NO. CV 07 4014469 HARTFORD/WINDSOR HEALTHCARE PROPERTIES, LLC	:	SUPERIOR COURT
	:	JUDICIAL DISTRICT OF
	:	
v.	:	NEW BRITAIN
CITY OF HARTFORD	:	APRIL 2, 2008

No. CV 07 4014470 TRINITY HILL REALTY, LLC	:	SUPERIOR COURT
	:	JUDICIAL DISTRICT OF
	:	
v.	:	NEW BRITAIN
CITY OF HARTFORD	:	APRIL 2, 2008

MEMORANDUM OF DECISION

The above captioned plaintiffs, Hartford/Windsor Healthcare Properties, LLC (HWHP) and Trinity Hill Realty, LLC (Trinity Hill) are the real estate owners of two nursing homes located in the city of Hartford (city) which the city's assessor revalued on the Grand List of October 1, 2006. On the October 1, 2006, the city's assessor determined that the fair market value of the two nursing homes was as follows: the HWHP nursing home at $10,530,000; the Trinity Hill nursing home at $7,086,900 and a separate parking lot at $113,100.

By agreement of the parties, the HWHP and Trinity Hill cases were combined for trial because both cases have common issues: (1) the assessor's classification of the

nursing homes and (2) the valuation of the subject real estate on the October 1, 2006 Grand List. The parties agreed to have the court decide the classification issue before valuation is determined as the classification of the property has an important bearing on valuation.

The General Assembly enacted Public Act (P.A.) 06-183, § 2 (codified as General Statutes § 12-62n) allowing a municipality to implement a tax relief program limiting annual tax increases for residential and apartment properties. As a result, the city enacted a residential relief program by ordinance[1] that permits the assessor to establish a rate of assessment for residential property and apartment property that is substantially lower than all other property categorized as commercial. The assessor set the assessment rate for residential property at 38.869% of fair market value, apartment property at 58.09% of fair market value and all other property at 70% of fair market value. For the Grand List of October 1, 2006, the assessor classified the subject two nursing homes as commercial property because, in his judgment, they did not meet the definition of either residential property or apartment property.

On the issue of classification, the plaintiff relies on General Statutes § 12-119 as a basis for bringing this appeal claiming the assessor violated the terms of § 12-62n by classifying the subject properties as commercial. The plaintiffs' main argument is that the

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[1] See § 32-54 (1) of the city's municipal code.

subject properties should have been classified as either apartment property or residential property because nursing homes are residential dwelling units.

The terms "apartment property" and "residential property" have been defined in § 12-62n as follows:

> "(1) 'Apartment property' means a building containing five or more dwelling units used for human habitation, the parcel of land on which such building is situated, and any accessory buildings or other improvements located on such parcel;
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> "(3) 'Residential property' means a building containing four or fewer dwelling units used for human habitation, the parcel of land on which such building is situated, and any accessory buildings or other improvements located on such parcel."

Section 32-54 of the city's ordinances adopted the language contained in § 12-62n defining "apartment property" and "residential property".

In the parties' 2/6/08 stipulation of facts, the subject nursing homes are described as follows:

"[HWHP's] Chelsea Home is a three-story structure with a licensed capacity of 234 residents. The Trinity Home is a three-story structure with a licensed capacity of 144 residents. The Chelsea Home has 120 resident rooms and the Trinity Home has 74 resident rooms. At the Chelsea Home, 114 of the rooms have a capacity of two beds and 6 are single rooms. At the Trinity Home, 70 of the rooms have a capacity of two beds and

four single rooms. At both the Chelsea Home and the Trinity Home (collectively, the 'Nursing Homes'), each resident is provided with an adjustable bed and mattress, nightstand, dresser, closet, and overbed table for eating. Any additional furniture is brought by individual residents. The Nursing Homes highly encourage residents to bring in their own additional furnishings. In the double-occupancy rooms, there is a movable curtain that attaches to the ceiling and separates the room into bed areas. Each room has a bathroom, with a sink and toilet but no bath or shower. Bathing is done in central shower rooms on each floor."

(2/6/08 stipulation, ¶ 9.)

