

**STATE OF NEW YORK  
SUPREME COURT**

**COUNTY OF ALBANY**

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IN THE MATTER OF THE APPLICATION UNDER ARTICLE 7  
OF THE REAL PROPERTY TAX LAW AND UNDER ARTICLE  
78 OF THE CIVIL PRACTICE LAW AND RULES

SLIC NETWORK SOLUTIONS, INC.,

Petitioner-Plaintiff,

**DECISION, ORDER AND  
JUDGMENT**

-against-

Index No.: 905446-20  
RJI No.: 01-20-ST1169

NEW YORK STATE DEPARTMENT OF TAXATION AND  
FINANCE, MICHAEL SCHMIDT, in his official capacity as  
Commissioner of New York State Department of Taxation  
and Finance, AND NEW YORK STATE BOARD OF REAL  
PROPERTY TAX SERVICES,

Respondents-Defendants.

FOR JUDGMENT PURSUANT TO ARTICLE 78 OF THE  
CIVIL PRACTICE LAW AND RULES, FOR REVIEW  
OF THE 2020-2021 TAX ASSESSMENT OF CERTAIN  
PROPERTY UNDER ARTICLE 7 OF THE REAL PROPERTY  
TAX LAW, AND FOR A DECLARATORY JUDGMENT  
PURSUANT TO § 3001 OF THE CIVIL PRACTICE LAW  
AND RULES.

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(Supreme Court, Albany County All Purpose Term)

Appearances<sup>1</sup>:

Hodgson Russ LLP

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<sup>1</sup> The Court has reviewed the request for oral argument. Said request came solely from the petitioner. In the absence of novel legal issues or some other compelling factor, this Court has adopted the practice of not granting oral argument when it is requested by only one party. This denial is also based on the procedural status of this matter. Accordingly, pursuant to 22 NYCRR 202.8-f, the request for oral argument is denied.

Attorneys for Petitioner-Plaintiff (“Petitioner”)  
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Letitia James  
Attorney General of the State of New York  
Attorney for Respondents-Defendants (“Respondents”)  
(Mark G. Mitchell, Esq., Assistant Attorney General)  
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**Roger D. McDonough, J.:**

Petitioner challenges the assessments and valuations of certain properties. This hybrid proceeding seeks various forms of relief under various statutes and the U.S. and New York Constitutions. Respondents have moved for partial dismissal of the petition/complaint (“petition”). Specifically, respondents seek dismissal of: (1) all of petitioner’s CPLR article 78 claims; (2) all of petitioner’s claims for declaratory relief under CPLR § 3001; (3) the sixth and seventh causes of action as well as any other claims that petitioner’s property is exempt from taxation; and (4) petitioner’s twelfth cause of action as well as any other claims that respondents violated petitioner’s constitutional rights. Petitioner opposes the partial motion to dismiss in its entirety.

**Background**

Petitioner is a cable television company that owns certain property situated throughout the State of New York. Each year, respondent-defendant the New York State Department of Taxation and Finance (“Department”) sends out certificates of tentative values for special franchise owners and tentative ceilings for telecommunications property owners. Respondent-Defendant New York State Board of Real Property Tax Services (“Board”) sets the final special franchise values and respondent-defendant Commissioner of the New York State Department of Taxation and Finance (“Commissioner”) sets the final ceilings. Petitioner contends that local assessors rely upon the final values and final ceilings to calculate property assessments.

The Department sent petitioner notices of the tentative ceilings and values in February of

2020. The notices included hearing dates for any challenges to tentative ceilings and values. The hearing dates were April 9, 2020 for the ceilings and April 6, 2020 for the values. A hearing on the values challenge was held on May 15, 2020. The Hearing Officer issued a report and recommendations on June 2, 2020. The report recommended no change in value from the tentative special franchise values. On June 17, 2020, the Board confirmed the Hearing Officer's report and recommendations.

A hearing on the ceilings challenge was held on May 28, 2020 before the same Hearing Officer. The Hearing Officer issued a report and recommendations on June 4, 2020. The report recommended no change in value for the ceilings. On July 9, 2020, the Commissioner issued final certificates with no change in value for the ceilings. The instant proceeding ensued.

The petition sets forth the following causes of action: (1) the Hearing Officer arbitrarily and capriciously failed to accept the inventory provided by petitioner and validated by petitioner's auditor; (2) the Office of Real Property Tax Services ("ORPTS") irrationally and unlawfully relied upon a summary footnote in a September 30, 2018 Consolidated Financial Statement of the Nicholville Telephone Company, Inc.; (3) ORPTS' interpretation of "surviving dollars" is illogical and inconsistent, and the Court should issue a declaratory judgment that grant dollars are not included in the definition of "surviving dollars"; (4) petitioner established that its special franchise properties were over-assessed; (5) petitioner properly utilized the RCNLD method and the Hearing Officer's decision and respondents' adoption of the decision are arbitrary, capricious and an error of law; (6) petitioner established that its properties outside of the special franchise are exempt under New York's Real Property Tax Law and the taxes unlawfully levied on personal property should be cancelled and petitioner should be granted refunds for its overpayments; (7) alternatively, petitioner's properties outside of the special franchise were overvalued by respondents; (8), (9) and (10) respondents improperly, unequally and unlawfully arrived at the special franchise values and telecommunications ceilings and; (11) petitioner met its burden at the administrative hearings; and (12) respondents violated petitioner's equal protection rights under the Constitutions of the United States and the State of New York, and petitioner is entitled to a Court declaration to this effect.

