

To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER:  
TAX CERTIORARI AND CONDEMNATION PART

-----X  
In the Matter of the Application of

THE CITY OF RYE,

Petitioner,

DECISION & ORDER  
Index No. 66087/2023  
Motion Seq. Nos. 1 & 2

For Judgment Pursuant to Article 78 of the CPLR,

-against-

COUNTY OF WESTCHESTER and STANDARD  
AMUSEMENTS, LLC,

Respondents.

-----X  
MINIHAN, J.

The following papers were considered on this motion by Petitioner, the City of Rye (“Rye”) for an order granting the following relief: 1. Ordering Respondent County of Westchester (the “County”) to comply with the Consent Judgment entered in *181 New England Seafood Corporation v Whitty et al.*, Index Nos. 15923-11, 67862-12, 61652-13, 68228-14, 68251-15, and 67101-19 by immediately paying all unpaid City, County and School Taxes, including penalties and interest, as agreed to by all parties with respect to the real property identified as Section 146-20, Block 1, Lot 6-1 (the “Restaurant Parcel”); 2. Ordering Respondents County and Standard Amusements, LLC (“Standard”) to pay the delinquent 2023 City and County taxes due, including all penalties and interest accrued up to and including the date of payment with respect to the real property identified as Section 146-20, Block 1, Lot 6-2 (the “Amusement Parcel”); and 3. Ordering the County to comply with its future obligations to pay any and all City, County and Rye City School taxes timely in accordance with the terms of the Consent Judgment regarding the Restaurant Parcel; and 4. Ordering the County and Standard to comply with its obligations to pay any and all future City, County and Rye City School taxes timely pending the resolution of the underlying matters of *City of Rye v. County of Westchester* (Index No. 66087/2023) and *County of Westchester and Standard Amusements LLC v. City of Rye, et al.* (Index No. 66977/2022); and 5. For such other and further relief as this Court may deem just and proper; and the motion by Respondents for an Order dismissing Petitioner’s Article 78 petition in its entirety pursuant to CPLR 3211 (a)(2) and (a)(7) and granting any such

other and further relief to Respondents, the County of Westchester and Standard Amusements LLC, as may be just and proper:

Petition, Order to Show Cause  
Affidavit of Joseph Fazzino in Support; Affidavit of Greg Usry in Support  
Affirmation of Kristen K. Wilson, Esq. in Support, Exhibit A  
Affirmation of Good Faith, Exhibit A  
Notice of Motion, Affirmation of Alfred E. Donnellan, Esq. in Opposition to  
Order to Show Cause and in Support of Motion to Dismiss, Exhibits 1-7  
Affirmation of Jeffrey P. Goldman in Opposition to Order to Show Cause and in  
Support of Motion to Dismiss  
Memorandum of Law in Opposition  
Affirmation of Kristen K. Wilson, Esq. in Opposition to Motion to Dismiss,  
Exhibits A-K  
Reply Affirmation of Alfred E. Donnellan, Esq. in Further Support of Motion to  
Dismiss, Exhibits 1-2  
Reply Affirmation of John M. Nonna, Esq.  
Notice of Petition (Amended)  
Letter Stipulation  
Affirmation of Alfred E. Donnellan, Esq. in Support of Motion to Dismiss  
Amended Petition, Exhibits 1-4  
Affirmation of John M. Nonna, Esq. in Opposition to Amended Petition,  
Exhibits A-D  
Reply Affirmation of Kristen K. Wilson, Esq. in Further Support of Amended  
Verified Petition  
Reply Affirmation of Edward P. Dunphy, Esq. in Further Support of Amended  
Verified Petition  
Consent Judgment  
New York State Courts Electronic Filing System ("NYSCEF") file (docs #1-74)

Upon the foregoing papers, this motion is determined as follows:

Factual and Procedural Background

The Prior Article 7 Proceeding

This is the second proceeding brought before this Court involving the tax exempt status of the Amusement Parcel. The Amusement Parcel is located in the City of Rye, County of Westchester, New York. It is a national historic landmark and a public amusement park known as Playland Park (hereinafter, "Playland"). The County owns Playland. Pursuant to a Second Restated and Amended Playland Management Agreement dated July 22, 2021 (the "Management Agreement"), Standard operates and manages Playland. Standard co-managed Playland together with the County during the period between July 22, 2021 and December 1,

2021. After December 1, 2021, Standard commenced full management and operation of Playland, subject to the terms of the Management Agreement. Historically, and in all years prior to 2022, Playland had tax-exempt status under Real Property Tax Law (“RPTL”) § 406 (1).