The 2/6/08 stipulation provides further details about the subject nursing homes. Each nursing home contains common rooms for recreation, dining and socializing. The residents receive three meals a day through a centralized kitchen although residents may receive meals in their rooms. Each resident is charged a daily fee to stay at the nursing homes and approximately 90% of the residents are eligible for funding from the state-federal Medicaid program. The per diem rate of pay is based upon an administrative formula set by the Connecticut Department of Social Services (DSS). The municipal property tax is a component of the rate set by DSS. The residents' per diem fee includes heat, electricity, water and maintenance. The terms and conditions of the residents' occupancy and care at the nursing homes are governed by state and federal law. Upon

admission to the nursing home, each resident receives a "Resident's Bill of Rights" which is provided pursuant to General Statutes § 19a-550. See 2/6/08 stipulation, ¶¶ 10-17.

The plaintiffs contend that the subject nursing homes contain "dwelling units used for human habitation" within the meaning of § 12-62n. See plaintiff's 2/15/08 brief, p. 6. In support of this position, the plaintiffs refer to the definition of "dwelling" in General Statutes § 53a-100 (a) (2) that defines dwelling as "a building which is usually occupied by a person lodging therein at night, whether or not a person is actually present[.]"[2]

The plaintiffs also seek support from the language in General Statutes § 47a-1 (c), the definitional section of landlord/tenant law, defining "dwelling unit" to mean "any house or building, or portion thereof, which is occupied, is designed to be occupied, or is rented, leased or hired out to be occupied, as a home or residence of one or more persons." See also § 47a-50 (3).

Using the definitions in the Penal Code and in landlord/tenant law, the plaintiffs conclude that a nursing home provides a "home," "residence" and "abode" for each of its residents and should be classified as residential or apartment property.

In further support of their argument, the plaintiffs cite to DRS policy statement 94

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[2] This definition of "dwelling" comes from the Penal Code which uses the term to define many offenses against persons and property. See plaintiff's 2/15/08 brief, p. 6.

(3.1)[3] for the commissioner of revenue services' interpretation of the term "residential dwelling" as specifically including nursing homes.

Although the plaintiffs argue that the court should be bound by the interpretation of the commissioner of revenue services in defining "residential dwelling", the commissioner's policy statement was issued solely for the purpose of interpreting exemptions under the sales tax statutes. As noted in Hasselt v. Lufthansa German Airlines, 262 Conn. 416, 432, 815 A.2d 94 (2003), "[i]nterpretations such as those in opinion letters—like interpretations contained in policy statements, agency manuals, and enforcement guidelines, all of which lack the force of law—do not warrant . . . deference[.]" (Internal quotation marks omitted.)

Additional support for the plaintiff's position can be found in American Healthcare Mgmt v. Director of Rev., 984 S.W.2d 496 (Mo. 1999), in which the nursing

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[3] Department of Revenue Services policy statement PS 94 (3.1) provides as follows: "Definitions: Because the exemptions for gas and electricity under Conn. Gen. Stat. § 12-412 (3) (A) and heating fuel under Conn. Gen. Stat. § 12-412 (16) do not affect the exemptions for manufacturing machinery, equipment, materials, tools or fuel under subsections (18) and (34) of Conn. Gen. Stat. § 12-42 or Conn. Gen. Stat. §12-412i, the following definitions are provided solely for purposes of interpreting the exemptions under Conn. Gen. Stat. §§ 12-412 (3) (A) and 12-412 (16).

- A 'residential dwelling' is any building, all or a predominant part of which is used for housing. Thus, for example, homes, apartment buildings, condominiums, mobile home parks, nursing or convalescent homes and halfway houses are 'residential dwellings,' whereas such places as hotels, motels (other than apartment hotels or motels) and hospitals are not considered 'residential dwellings.'"

