

**STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS  
PROVIDENCE, Sc. DISTRICT COURT  
SIXTH DIVISION**

Joseph M. DiOrio, Chapter 11 :  
Trustee of Hope Mills Village :  
Associates, LLC :  
v. : A.A. No. 2009-203  
David M. Sullivan, Tax Administrator, :  
State of Rhode Island :

JUDGMENT

This cause came before Isherwood, J. on Administrative Appeal, and upon review of the record and memoranda of counsel, and a decision having been rendered, it is

ORDERED AND ADJUDGED

The decision of the Tax Administrator is affirmed.

Dated at Providence, Rhode Island, this 8<sup>th</sup> day of April, 2015.

Enter:

\_\_\_\_\_/s/\_\_\_\_\_

By Order:

\_\_\_\_\_/s/\_\_\_\_\_



Administrator.<sup>2</sup> This court has jurisdiction pursuant to Rhode Island General Laws §§ 42-35-15(a) and 8-8-24.

## I. PROCEDURAL HISTORY AND FACTS

Hope Mills Village Associates, LLC (“Hope LLC”) was formed with the apparent intent to rehabilitate and develop the Hope Mill (“Mill”) in Scituate, Rhode Island. The project had, since its inception, asserted historical significance.<sup>3</sup> The eventual goal of Hope LLC was to produce a residential rental complex at the Mill.

Part of the developmental process envisioned by Hope LLC was to utilize certain historic tax credits since the Mill was certified as a Historic Structure by the Rhode Island Historical Preservation & Heritage Commission (“Commission”). This certification by the Commission in 2006 was the first step whereby projects which qualified can apply said tax credits to assorted income-based state taxes. This is referred to by the parties as Part 1 Certification.<sup>4</sup> Hope LLC never obtained the Commission approval for a comprehensive rehabilitation plan - Part 2 Certification.

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<sup>2</sup> The parties have agreed that this case is to be decided based on stipulated facts and agreed upon exhibits submitted to the court.

<sup>3</sup> Hope LLC published as part of its allure that the Mill was once used as a furnace for the production of iron products such as cannons and cannon balls by Stephen Hopkins, an early Rhode Island Governor and an original signatory of the Declaration of Independence.

<sup>4</sup> Securing Part 1 Certification is the initial step is a three (3) part process whereby a project qualifies for Historic Structure Tax Credit which, in turn can be applied against various income-based state taxes. RIGL §§44-33.2-1 *et. seq.*

In March, 2008, Hope LLC was petitioned into State receivership in Riverfront Condominiums, LLC vs Hope Mill Village Associates, LLC, KM No. 08-0361 and Jonathan Savage, Esq. was appointed receiver. Thereafter, in April, 2008, the Historic Tax Credit program was modified; the changes necessitated by the General Assembly required an application to be filed by potential tax credit claimants – any party already in possession of Part 1 Certification. Said potential tax credit claimants were obligated to file an application, remit a Processing Fee and enter a contract of Guaranty by May 15, 2008 in order to protect entitlement to tax credits. These modifications put into place by the legislature effectively closed the process as it existed at that time to any new application.<sup>5</sup> Out of an abundance of caution, the Tax Administrator took immediate steps to provide notice to all appropriate parties of the legislative modifications.<sup>6</sup>

Notice was provided to Hope LLC by the Tax Administrator advising of the statutory May 15<sup>th</sup> deadline per the change of the law for submitting a Historic Tax Credit application and for the payment of the Processing Fees. Hope LLC did not fulfill either step regarding the deadline for submitting a Historic Tax Credit application. On July 22, 2008, the Tax Administrator notified Hope LLC that it was not entitled to Historic Tax Credits since it had not filed a timely application.

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<sup>5</sup> The legislature's rational for passing such legislation RIGL §44-33.2-4(f) was that the fiscal budgetary crisis was of such a nature to cause immediate peril to the public health, safety and welfare.

<sup>6</sup> The Tax Administrator along with the Commission promulgated emergency regulations, issued notices, and created certain necessary documents to effectuate this amended process.