On May 26, 2022, Rye’s Assessor revoked the tax-exempt status of Playland claiming that Playland had lost its entitlement to the exemption because the County contracted with Standard to manage Playland. The County and Standard filed a Complaint on Real Property Tax Assessment to have Playland’s real property’s tax exemption restored and its assessment reduced on the 2022 tentative assessment roll. Rye’s Assessor and Board of Review (“BAR”) denied the Complaint and refused to restore the tax exemption. The assessment of Playland upon the final 2022 assessment roll was \$3,299,383.

On October 13, 2022, the County and Standard commenced a proceeding entitled, *County of Westchester and Standard Amusements LLC v City of Rye, et al.* (Index No. 66977/2022), against Rye, its Assessor and BAR (collectively, “Rye”) seeking judicial review pursuant to Article 7 of the Real Property Tax Law (“RPTL”) with respect to the 2022 assessment of the Amusement Parcel. In their petition, the County and Standard claimed, inter alia, that the assessment was unlawful because Playland is required to be exempt from real property taxation pursuant to the provisions of RPTL § 406 and requested that Rye annul and set aside the 2022 final assessment, restore the tax exemption and Playland to the wholly exempt portion of the assessment roll, and refund all unlawfully assessed taxes paid.

On March 31, 2023, Rye filed a Verified Answer containing five defenses and objections in point of law, including a claim in the second defense and objection in point of law that Standard is the beneficial owner of Playland and as a private, for-profit entity, it is not entitled to an exemption under RPTL § 406 (1).

Prior to the joinder of issue, on November 18, 2022, the County and Standard filed a motion for summary judgment seeking an order restoring the tax exemption pursuant to Section 406 of the RPTL and related relief. By Decision and Order dated September 26, 2023 and filed on September 27, 2023 (the “Decision”), this Court granted the summary judgment motion in large part, ruling that Playland was entitled to maintain its tax exempt status for the reasons set forth in the Decision which are incorporated herein by reference. The decretal paragraphs of the Decision read as follows:

“ORDERED that the Verified Petition is GRANTED, in part, and the 2022 assessment of Petitioners’ real property known as Playland Park located in the City of Rye, New York, County of Westchester, and designated on the Tax Map of the City of Rye as Section 146-20, Block 1, Lot 6-2, as taxable by Respondents was unlawful; and it is further

ORDERED that Petitioners’ motion for summary judgment is granted to the extent that Respondents are directed to restore the tax exemption on Petitioners’ real property known as Playland Park located in the City of Rye, New York,

County of Westchester, and designated on the Tax Map of the City of Rye as Section 146-20, Block 1, Lot 6-2, pursuant to Section § 406(1) of the Real Property Tax Law and return the assessment on said property to the wholly exempt portion of the 2022 assessment roll, within five (5) days of entry of this Order; and it is further

ORDERED that any overpayment of taxes by Petitioners resulting from Respondents' unlawful revocation of the tax exemption on Petitioners' real property shall be refunded, with statutory interest, within ten (10) days of entry of this Order..."

On October 2, 2023, Rye filed a Notice of Appeal of the Decision to the Appellate Division, Second Department. The Court takes judicial notice that Rye requested, and obtained an extension to perfect the appeal to May 2, 2024. It also appears that there is an application pending before the Appellate Division to vacate the automatic stay pursuant to CPLR 5519(a)(1) and for a calendar preference.

#### The Instant Article 78 Proceeding

Shortly before this Court issued the Decision, on August 29, 2023, Rye commenced this Article 78 proceeding seeking an order and judgment mandating the County and Standard to pay taxes on the Restaurant Parcel and Playland. In the proposed Order to Show Cause accompanying the Petition, Rye sought a preliminary injunction ordering the County and Standard to pay all taxes due with respect to the 2022 tax assessment on Playland pending a decision on its application in the Article 7 proceeding. In its papers in support, Rye stated, inter alia, that the County and Standard entered into a consent judgment resolving the tax certiorari proceedings pending from 2011 and 2019 with respect to the Restaurant Parcel whereas it was agreed that the Restaurant Parcel is taxable. Rye asserted that although Standard was obligated to pay taxes on the Restaurant Parcel pursuant to the consent judgment, it had not remitted payment. Rye also argued that the pending Article 7 proceeding did not absolve the County and Standard from paying the taxes due on Playland based upon the 2022 tax assessment.

