

STATE OF VERMONT
ORANGE COUNTY

Mangala Shri Bhuti)
)
 v.)
)
Town of Vershire)

Orange Superior Court
Docket No. 207-10-06 Oecv

FILED
AUG 20 2008
ORANGE SUPERIOR COURT

DECISION REGARDING: CROSS MOTIONS FOR SUMMARY JUDGMENT

Introduction

In this appeal from a decision of the Town of Vershire Board of Civil Authority, plaintiff Mangala Shri Bhuti seeks a declaration that all of its property, or at least a greater portion of its property, is exempt from real estate taxes under 32 V.S.A. § 3802(4). The Town maintains that it properly distinguished between exempt and non-exempt property, when it determined that 53.56% of plaintiff's property was exempt. Attorney Hans Huessy represents Mangala Shri Bhuti. Attorney Paul Gillies represents the Town of Vershire.

Summary Judgment

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, referred to in the statements required by Rule 56(c)(2), show that there is no genuine issue as to any material fact and that any party is entitled to judgment as a matter of law." V.R.C.P. 56(c)(3). The party moving for summary judgment has the burden of proof, and the opposing party must be given the benefit of all reasonable doubts and inferences in determining whether a genuine issue of material fact exists. *Price v. Leland*, 149 Vt. 518 (1988). Summary judgment is mandated where, after an adequate time for discovery, a party fails to make a showing sufficient to establish the existence of an element essential to his case and on which he has the burden of proof at trial. *Poplaski v. Lamphere*, 152 Vt. 251 (1989).

Undisputed Facts

The court generally derives the undisputed facts from the parties' statements of fact submitted under V.R.C.P. 56(c)(2) and supporting documents. *Boulton v. CLD Consulting Engineers, Inc.*, 2003 VT 72, ¶ 29, 175 Vt. 413, 427. The court need not consider any facts not set forth in the parties' statements of facts, or any facts set forth without specific citation to the record. The purpose of the rule requiring statements of fact with citations to the record is "to focus summary judgment arguments and allow courts to more readily determine the material facts in issue." *Webb v. Leclair*, 2007 VT 65, ¶ 4, 18 Vt.L.W. 235, 236. In this case, the parties have stipulated to the following material facts, which are taken as undisputed for present purposes:

A. Background

1. Plaintiff, Mangala Shri Bhuti (“MSB” or “Church”) is a Buddhist Church and non-profit corporation incorporated under the laws of the State of Colorado, registered as a foreign corporation in the State of Vermont with real property located in Vershire, Vermont. MSB is granted tax-exempt status as a “church” under § 501(c)(3) of the Internal Revenue Code by the U.S. Internal Revenue Service, hence the use here of the term “Church” for the plaintiff. The use of this term is without prejudice to the use of the term “church” in 32 V.S.A. § 3822(2) [sic].¹

2. Defendant, the Town of Vershire (“Town” or “Vershire”), is a town organized under the laws of the State of Vermont.

3. On June 5, 2006, the Vershire Listers assessed the value of the Property (defined in ¶ 7 below) at \$507,600, of which \$275,400 was determined to be tax exempt. The Church unsuccessfully grieved the assessment, arguing that certain portions of the Property had incorrectly been determined to be used for non-pious purposes and thus were erroneously determined to be non-exempt from property taxes.

4. The Church appealed the Listers’ denial of its grievance to the Vershire Board of Civil Authority (the “Board”) on July 19, 2006.

5. On August 17, 2006, the Board issued an order affirming and amending the Listers’ determination that certain portions of the Property were not exempt from Property Taxes pursuant to the exemption in 32 V.S.A. § 3802(4). A true and correct copy of the Board’s Order is filed as Exhibit A.

6. The Board assessed the value of the Property at \$626,400, of which \$335,500 (53.56%) was regarded as tax-exempt for pious use, leaving the present taxable figure at \$290,900 (46.44%).

B. The Property and Its Use

7. The Church’s center in Vershire, known as Pema Osel Do Ngak Choling, consists of several structures on 9.8 acres at 322 Eastman Cross Road (the “Property”). Diagrams of the Property and Community Center are filed as Exhibit B.

8. The buildings on the Property are a Main Building (consisting of a “Pavilion,” a “Teacher’s Suite,” and a “Community Center”) and two Retreat Cabins.

9. The Main Building and Retreat Cabins were designed by an architect conversant with the activities of Buddhist monasteries and teaching establishments, the specific practices and needs of the Church, and the hallmarks of Tibetan Buddhism as set forth herein.

10. The Pavilion (of approximately 2,368 square feet) contains a large shrine room and

¹ Although the parties appear to have made some mistakes in their stipulated facts, the court has not attempted to correct the apparent mistakes, because the parties agreed to these facts in their stipulation.

covered patio. (See photos filed as Exhibit C). The Pavilion is used for large public religious teachings and meditation practice programs. Plaintiff and Defendant agree that the Pavilion is tax-exempt property used for pious purposes.