Hope LLC – after requesting an administrative hearing without the involvement of its Receiver, Jonathan Savage, Esq. - filed for Chapter 11 protection in the United State Bankruptcy Court for the District Of Rhode Island.<sup>7</sup> In December, 2008, in spite of the pending bankruptcy petition, Hope LLC requested and was granted an opportunity to an administrative hearing before the Tax Administrator.

In March of 2009, the Bankruptcy Court appointed Joseph DiOrio, Esq., as Chapter 11 Trustee for the debtor Hope Mill Village Associates, LLC; subsequently, Trustee DiOrio, filed to amend the bankruptcy matter to a Chapter 7 proceeding. Vincent Coccoli, individually, (Coccoli) objected to the conversion by the Trustee.

Eight months later, on November 13, 2009, the Tax Administrator issued a final administrative decision finding that Hope LLC had not satisfied the timing requirements for a proper application of historic tax credits to be considered. Following this decision, two actions were then filed with the Rhode Island District Court – Sixth Division.<sup>8</sup> The two actions were identical - the former having been filed on December 8, 2009 by Hope LLC bankruptcy attorney, Keven McKenna, Esq. and the latter filed on December 11, 2009 by Trustee, Joseph M. DiOrio, Esq. Thereafter, Trustee DiOrio was granted permission from the Bankruptcy Court to

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<sup>7</sup> *In Re: Hope Village Associates, LLC, Debtor*, Bk No. 08-1256

<sup>8</sup> *Hope Mill Village Associates, LLC and Its Assignees v RI Division of Taxation and RI Historical Preservation & Heritage Commission*, AA No. 09-201 and *Joseph M. DiOrio, in his Capacity as Chapter 11 Trustee of Hope Mill Village Associates, LLC v David M. Sullivan, Tax Administrator*, AA No. 09-203.

sell Hope LLC assets to New England Development & Funding, LLC. (NE Development) Coccoli objected to the sale, however, the Bankruptcy Court granted the Trustee's request for said sale as well as the Trustee's Motion to Convert the matter to a Chapter 7 petition. Thereafter, NE Development was substituted for the Trustee as the plaintiff in this matter.

In August of 2010, Peter Furness, Esq. was appointed Receiver in a petition filed by NE Development with the Providence County Superior Court. Receiver Furness petitioned and was granted permission to sell the Mill to Coccoli "as is" for Seven Hundred Thousand (\$700,000.00) Dollars. Following the approval by the Superior Court, Coccoli petitioned the District Court arguing that he had standing as a potential purchaser to stand in the shoes of and be entitled to the Mill's Historic Tax Credits. It is at this time that Coccoli initially asserted that he was entitled to the Historic Tax Credits and petitioned the District Court accordingly.

Following these events, Receiver Furness filed a motion in the Superior Court requesting that the court determine the value and ownership of the aforementioned Historic Tax Credits. The Superior Court held an evidentiary hearing and issued a decision denying the receiver's request for lack of subject matter jurisdiction; an appropriate Order was then entered on July 15, 2013.

In October of 2013, the matter was heard by the District Court on the Receiver's Motion to Assign along with an objection thereto. No action was taken on that motion other than the matter to be reassigned. At the same hearing

the court granted Tax Administrator's Motion to Dismiss AA No. 09-201 *Hope Mill Village Associates, LLC and Its Assignees v RI Division of Taxation and RI Historical Preservation & Heritage Commission*.

Today the current plaintiff in the matter before the court is Peter Furness, Receiver for NE Development. NE Development purchased the assets of Hope LLC from Trustee DiOrio via an Asset Purchase Agreement approved by the Bankruptcy Court.

## II. DISCUSSION

The parties have stipulated to the facts in this matter by filing respective memoranda with extensive documentation in support thereof outlining the procedural posture and their legal arguments. They have further agreed that there is a single issue presented for this court to decide, specifically: "Whether or not a final decision of the Tax Administrator was proper when the Tax Administrator decided that Hope LLC did not properly pursue historic tax credits under the 2008 Historical Tax Program because Hope LLC failed to timely file an application and remit statutorily required fees thereby negating it's eligibility to claim said credits."