On September 8, 2023, this Court signed the Order to Show Cause but declined to issue a preliminary injunction. On September 20, 2023, the County and Standard moved to dismiss pursuant to CPLR 3211 (a)(2) and (a)(7). In their papers in opposition to the Order to Show Cause and in support of the motion to dismiss the Petition, the County and Standard argue that the legitimacy of the tax assessment on the Restaurant Parcel was left unaddressed by the consent judgment. Instead, the consent judgment stipulated that the parties settled the challenge to that assessment and the corresponding tax obligations for the years at issue and extending to the three subsequent years, as governed by RPTL § 727. In any event, with regard to the Restaurant Parcel, the County and Standard have submitted receipts evidencing payment of the unpaid taxes and state that the tax bills corresponding to the Restaurant Parcel are no longer at issue in this Article 78 proceeding. With respect to the Playland, the County and Standard contend, inter alia, that the Petition under Article 78 must be dismissed as procedurally improper

since enforcement proceedings pursuant to RPTL § 995 do not apply to municipally owned property held for public use. They also posit that there are alternative review mechanisms available making the petition procedurally improper and that there are compelling merits to their position in the Article 7 proceeding which mandate dismissal of the instant proceeding.

Notwithstanding the issuance of the Decision on September 26, 2023, this Article 78 proceeding continued and Rye submitted papers in opposition to the motion to dismiss. With regard to taxes owing on the Restaurant Parcel, counsel for Rye acknowledged that after Rye commenced this proceeding, Standard paid same (see NYSCEF doc# 35). However, Rye complains that since the payment was made only after Rye commenced this proceeding, costs associated with commencing this proceeding should be reimbursed. Rye adds that it is unjust for Rye to fairly negotiate a consent judgment and then be forced to spend additional monies to enforce the terms of such consent judgment. With respect to Playland, Rye contends, inter alia, that the County and Standard remain obligated to pay taxes that come due pending the appeal of the Decision. Rye avers that under CPLR § 5519, there is an automatic stay of enforcement of the Article 7 proceeding which mandates such payment.

In reply, the County and Standard point out that Rye continues to request that the County and Standard pay over three million dollars in taxes despite this Court's ruling that the tax exemption be restored and that the 2022 tax assessment on Playland was unlawful. They counter that RPTL § 995 presumes the existence of a valid assessment and that the Court cannot compel the payment of a taxes based upon an assessment that has been deemed unlawful. They add that the proceeding is frivolous since Rye has little chance of success on the merits. They also refer to publications quoting the Mayor of Rye that the anticipated taxes to be generated with respect to the 2002 tax assessment on Playland were never incorporated into Rye's budget. They believe that such statements belie Rye's claim of any financial detriment pending the appeal.

On November 6, 2023, Rye filed an Amended Petition. In addition to the relief requested in its original Petition, Rye alternatively seeks an order that it can "withhold the total amount of taxes owed on Playland from the County's draw from the City's account." The amendment of the Petition appears to be precipitated by a dispute between the County and Rye with regard to County taxes due in October 2023. In its responsive papers, the County explains that the County does not assess taxes against individual properties or collect taxes from property owners. Instead, the County sends its tax warrants to each municipality for the total amount due from that town or city and the towns and cities are responsible for the individualized assessment and collection of the taxes and remittance to the County. The County cites to RPTL § 1512 whereby the City is responsible for remitting 60% of the taxes owed to the County by May 25th of each year, regardless of whether or not those taxes have been collected, and the balance must be remitted by October 15th of each year. The County states that while the statutory language indicates that the town and city officials must make payment to the County, in practice, the County debits the accounts of the municipalities, after providing advance notice, to ease administrative burdens. The County reports that the following occurred with respect to Rye's payment due on October 15, 2023. On September 27, 2023, the County's Commissioner of Finance sent a letter notifying Rye of the amount due. On October 16, 2023, the County debited Rye's payment, as was

standard practice. The payment, however, was reversed or canceled by Rye and Rye sent a letter to the County's Commissioner of Finance challenging the amount of the payment. Specifically, Rye alleged that the County "owes taxes to the City, Rye City School District and the County itself" . . . and therefore would "only release funds for the second installment that reflect the property tax warrant minus the amount owed for" taxes on Playland. On October 18, 2023, Rye sent a second letter, seeking to withhold additional monies from the payment. Two weeks prior to filing the Amended Petition, Rye delivered a check to the County in an amount representing what Rye claimed to be the balance due of the payment. On November 8, 2023, the County returned the check, informing Rye that it could not accept a partial payment and that Rye was required to make payment pursuant to RPTL § 1512.