home claimed to be exempt from sales taxes because the utility services were for the domestic use of nursing home residents. In holding that utility services purchased for nursing home residents was exempt from sales tax, the American Healthcare court stated as follows: "Nursing homes are residential facilities and are apartments under the common dictionary definition. These nursing homes have a number of dwelling units, and they usually have common conveniences, including heat and elevators. The nursing home residents, like those in apartments or condominiums, live in these units and use these utilities for domestic purposes. . . . The economic reality is that sales taxes on utilities are ultimately passed on to the residents. It hardly makes sense to impose the tax burden on those who are receiving some level of direct care while reserving the exemption for those who are less in need of care. We do not think that the legislature intended this result. Nursing homes are special homes for their residents. The residents could have leased regular apartments but, due to their special needs, they have found themselves in these specialized facilities to have health and other care services provided by these nursing homes. Similarly these residents could have opted to stay in their homes and receive home health care services, without having their utilities subject to sales tax. Nothing about the care that is provided detracts from the notion that these nursing homes are residential apartments. As such, they are entitled to the sales tax exemption." Id., 498.

It appears that the Missouri court's rationale, equating nursing homes to

residential apartments, was not only the resident's ability to pick and choose whether to "reside" in a nursing home, apartment or residential home, but also that nursing homes have a number of dwelling units with the same common conveniences as residential apartments. In addition, the Missouri court pointed out that the imposition of a sales tax was economically passed on to the residents. Such is not the case in the present action because the property tax is included within the Medicaid reimbursement rate under which the plaintiffs operate.

The city argues that a nursing home is not a "dwelling unit" for property tax purposes. It centers its claim on a nursing home being an institution subject to rules relating to the care provided to its patients, not on being an apartment or residential dwelling.

As the city notes and the plaintiffs concede, each subject nursing home has a license as a chronic and convalescent nursing home with the Department of Public Health pursuant to § 19a-493.

In enacting P.A. 06-183, the legislature defined what it meant by the use of the terms "apartment" and "residential", but did not define any other type of real property to be considered under its tax relief program. However, in construing the statutory provisions relating to nursing homes, the legislature defined the term "nursing home" as meaning "any licensed chronic and convalescent nursing home or a rest home with

nursing supervision[.]" See General Statutes § 17b-320.

The court notes that the key element contained in the legislative definition of "apartment property" and "residential property" are the words "dwelling units used for human habitation." On its face, the plaintiffs' claim that the subject nursing homes can qualify under either the "residential property" classification or the "apartment property" classification is difficult to sustain. The definition of "residential property" in § 12-62n means "a building containing four or fewer dwelling units . . . ." Given the fact that each of the subject nursing homes contain substantially more than four so-called dwelling units, the term "residential property" cannot be applied to the subject nursing homes.

The issue in these appeals boils down to whether a nursing home could be classified as "apartment property" as provided in General Statutes § 12-62n and in § 32-54 (1) of the city's municipal code.

In considering this issue, it is important to recognize that these actions were brought pursuant to § 12-119 which requires the plaintiff to prove that either the assessor had no authority to tax the subject property or that "the assessment was manifestly excessive and could not have been arrived at except by disregarding the provisions of the statutes for determining the valuation of the [real] property." Waterbury Equity Hotel v. Waterbury, 85 Conn. App. 480, 501, 858 A.2d 259 (2004), citing § 12-119.

As the city notes: "The question to be addressed in this phase of the case is

whether the Assessor of the City of Hartford disregarded the provisions of the statutes in his determination of the classification of the plaintiffs' property." (Defendant's 2/20/08 brief, p. 7.)

In dealing with the issue of whether the assessor should have classified a "nursing home" as "apartment property", both the plaintiffs and the defendant look to the construction of the meaning of "dwelling units" contained in § 12-62n. The plaintiffs and the defendant cite to Connecticut Light & Power Co. v. Overlook Park Health Care, Inc., 25 Conn. App. 177, 593 A.2d 505 (1991) (hereinafter the Overlook Park case) and agree that because the term "dwelling unit" was not defined in § 12-62n, the court must apply a statutory construction to the meaning of "dwelling unit" as it applies to this case.

In the Overlook Park case, the plaintiff public utility company sought to collect unpaid utility bills from the owners of real estate operated as a nursing home and from the nursing home operator. The utility's claim against the real estate owners was based on General Statutes § 16-262e (c), which imposes liability for unpaid utility bills on the "owner, agent, lessor, or manager of a residential dwelling." The Overlook Park court affirmed the judgment of the trial court that a nursing home was not a residential dwelling. In making this distinction, the court recited the terms of § 47a-1 (l) stating that a tenant is a "person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others. . . ." Id., 179.

