costs to either party. As a result of the court's order bifurcating the trial by separating the issues of exemption and valuation, the issue of the subject property's

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See Plaintiff's post-trial brief, pp. 50-51.

valuation remains outstanding. If within thirty days of the issuance of this decision, the parties are unable to resolve the valuation issue, a trial date will be scheduled at the convenience of the court and the parties to fully dispose this appeal.

Arnold W. Aronson
Judge Trial Referee