In reply, counsel for Rye disputes this account and states that the County "double-dipped" in essence, by deducting a total tax amount that included taxes for Playland that the County had never paid in May when the first 60% payment was due and that the County is required to pay Rye for the taxes it improperly deducted from Rye's account. There is no information in the NYSCEF record as to whether this dispute has been resolved to date.

However, on February 8, 2024, Rye submitted an Affirmation in which counsel reports that since the filing of the Amended Verified Petition, Rye consented to remove Playland from the taxable portion of the subsequent 2023 assessment roll and has restored it to the exempt portion of Rye's tax rolls. As a consequence, the parties entered into a consent judgment settling the pending 2023 challenge pursuant to Article 7 of the Real Property Tax Law wherein the County and Standard sought to have the Playland property restored to the wholly exempt portion of the assessment roll (*County of Westchester and Standard Amusements LLC v City of Rye, et al.* (Index No. 69255/2022)). Accordingly, Rye has withdrawn any request that the County or Standard pay future real property taxes, including County, City and Rye City School taxes on Playland.

### Analysis

Mandamus to compel performance is an extraordinary remedy that is available only in limited circumstances (*see Matter of County of Fulton v State of New York*, 76 NY2d 675, 678 [1990]). "[M]andamus will lie against an administrative officer only to compel him [or her] to perform a legal duty, and not to direct how he [or she] shall perform that duty" (*Matter of Willows Condominium Assn. v Town of Greenburgh*, 153 A D3d 535, 536 [2017], quoting *People ex rel. Schau v McWilliams*, 185 NY 92, 100 [1906]). "A party seeking relief in the nature of mandamus must show a 'clear legal right' to that relief" (*Matter of County of Fulton v State of New York*, 76 NY2d at 678 [1990] [internal quotation marks omitted]; *see Matter of Legal Aid Socy. of Sullivan County v Scheinman*, 53 NY2d 12, 16 [1981]).

RPTL § 995 authorizes an Article 78 proceeding in the nature of mandamus against real property owned by a municipal corporation to collect unpaid taxes. Specifically, it provides as follows:

“Real property owned by a municipal corporation shall not be sold or conveyed by foreclosure or otherwise for the nonpayment of any tax or special assessment. Any tax or special assessment validly levied or charged against real property owned by a municipal corporation shall be paid in the same manner as a general municipal charge. If any such tax or special assessment remains unpaid for more than sixty days after demand therefor in writing has been filed with the chief executive officer or clerk of such municipal corporation, payment may be enforced by a proceeding brought pursuant to article seventy-eight of the civil practice law and rules. If the municipal corporation owning the real property determines that the value thereof is insufficient to justify payment of the tax or special assessment levied thereon, in lieu of payment it may consent to an order directing sale of the property at public auction on such notice as the court may order to satisfy the claim.” RPTL § 995.

However, CPLR § 7801 provides that “[e]xcept where otherwise provided by law, a proceeding under this article [78] shall not be used to challenge a determination... [that] can be adequately reviewed by appeal to a court or to some other body or officer or where the body or officer making the determination is expressly authorized by statute to rehear the matter upon the petitioner’s application.”

Pursuant to RPTL § 704 (3), commencement of a tax certiorari proceeding does not stay the collection of taxes. Generally, “one challenging a tax assessment must continue to pay his [or her] taxes and that the commencement of an assessment review proceeding does not stay the collection of taxes or enforcement procedures instituted by the taxing authority” (*W.T. Grant Co. v Srogi*, 52 NY2d 496, 515-516 [1981]). This is so even for public entities such as the State of New York, which must timely pay their local real property taxes as assessed, notwithstanding the pendency of an Article 7 tax certiorari proceeding (*Matter of Fulton v State of New York*, 76 NY2d 675 [1990]). The Court of Appeals explained in *Grant* as follows:

“The reason for this rule is readily apparent. A government must function and to that end it must have funds. Restraints on the exercise of the taxing power would impede the progress of government and deprive it of the moneys it needs to provide essential services to the public. Thus, a municipality ordinarily should not be denied or delayed in the enforcement of its right to collect the revenues upon which its very existence and the general welfare depends (*Grant* at 515-516).