In addressing the definition of a nursing home, the Overlook Park court stated "a nursing home is defined in General Statutes, chapter 368v, Health Care Institutions, §§ 19a-511 and 19a-521 as a licensed institution that provides, in addition to shelter, personal care, meals and nursing and medical supervision twenty-four hours a day. . . . Nursing home residents require a high degree of personal care and pay a total fee for all services rendered by the nursing home." Id., 180.

The plaintiffs argue that this court should not follow the reasoning in Overlook Park because that decision was "driven more by the statute's emphasis on the landlord-tenant relationship than on whether the building's residents were 'dwelling' there." (Plaintiffs' 2/15/08 brief, p. 10.)

Also instructive in resolving the issue in this case is McNeill v. Board of Assessors of West Springfield, 396 Mass. 603, 487 N.E.2d 849 (1986), where the assessor classified the real estate of a nursing home as commercial property for assessment purposes. The McNeill court noted that "[c]lassification is part of a comprehensive scheme of property taxation which permits an apportionment of the real property tax burden among commercial, industrial, open space, and residential property owners through usage classification. The underlying rationale of classification is that the commercial and income-producing property owner pays more for local taxes because he receives more economic benefits from the community." (Citations omitted; internal

quotation marks omitted.) Id., 606.

The McNeill court further noted that "[t]he common thread of the commercial group quarters is their service-related functions and the relationship between those functions and the economic life of the enterprise. The entire economic basis for a nursing home is to provide services rather than simply to provide residential quarters. The board found that people enter nursing homes because they need care and treatment services and that the room and board provided is only a 'necessary incident' to those services. It is clear that in the absence of these services none of the residents could use the nursing home as a dwelling place. Moreover, the nursing home does not approximate normal family or residential living. The daily living routine of nursing home patients is highly supervised and closely regulated. The degree of supervision and regulation is incompatible with the activities normally associated with ordinary living or habitation." Id., 607-08.

In Connecticut, the licensing of health care institutions, pursuant to Chapter 368v of the General Statutes, includes the term "nursing home" within the definition of "institution". Under § 19a-490 (c) regarding licensing of institutions, the terms "'residential care home', 'nursing home' or 'rest home' means an establishment which furnishes, in single or multiple facilities, food and shelter to two or more persons unrelated to the proprietor and, in addition, provides services which meet a need beyond

the basic provisions of food, shelter and laundry[.]"

Section 19a-537 further defines the term "nursing home" to mean "any chronic and convalescent facility or any rest home with nursing supervision, as defined in section 19a-521[.]" Section 19a-521 recites as follows: "As used in this section and sections 19a-522 to 19a-534a, inclusive, 19a-536 to 19a-539, inclusive, and 19a-550 to 19a-554, inclusive, unless the context otherwise requires: 'Nursing home facility' means any nursing home or residential care home as defined in section 19a-490 or any rest home with nursing supervision which provides, in addition to personal care required in a residential care home, nursing supervision under a medical director twenty-four hours per day, or any chronic and convalescent nursing home which provides skilled nursing care under medical supervision and direction to carry out nonsurgical treatment and dietary procedures for chronic diseases, convalescent stages, acute diseases or injuries[.]"

Although the plaintiff argues that the Overlook Park court based its decision primarily on the landlord-tenant relationship, both the Overlook Park and McNeill courts set forth the distinguishing features between a nursing home and residential dwelling.

In the statutory provision for the licensing and regulating of nursing homes in the state of Connecticut, the legislature clearly looked at nursing home residents as "patients", not tenants. Of particular significance in § 19a-550 is the patients' bill of rights setting forth benefits and protections that nursing home residents, as patients, are

entitled to rely upon.

