

NO. CV 08 4008026S : SUPERIOR COURT  
THE GOOD FOUNDATION, INC. : JUDICIAL DISTRICT OF  
WINDHAM  
V. : AT PUTNAM  
TOWN OF WINDHAM : OCTOBER 14, 2011

**MEMORANDUM OF DECISION**

The plaintiff, the Good Foundation, Inc. (Foundation), brings this six-count amended complaint, dated June 7, 2010, challenging the decision of the town of Windham’s assessor denying its tax exemption claim for its real and personal property located at 85 Bridge Street. The site is improved with a one and one-half story commercial building consisting of various partitioned areas. The building is undisputedly in poor condition.<sup>1</sup>

In counts one and three of its amended complaint, labeled “Illegal Assessment,” the plaintiff alleges that the assessor denied the Foundation’s request for a tax exemption pursuant to General Statutes § 12-81 (7) for its property even though, as the plaintiff alleges, it was “a corporation organized exclusively for scientific, educational and

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Dr. Philip Jay Mann (Dr. Mann) testified that the real estate was very rundown; the roof and ceiling were caved in; the air conditioner did not work and that the condition was the same since the purchase date. The assessor, in periodic inspections of the subject premises, confirmed the condition of the property.

charitable purposes and the Subject Property is used exclusively for carrying out such purposes[.]” for the Grand Lists of October 1, 2006 and 2007, respectively.

In counts two, four and six of its amended complaint, labeled “Manifestly Excessive,” the plaintiff alleges that the assessor determined that the fair market value of the subject real property, as of the Grand Lists of October 1, 2006, 2007, and 2009, respectively, was \$117,600<sup>2</sup> and that the valuation was “manifestly excessive and could not have been arrived at except by disregarding the statutes for determining the valuation of such property.” Although the language in these counts track the statutory language in General Statutes § 12-119, the plaintiff appears to contest the valuation placed upon the subject property which would properly be brought under General Statutes § 12-117a. See Griswold Airport, Inc. v. Madison, 289 Conn. 723, 740, 961 A.2d 338 (2008).

In count five of its complaint, labeled “Appeal Pursuant to C.G.S. Section 12-117a,” the plaintiff alleges that the subject real and personal property, as of the Grand List of October 1, 2009, were exempt from taxes, and therefore, the denial of the exemption by the assessor and the denial of its appeal by the board of assessment appeals (BAA) caused the Foundation to be an aggrieved party.

The issue of valuation is not the focus of the Foundation’s complaint. The focus is

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See plaintiff’s Exhibit 2. The assessor’s valuation of the subject at \$117,600, as of the Grand List of October 1, 2006, is substantially lower than the plaintiff’s purchase price in 2006 at \$158,000.

that the Foundation's real and personal property, located at 85 Bridge Street, were exempt from taxation pursuant to § 12-81 (7). Although the Foundation purports to claim that its property was overvalued, and therefore, the assessments were excessive, none of the six counts address the issue of valuation.

Counts one through four and six challenge the assessor's denial of an exemption presumably pursuant to § 12-119 which deals with some illegal act committed by the assessor. See Griswold Airport, Inc. v. Madison, supra, 289 Conn. 740. Except for count five, none of the other counts allege an appeal of the assessor's action to the BAA, as required by § 12-117a. Even if count five was brought pursuant to § 12-117a, it does not deal with valuation<sup>3</sup> but the denial of an exemption.

An appeal from an assessor's denial of an exemption pursuant to § 12-81 (7) is authorized by General Statutes § 12-89 which provides, in relevant part as follows: "Any organization filing a tax-exempt statement, aggrieved at the action of the assessor or board of assessors, may appeal, within the time prescribed by law for such appeals, to the [BAA]. Any such organization claiming to be aggrieved by the action of the [BAA] may, within two months from the time of such action, make application in the nature of an appeal therefrom to the superior court . . . ."

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The plaintiff has offered no evidence to support its claim that the valuation placed upon its real and personal property by the assessor was overvalued on the Grand Lists at issue.

As the town notes in its post-trial brief (dated August 31, 2011), p. 2, counts one and two, relating to the Grand List of October 1, 2006, were not timely commenced. Section 12-117a requires an appeal to be taken within two months from the date of the mailing of the notice of the BAA's decision and § 12-119 requires an appeal "within one year from the date as of which the property was last evaluated for purposes of taxation[.]" neither of which was accomplished.

Counts three, four and six, although not statutorily identified, by their language relate to § 12-119, requiring a showing that the assessor did something illegal. See Griswold Airport, Inc. v. Madison, 289 Conn. 740.

Only count five appears to comply with the requirements of § 12-89. Although count five recites that the appeal was brought pursuant to § 12-117a, it appears to be a mislabeling of the appeal which is authorized under § 12-89. It should be noted that count five relates only to the Grand List of October 1, 2009. Therefore, the only issue remaining in this appeal is whether, as of the Grand List of October 1, 2009, the Foundation was entitled to an exemption from any property tax.