The Court of Appeals noted as follows:

“There is no statute in New York which either expressly authorizes or prohibits preliminary injunctions in the context of tax review proceedings. The CPLR provisions relating to injunctions, therefore, should, at least by implication, be available in these situations.” (*Grant* at 516).

However, there is a limited exception to the general rule where there is willful

misconduct by the taxing authority, as explained in *Grant* as follows:

“We would agree that a court has the power to issue a preliminary injunction restraining the enforcement of a tax, but that power should be exercised in only the most unusual circumstances. Where there has been a deliberate misuse of the taxing power, a court should be able to intervene to prevent the threatened loss of the taxpayer’s property occasioned by the imposition of an intentionally excessive tax. Indeed, to adopt a contrary view would relegate the taxpayer to a truly pyrrhic victory...Such a temporary restraint does little harm to the taxing authority and at the same time preserves the status quo pending a determination of the amount owed” (*Grant* at 517).

CPLR § 5519 (a) (1) provides in pertinent part that the taking of an appeal “stays all proceedings to enforce the judgment or order appealed from pending the appeal” where the appellant is the state or any political subdivision of the state. The Second Department has held that the plain language of the statute makes it clear that only “proceedings to enforce the judgment or order” are stayed and not all proceedings in the action (*Shorten v City of White Plains*, 216 AD2d 344 [1995]; *Pokoik v Dep’t of Health Services*, 220 AD2d 13 [1996]; *Schwartz v N.Y.C. Housing Auth.*, 219 AD2d 47 [1996]).

To be clear, “an appeal by the State, a political subdivision thereof, or their officers or agencies does not suspend the operation of the order or judgment and restore the case to the status which existed before it was issued. A motion decided by an order does not become undecided and the declaratory provisions of a judgment are not undeclared when a governmental party serves a notice of appeal therefrom” (*Pokoik* at 884). The purpose of the automatic stay provision under CPLR § 5519(a)(1) is to maintain the status quo between the litigants pending the appeal and to prevent one side from benefitting from the order or judgment while the loser appeals (*see, State of New York v Town of Haverstraw*, 219 AD2d 64, 65 [1996]). “[T]he automatic stay of CPLR 5519(a) is restricted to the executory directions of the judgment or order appealed from which command a person to do an act, and ... does not extend to matters which are not commanded but which are the sequelae of granting or denying relief” (*Pokoik* at 15).

As indicated above, any issues regarding taxes due on the Restaurant Parcel have been resolved and Rye’s request for an order regarding the payment of taxes on Playland with respect to the 2023 assessment roll and subsequent years has been withdrawn at this time. Therefore, the issue here is whether, as Rye contends, the County and Standard should be mandated in this Article 78 proceeding to remit payment of taxes based on the 2022 assessment of Playland pending Rye’s appeal of the Decision, either pursuant to RPTL § 995 or CPLR § 5519(a)(1). Applying the foregoing principles to the instant proceeding, this Court denies Rye’s application and dismisses the Amended Petition for the reasons that follow.

It is undisputed that the portion of the Decision which directed Rye to refund any taxes is subject to the automatic stay provisions of CPLR § 5519(a)(1) (*see Matter of Pickerell v Town of Huntington*, 219 AD2d 24, 25 [2d Dept 1996]). Accordingly, the filing of a notice of appeal



from the Decision automatically stayed Rye's obligation to refund taxes previously paid. However, no taxes have been paid on the 2022 tax assessment. Rye contends then, in circuitous fashion, that although it is not required to refund any taxes, the County and Standard should be ordered to pay over three million dollars pending an appeal. Unquestionably, a mandamus to such effect would not maintain the status quo. The fact that Rye filed an appeal does not void this Court's determination that Rye's revocation of the exemption was unlawful. Moreover, it is questionable whether the automatic stay applies under these circumstances where there is an order prohibiting Rye's conduct in taxing an otherwise exempt property (*see State of New York v Town of Haverstraw*, 219 AD2d 64 [2d Dept 1996]).