As an example of how closely the legislature has regulated nursing homes and how nursing home patients can be distinguished from apartment building tenants, various statutes have been enacted. General Statutes § 19a-511 requires each nursing home to operate under the supervision of a licensed nursing home administrator; § 19-537 requires all nursing homes to set aside or reserve, under certain conditions, beds for patients of the home; § 19a-551 requires nursing homes to manage patient's personal funds and § 19a-552 provides criminal penalties for failure to comply with § 19a-551.

Contrary to the rationale expressed by the Missouri court, the Overlook Park case in Connecticut and the McNeill case in Massachusetts analyzed the difference between nursing home residents and apartment residents in terms of the specialized personal care required by the nursing home residents and the licensed and regulatory controls provided by the state legislatures. As noted by the Overlook Park and McNeill courts, there is a significant difference between an apartment dweller and a resident of a nursing home. The relationship between an apartment dweller and the owner of the apartment building is that of a landlord-tenant relationship; however, the relationship between a nursing home owner and nursing home resident is that of provider-patient. In addition, as previously noted, the Missouri court inferred that the benefit of the tax exemption would inure to the benefit of the nursing home residents implying that a saving in sales taxes would in some

way work itself into the pockets of the residents of the nursing home. From the facts in the present action, a savings in property taxes would only benefit the owner, not the individual nursing home residents/patients.

It is of prime importance in the present cases that the legislature, in authorizing municipalities to implement a tax relief program limiting annual tax increases solely for residential and apartment properties, specifically defined what are residential and apartment properties. It is well settled that when the legislature grants tax exemptions, it does so to the benefit of one citizen at the expense of another. The exemption in the present cases comes from the city's ordinance § 32-54 adopting the terms of P.A. 06-183 which reduced the assessment ratio from 70% as applied to commercial property, to 58.09% as applied to apartment buildings.

The court notes that "[t]he 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. . . . It is also well settled that the burden of proving entitlement to a claimed tax exemption rests upon the party claiming the exemption. We strictly construe such statutory exemptions because [e]xemption from taxation is the equivalent of an appropriation of public funds [where] the burden of the tax is lifted from the back of the potential taxpayer who is exempted

and shifted to the backs of others. . . . The owners of tax-exempt property in the community derive the same benefits from government as other property owners but pay no property taxes for those benefits." (Citations omitted; internal quotation marks omitted.) NSA Properties, Inc. v. Stamford, 100 Conn. App. 262, 268, 917 A.2d 1034 (2007).

In order for the court to accomplish what the plaintiffs are seeking, the court would have to expand upon the legislative definition of apartment property to include a nursing home within the meaning of "a building containing five or more dwelling units used for human habitation" as contained in § 12-62n.

"It is well settled that [w]e are not permitted to supply statutory language that the legislature may have chosen to omit. Moreover, [i]t is a principle of statutory construction that a court must construe a statute as written. . . . Courts may not by construction supply omissions . . . or add exceptions merely because it appears that good reasons exist for adding them. . . . The intent of the legislature, as this court has repeatedly observed, is to be found not in what the legislature meant to say, but in the meaning of what it did say. . . . It is axiomatic that the court itself cannot rewrite a statute to accomplish a particular result. That is a function of the legislature." (Citations omitted; internal quotation marks omitted.) Bloomfield v. United Electrical, Radio & Machine Workers of America, 285 Conn. 278, 288-89, _ A.2d _ (2008).

Recognizing that the legislature is well aware of the distinction between the meaning of a "nursing home" versus "apartment property", especially in light of the legislature having specifically defined the term "apartment property" in § 12-62n and "nursing home" in § 19a-490 (c), it would be inappropriate for this court to interject the term "nursing home" within the meaning of "apartment property". It is the function of the legislature, not this court, to define the phrase in § 12-62n – "dwelling units used for habitation" – to include "nursing homes".

For the above stated reasons, the classification of the term "apartment," as defined in § 12-62n, does not include the term "nursing home" for property tax assessment purposes. As a result of the court's order bifurcating the trial by separating the issues of classification and valuation, the issue of the subject real estate valuation remains outstanding. If within thirty days of the issuance of this decision, the parties are unable to

resolve the valuation issue for both properties, a trial date will be scheduled at the convenience of the court and the parties to fully dispose these appeals.

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Arnold W. Aronson
Judge Trial Referee