As a general principle, it is important to recognize that "in taxation cases . . . provisions granting a tax exemption are to be construed strictly against the party claiming the exemption, who bears the burden of proving entitlement to it. . . . Exemptions, no matter how meritorious, are of grace . . . . [Therefore] [t]hey embrace only what is strictly

within their terms. . . . We 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 others. . . . (Citation omitted; internal quotation marks omitted.) St. Joseph’s Living Center, Inc. v. Windham, 290 Conn. 695, 707, 966 A.2d 188 (2009).

“In order to qualify for a property tax exemption under the relevant portions of § 12-81 (7), the property must be owned by, or held in trust for, ‘a corporation organized exclusively for scientific, educational, literary, historical or charitable purposes or for two or more such purposes and used exclusively for carrying out one or more of such purposes,’ and no ‘officer, member or employee’ may ‘receive any pecuniary profit from the operations thereof, except reasonable compensation for services in effecting one or more of such purposes . . . .’” *Id.*, 708.

Turning to the present case, the Foundation was initially organized and formed in 2006 and later the Internal Revenue Service determined that the Foundation was exempt from federal income tax pursuant to Internal Revenue Code § 501 (c) (3). See plaintiff’s Exhibit 3. The state of Connecticut also recognized the Foundation’s tax exempt status. See plaintiff’s Exhibit 1, pp. 10-11, deposition testimony of Dr. Mann.

The Foundation’s by-laws state that its purpose is “[t]o conduct scientific research

in the physical sciences on an on-going basis through the donation of time and skills by volunteers, and share the results of that research to the general public without cost, primarily by donating its findings to publications made available to the general public.” (Plaintiff’s Exhibit 4, p. iii.)

The Foundation is a one-man corporation with Dr. Mann as its president and research director. Dr. Mann pays the Foundation’s expenses from his own personal funds. The Foundation apparently does not generate any income, does not maintain any bank accounts and has not filed any tax returns.<sup>4</sup>

Dr. Mann has a doctorate in electromagnet and physical electronics from the University of Connecticut (UCONN). He conducts research in the electromagnetic field as well as regularly conducts acoustical and electromagnetic experiments in collaboration with at least one UCONN professor. Dr. Mann also participates in seminars and symposiums with an international organization known as the American Mathematics Society for Advancement of Science, but he is not compensated for his participation in these seminars and symposiums. However, Dr. Mann does receive some compensation from time to time in relation to his research. See plaintiff’s Exhibit 1, p. 45, deposition testimony of Dr. Mann.

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The town’s main focus is that the plaintiff is not a charitable organization because it is a one-man operation and has no income to devote to charity. See defendant’s brief, pp. 6-7.

As Dr. Mann describes it, he conducts and promotes research “in unresolved, undeveloped areas of fundamental physics. . . .” (Plaintiff’s Exhibit 1, p. 13, deposition testimony of Dr. Mann.) A more detailed description of the Foundation’s mission and purpose is stated as follows:

“The mission of The Good Foundation is to conduct and promote research, including experimental design and analysis, in unresolved, undeveloped areas of fundamental physics, such as: postulational formulation of electromagnetic field group/phase velocity propagation and corresponding forces on moving charge; far-field higher order multi-pole (octopole, hexadecapole, etc.) moment expansion of extended charge distributions; angular momentum conservation of rigid bodies with constrained degrees of freedom; and related applications of complex variables, vector field theory, tensor calculus, differential geometry and variational methods, along with developing new mathematical representations for non-infinitesimal quantities.” (Plaintiff’s Exhibit 1, defendant’s deposition Exhibit 1.)

Although Dr. Mann maintains that he has a legal residence at 341 East Center Street in Manchester, Connecticut, he contends that his primary residence is in Brattleboro, Vermont. However, all of Dr. Mann’s research is done at the subject property at 85 Bridge Street. He describes this location as his laboratory where all of his research equipment is located. Dr. Mann, although not under a time-clock, spends between thirty

to fifty hours per week at the Bridge Street address.

Dr. Mann's laboratory at 85 Bridge Street contains research equipment including numerous voltmeters, capacitors, inductors, resistors, diodes, oscilloscopes, an exemplar function generator and other function generators that create various waves. See plaintiff's Exhibit 1, defendant's deposition Exhibit 2. Dr. Mann also keeps many empty boxes at the Bridge Street laboratory. See, e.g., defendant's Exhibits A3-A7. Dr. Mann explained that he uses the empty boxes to take up air space in order to provide insulation and temperature control of the premises which is heated with ceramic stoves.

An example of the kind of research conducted by Dr. Mann, in cooperation with various associates, is shown in a publication of a scientific paper entitled "A Unified Analysis of Four Famous Experiments: Michelson-Morley, Sagnac, Michelson-Gale and Morley-Miller." See plaintiff's Exhibit 1, defendant's deposition Exhibit 11, p. 23.<sup>5</sup>

Considering the first criteria set out by § 12-81 (7) and our case law, the evidence supports a finding that the Foundation was the owner of 85 Bridge Street which, from the testimony of Dr. Mann, was used exclusively as a laboratory for scientific purposes.