This issue is preempted by preliminary arguments. First, the issue of standing - the only party plaintiff in this matter is Receiver, Peter Furness, Esq. The court agrees with the defendant's argument that Receiver Furness stands in

the shoes of the debtor, NE Development and who, as such became the rightful owner of any rights or interests to tax credits. No subsequent action has occurred to substitute any party in place of NE Development although Coccoli has argued that he has standing to present arguments before the court. At best, Coccoli is an interested potential purchaser. However, without any consummated agreement with the Receiver, Coccoli cannot be part of this action to pursue a tax appeal; he has no standing before this court in this matter. Accordingly, this court finds that the specific inaction of Receiver Savage with regard to the timely filing for Part 2 Certification for the Historic Tax Credits has bound the plaintiff.

The next issue asserted by the plaintiff in this matter is the allegation that there was a violation of the Bankruptcy Court automatic stay by the defendant. Assuming *arguendo*, even if Coccoli had standing to argue that he or NE Development - as the substituted plaintiff - had a right to argue that the Tax Administrator's decision to deny the benefit of the Historic Tax Credit violated the provisions of a bankruptcy court stay, that argument is not supported by any sound reason nor case law. The defendant argues that the proper representative of the then plaintiff - Receiver Savage - failed to timely file its claim for the Historic Tax Credits and that Hope LLC never applied for the tax credits before the filing of the bankruptcy petition. This court agrees with defendant that Hope LLC did not have any tax credits or even a right to tax credits when it filed for Chapter 11 protection. Therefore, the Bankruptcy Stay was not violated by the aforementioned final decision of the Tax Administrator.

Thirdly, there was no contractual right to the Historic Tax Credits for the plaintiff as the plaintiff alleges. Simply because there was a Part 1 Certification issued by the Commission for the benefit of Hope LLC, does not inevitably entitle the plaintiff to an impenetrable contractual right to Part 2 Certification.

The Certification of Historic Significance (**Exhibit 4** of the Defendant's documentation in support of its pre-trial presentation) is a simply written straight forward document providing no contractual rights the Hope LLC.

Similarly, plaintiff's argument that the legislature's actions to amend the statute (RIGL §44-33.2-1*et. seq*) violated the plaintiff's constitutional rights under the Due Process Clause is unfounded and simply inapplicable. Plaintiff asserts this portion of its argument as a cornerstone to its position and this court could not disagree more. The statutory language as amended is clear, concise and necessary. The plaintiff had the option to take action for the Part 2 Certification.

In examining this portion of the dispute the court must review the statutes in questions and determine if there is any ambiguity therein. One of the often used rules of statutory construction is if there is an ambiguity in the legislation, revenue statutes are to be construed against the state, Sycamore Properties v. Tabriz Realty, LLC, 870 A.2d 424, 428 (R.I. 2005).

Here, there is no ambiguity in the amended statutory language and the plaintiff's argument once again is improper and is overcome by the defendant's arguments which are supported bits accompanying memoranda. To rule otherwise would thwart one of the principal objectives of the statute to protect the public

from an extreme budgetary disaster. It would also result in a greater opportunity to the plaintiff than was intended under the statute.

None of the arguments promoted by the plaintiff is supported by reason, the facts of this matter or case law. The plaintiff simply has no excuse for its failure to follow the time constraints of the statute as amended by the legislature. Hope LLC failed to timely file an application and remit statutorily required fees therefore, the final decision of the Tax Administrator was proper when the Tax Administrator decided that Hope LLC did not properly pursue historic tax credits under the 2008 Historical Tax Program.

### **III. CONCLUSION**

The court finds that the only plaintiff with standing to assert this matter is Peter Furness, Esq. as Receiver of NE Development. The court also finds that there has been no breach of an automatic stay in either the Rhode Island state receivership or the United State Bankruptcy matters relevant to *Joseph M. DiOrio, in his Capacity as Chapter 11 Trustee of Hope Mill Village Associates, LLC* and that the legislative amendments of 2008 to the Historic Tax Credit Law are constitutional. Finally, the court finds that no contractual right existed for the plaintiff to assert an obligation to extend Part 2 Certification with regard to the prior pending application for Historic Tax Credits under the 2008 program.