This Court notes that in the related Article 7 proceeding, Rye claimed that the payment of taxes was a condition precedent to the commencement of the proceeding. This Court held to the contrary in the September 2023 Decision and Order since Petitioners could not have paid the taxes prior to the commencement of the proceeding. This Court also noted that had Rye timely and promptly pursued the defense of that proceeding, Rye would not have had an opportunity to raise the non-payment of taxes as an issue. Although the Notice of Petition and Petition and accompanying papers were filed on October 13, 2022 and Rye was served on October 17, 2022, Rye waited to file its answer, originally due on November 7, 2022, until March 31, 2023. The summary judgment motion, originally returnable on December 12, 2022 was also adjourned to accommodate Rye. In the related proceeding, this Court reasoned that it would be unjust and prejudicial to allow Rye's delay to thwart the right of the County and Standard to be heard on their challenge to the tax assessment.

Similarly, Rye's continued delay of the appeal in the Article 7 proceeding prejudices the County and Standard in the instant proceeding. Although Rye timely filed a Notice of Appeal of the Decision, Rye has yet to perfect the appeal and has requested an extension to perfect the appeal. It is unknown, when, if at all, Rye will perfect the appeal and proceed. Notwithstanding this procedural posture, Rye insists it should be paid over three million dollars while the appeal remains pending for an indefinite period of time. Rye's arguments in support are without merit since, as previously held, any tax lien on Playland was void ab initio (*see Town of Hempstead v AJM Capital II, LLC*, 183 AD3d 550, 551 [2d Dept 2020]). Alternatively, Rye has made a belated request for an order that it can "withhold the total amount of taxes owed on Playland from the County's draw from the City's account" in its Amended Petition. However, there is simply no authority to ignore the statutory provisions of RPTL § 1512 in this regard. Where, as here, there has been a deliberate misuse of the taxing power, this Court has authority to intervene to prevent the imposition of an intentionally excessive tax (*see Grant* at 517).

Moreover, Real Property Tax Law (RPTL) § 995, on its face, restricts its application to instances where taxes have been "validly levied or charged." And, as the County and Standard correctly point out, this statutory mechanism does not apply to Playland as a municipally owned property for public use. In a case directly on point, *In Matter of AJM Capital II, LLC v. Inc. v Vil. of Muttontown*, 130 AD3d 1018 [2d Dept 2015], the Second Department held that RPTL § 995 does not apply to "municipally owned property held for public use, which is exempted from taxation by RPTL 406(1)" (*AJM Capital* at 1020-1021). Rye's attempt to distinguish same and

the cases cited in support are not controlling. For example, *In Matter of Fulton v State of New York*, 76 NY2d 675 [1990], the issue was whether a taxpayer was required to continue to pay taxes during the pendency of a tax certiorari proceeding challenging the amount of the assessment, not whether taxes should be paid on an unlawfully imposed assessment on a property that was historically entitled to a tax exemption.

Further, the instant Article 78 proceeding is not the appropriate avenue for the review of this Court's Decision or interpretation of the applicability of the automatic stay afforded by CPLR §5519 since such determinations are properly reviewed by the Appellate Division (see *Scarsdale-Harney Corp. v Briante*, 11 AD2d 777 [2d Dept 1960]). Indeed, the parties have already articulated their positions and presented arguments in their papers on the motion before the Appellate Division with respect to the effect of the automatic stay on the pending proceedings. A finding to the contrary would effectively overturn the Decision pending Rye's possible perfection of its appeal before the Appellate Division has made a determination (see *Cherry v New York City Hous. Auth.*, 67 AD3d 438, 438 [1st Dept 2009]).

Finally, Rye's claims that it will be irreparably harmed and is suffering financial damage absent an order mandating the County and Standard to pay taxes due on the exempt property are disingenuous at best. Notably, Rye's City Council included no extra revenue in its budget from the 2022 assessment of Playland, and, for over ninety-five years before 2022, Playland was tax exempt. Notwithstanding Rye's proffered justifications for the commencement of the instant proceeding, it is essentially an attempt at a second bite of the apple. As such, it cannot be maintained since "no principle is better established than that a plaintiff should be denied an injunction where it lacks equitable standing to obtain affirmative equitable relief" (*Fischel & Co. v Macy & Co.*, 20 NY2d 180, 187 [1967]).

Accordingly, Petitioner's application is denied in all respects and Respondents' motion to dismiss is granted in all respects and the Petition is hereby dismissed.

All other arguments raised on this motion and evidence submitted by the parties in connection thereto, have been considered by this court, notwithstanding the specific absence of reference thereto.

ORDERED, that Respondents shall serve a copy of this order with Notice of Entry upon all parties within five (5) days of entry.

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York  
April 9, 2024

  
HON. ANNE E. MINIHAN  
Justice of the Supreme Court

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