Although the premises at 85 Bridge Street are in disarray, it is not the condition of the premises but the use to which it is put that is important. Here, Dr. Mann spends up to fifty

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This paper analyzed the four famous experiments according to two postulates on the velocity of light suggested by Albert Einstein in 1907. See also plaintiff's Exhibit 6.

hours per week at the subject premises devoting his time to his experiments in the acoustical and electromagnetic fields. Simply because Dr. Mann does not have a structured program for his research and the premises are strewn with boxes and equipment does not take away from the use of the premises for scientific research.

The town focuses on several defenses, namely, that the Foundation is not organized for an exclusively charitable purpose; is self-supporting; no students or professors visit the subject premises and no teaching is conducted there; and that the subject property is not used exclusively for carrying out a charitable purpose. Although Dr. Mann referred to his work as charitable, clearly, the claimed exemption was for scientific purposes as permitted in § 12-81 (7). Dr. Mann acknowledges that the Foundation was established for scientific, educational and charitable purposes and it performs only scientific research. See plaintiff's Exhibit 1, p. 21, deposition testimony of Dr. Mann. The reference to charity is that the Foundation intends to benefit the public with its research.

However, there is no evidence that the premises are used for educational activities. From the description of the interior of the premises by Dr. Mann and the assessor, the disorganized condition of the personal property, including numerous boxes, belies any use of the premises to conduct activities such as classes or other instructional use. However, the condition of the premises has no bearing on the fact that Dr. Mann

conducts research in his chosen field in what he refers to as his laboratory. See plaintiff's Exhibit 1, p. 22, deposition of Dr. Mann.

As previously noted, there are two aspects to the issue of whether the Foundation is entitled to a tax exemption for the subject property and the personal property located within. The first is whether the Foundation was organized exclusively for scientific purposes, and second, whether the Foundation used the subject premises exclusively for scientific purposes.

“‘Science’ is defined in Funk & Wagnall’s New Standard Dictionary as ‘Knowledge obtained individually by study of facts, principles, causes, etc.’ and as ‘any department of knowledge in which the results of investigation have been worked out and systematized.’” People ex rel. Johnson O’Connor Research Found., Inc. v. Tax Com’rs, 96 N.Y.S.2d 36, 37 (1950). See also Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 590, 113 S. Ct. 2786, 125 L.Ed. 2d 469 (1993): “[A]rguably, there are no certainties in science. See, e.g., Brief for Nicolaas Bloembergen et al. as Amici Curiae 9 (‘Indeed, scientists do not assert that they know what is immutably true -- they are committed to searching for new, temporary, theories to explain, as best they can, phenomena’); Brief for American Association for the Advancement of Science et al. as Amici Curiae 7-8 (‘Science is not an encyclopedic body of knowledge about the universe. Instead, it represents a process for proposing and refining theoretical explanations about

the world that are subject to further testing and refinement[.]’” (Internal quotation marks omitted.)

For example, in Johnson O’Connor, 96 N.Y.S.2d 37, the plaintiff corporation contended that its realty was exempt from taxation under a statute that exempted realty of a corporation organized exclusively for educational or scientific purposes. Similar in complexity to the present case, the Johnson O’Connor court noted that the plaintiff corporation was organized exclusively for research in the field of psychometrics, which involves the measurement of aptitudes, and which constitutes an educational or a scientific purpose within the meaning of statute. The Johnson O’Connor court further noted that the plaintiff corporation’s “efforts at research may not be generally accepted as correct in the educational or scientific world . . . [but this] is not fatal to its claim that it is engaged in educational and scientific pursuits. The type and character of its activities, not their quality, is determinative.” *Id.*, 37-38.

In the present case, Dr. Mann conducted research in the electromagnetic field consistent with his doctorate degree from UCONN in electromagnet and physical electronics. As previously noted, Dr. Mann conducts research in acoustical and electronic experiments consistent with the by-laws of the corporation. As noted in Johnson O’Connor, *id.*, 37, “[r]esearch is the method used by modern universities to increase the sum of human knowledge. Research conducted for such purpose is clearly ‘educational’

within the meaning of the statute.” In the context of § 12-81 (7), the activities performed by Dr. Mann at his laboratory at 85 Bridge Street come within the definition of research in the field of science.

In summary, the plaintiff was organized as a corporation devoted to research in the field of electromagnetics and physical electronics. The corporation did not provide compensation to its officer and its expenses were paid for by Dr. Mann since the corporation received no income or donations to support its activities. Because the corporation used the property at 85 Bridge Street exclusively as a laboratory for its experiments and research, the conditions set forth in § 12-81 (7), entitling the Foundation to an exemption from municipal taxes as to its real estate at 85 Bridge Street and the personal property located therein, were duly met.

Accordingly, judgment may enter in favor of the plaintiff, finding that the Foundation’s real and personal property, at 85 Bridge Street, were exempt from taxation for the Grand List of October 1, 2009. No costs are awarded to either party.

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Arnold W. Aronson  
Judge Trial Referee