## **Discussion**

### **Respondents' Partial Motion to Dismiss**

#### **Petitioner's Article 78 claims**

Respondents maintain that petitioner's challenges with respect to assessments must be brought exclusively as RPTL article 7 actions. In support they cite a plethora of case law as well as the language of the RPTL. Further, respondents maintain that the methodology exception does not apply here because petitioner is not challenging a general practice or policy governing assessments. Petitioner argues that the article 78 claims are proper under the methodology exception.

The Court has considered the respective arguments and finds that the article 78 claims at issue<sup>2</sup> fall within the scope of a RPTL article 7 proceeding (*see, Brooklyn Union Gas Co. v State Bd. of Real Property Services*, 246 AD2d 898, 899-900 [3<sup>rd</sup> Dept. 1998]; RPTL § 499-pppp). Accordingly, the causes of action seeking article 78 relief must be dismissed.

#### **Petitioner's Requests for Declaratory Relief**

Respondents contend that declaratory relief is unwarranted here because petitioner, per the arguments above, has adequate remedies via RPTL article 7. Petitioner maintains that declaratory relief is appropriate here because: (1) petitioner is appropriately seeking clarity as to the term "surviving dollars"; and (2) petitioner is appropriately seeking to have constitutionality challenges addressed via declaratory relief.

Based on the Court's findings as to the article 78 causes of action, and controlling case law, the Court finds that the declaratory judgment relief must be dismissed based on the availability of adequate remedies in petitioner's current pursuit of RPTL Article 7 relief (*see, Matter of Woodland Estates, LLC v Soules*, 79 AD3d 942, 943 [2<sup>nd</sup> Dept. 2010]).

#### **Failure to State a Cause of Action**

As to the sixth and seventh causes of action, respondents argue that they are fatally deficient based on petitioner's failures to properly plead that the subject property was primarily or exclusively used for one of the exempt purposes in RPTL 102. Petitioner contends that it

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<sup>2</sup> This ruling does not apply to the sixth cause of action.

adequately set forth allegations supporting the RPTL 102 causes of action.

The Court has reviewed the complaint and finds that it sufficiently states a cause of action, under the sixth cause of action, for article 78 relief as it challenges determinations that certain properties constituted taxable real property (*see, Matter of Level 3 Communications, LLC v Erie County*, 174 AD3d 1497, 1499 [4<sup>th</sup> Dept. 2019]). As to the seventh cause of action, the Court finds that it must be dismissed as it falls within the scope of a RPTL article 7 proceeding.

As to the equal protection claims, respondents assert that the claims are too conclusory and are best addressed through an RPTL article 7 proceeding. Petitioner contends that it sufficiently set forth constitutional challenges and that the motion to dismiss is without merit. For the reasons set forth above, and based on controlling case law, the Court finds that the constitutional claims at issue fall within the scope of a RPTL article 7 proceeding (*see, Matter of Groll v Board of Assessment Review of Town of Delaware*, 183 AD3d 1156, 1159 [3<sup>rd</sup> Dept. 2020]).

The Court has considered the parties' remaining arguments and requests for relief and finds to them be without merit and or unnecessary to reach in light of the Court's findings and the procedural status of this case.

Based upon all of the foregoing, it is hereby

**ORDERED and ADJUDGED** that the partial motion to dismiss is hereby granted except as to the sixth cause of action; and it further

**ORDERED and ADJUDGED** that the Court declines to grant declaratory relief based on the existence of petitioner's adequate remedies under RPTL Article 7; and it is further

**ORDERED and ADJUDGED** that the parties are directed to confer and agree<sup>3</sup> upon a

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<sup>3</sup> In the event that the parties cannot agree on a schedule, the Court will prepare a briefing schedule order.

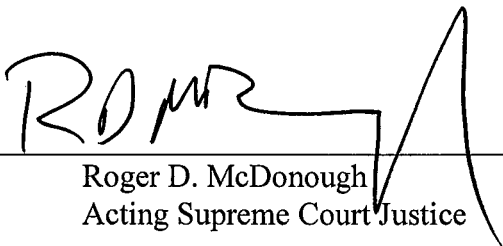
proposed briefing schedule for respondents' answer to the sixth cause of action and the RPTL section 7 proceeding and any legally permitted reply papers to be submitted by petitioner. Said proposed schedule should be provided to the Court within twenty (20) days of the date this Decision, Order and Judgment appears on the NYSCEF system.

**SO ORDERED and ADJUDGED.**

This shall constitute the Decision, Order and Judgment of the Court. This Decision, Order and Judgment will be forwarded to the Albany County Clerk by the Court. A copy of the Decision, Order and Judgment is being forwarded to counsel for both parties. The signing of this Decision, Order and Judgment and delivery of the same to the County Clerk shall not constitute entry or filing under CPLR 2220. Counsel for the respondents is not relieved from the applicable provisions of that rule with respect to filing, entry, and notice of entry of the Decision, Order and Judgment. As this is an E-FILED case, there are no original papers considered for the Court to transmit to the County Clerk.

**ENTER.**

Dated: Albany, New York  
July 9, 2021

  
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Roger D. McDonough  
Acting Supreme Court Justice

Papers Considered<sup>4</sup>:

Notice of Petition, dated August 21, 2020;

Verified Petition, dated August 21, 2020, with annexed schedules and exhibits;

Respondents' Notice of Motion, dated December 7, 2020;

Affirmation of Mark G. Mitchell, Esq., dated December 7, 2020, with annexed exhibit;

Affidavit of Kevin Lynch, sworn to February 12, 2021, with annexed exhibits;

Affirmation of Tobias A. Lake, Esq., sworn to February 18, 2021, with annexed exhibit.

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<sup>4</sup> The parties also submitted memoranda of law in support of their respective positions. Respondents supplied a reply memorandum of law as well.