11. The Teacher's Suite (of approximately 1,064 square feet) consists of the senior minister and visiting teacher's residence. It is a separate suite located above a portion of the Pavilion and internally connected to the Community Center and includes a kitchen, dining room, living room, three bedrooms, and two full baths. (See photos filed as Exhibit C). Plaintiff and Defendant agree that the Teacher's Suite is tax-exempt property used for pious purposes.

12. The Community Center (of approximately 2,764 square feet) is a two-story area of the Main Building that is used by the Church congregation and by attendees of the teaching/mediation² program to prepare offerings and support liturgical feast practices, to prepare meals for teachers and Church members, for study, for meetings of Church members, for staff planning and meetings, for office activities, for storage, by retreatants,³ and as living quarters/parsonage for a resident minister (and his family).

13. Plaintiff and Defendant agree that the shrine/prayer room located on the second floor of the Community Center (approximately 300 square feet) is tax-exempt property used for pious purposes. A diagram of the second floor of the Community Center is filed as Exhibit B. (Also see photos filed as Exhibit C).

14. The taxable status of the remaining areas of the Community Center remains in dispute. These remaining areas total approximately 2,400 square feet, and are decorated with Buddhist calligraphies and religious paintings, religious statues and other artifacts designed to contribute to the contemplative religious environment. The disputed areas of the Community Center include the following:

a. on the first floor,

i. a covered front porch (used by congregation members and teaching/meditation programs attendees to access the Community Center, for program registration tables and information during programs, and as a sheltered gathering area for congregation members and others during inclement weather);

ii. an entry way (containing a shrine to Ganesh, a "protector" of the Buddhist teachings, that is maintained by the associate minister's wife (and others) on a daily basis with fresh offerings), through which persons access the Community Center;

² As noted above, the parties may have made some mistakes in their stipulated facts, and the court has not attempted to correct such mistakes, given the parties' stipulation. Here, and throughout the stipulated facts, it is unclear whether the parties meant to refer to "mediation" or "meditation."

³ "Retreatants" are those individual Church members currently in retreat practice.

- iii. a coat closet off the entry way (used by resident, congregation members, and teaching/mediation program attendees to store coats and shoes as needed);
 - iv. an open office area (maintained and used by the resident associate minister and the center directors and staff and serving as the central hub for the Church's activities in Vermont, the eastern United States, and Canada);
 - v. a kitchen (used by the residents, congregation members, and teaching program attendees to prepare food, offerings and meals);
 - vi. a great room (a dining area and living area used by the congregation, by teaching/meditation program attendees for meeting, study, and respite between teachings and practice, for child care during Church functions and practice sessions, and for simulcasting of teaching programs in the Pavilion for parents and/or other congregation members who are tending children during religious activities);
 - vii. a utility and retreat support room and laundry/pantry (used to support retreatants, and including storage space for liturgical and offering materials and a sink for preparation of feast and flower offerings);
 - viii. a bathroom (used by retreatants, residents, and other congregants, and situated off the utility room and retreat support room so that retreatants can use it without entering the rest of the Main Building and encountering other people); and
 - ix. staircases leading up to the second floor (used by congregation and teaching/meditation program attendees to get to the shrine room and to service access to senior minister's quarters on the second floor, and used by the resident minister and his family to access their bedrooms); and
- b. on the second floor,
- i. three bedrooms (two of which are utilized year-round by the resident associate minister and his family [his wife, who is the co-director of the Center, and their young daughter], and the third is utilized six months out of the year by the other co-director of the center and her husband who provides retreat support and caretaking of the facilities);
 - ii. a bathroom (shared by congregation, teaching/meditation program attendees, and residents);
 - iii. an open area adjacent to the shrine room entrance used as a Buddhist library and "PMH" area (a "post-meditation hall" used for pre- and post-meditation sitting and study);

iv. a hallway (used to walk to get to shrine room, library, bathroom and PMH); and

v. a passageway to the senior minister's quarters (used by the senior minister for access to and from the second floor shrine room and by congregation members attending/serving the senior minister when in residence). (See photos filed as Exhibit C).

15. The Retreat Cabins are used by Church members to perform solitary Buddhist mediation retreats under the guidance of the minister and other specifically trained authorized representatives of the Church. The taxable status of the Retreat Cabins is in dispute.

16. The initial Retreat Cabin (with an assessed value of \$24,000) is a 400-square-foot building with a 300-gallon cistern on the roof that feeds by gravity one small sink, with an outhouse (no toilet or septic), small kitchen areas, tiled shower area, hardwood floor, separate sleeping area, woodstove for heat, and a covered porch. A diagram of the initial Retreat Cabin is filed as Exhibit E. (Also see photos filed as Exhibit C).

17. The second Retreat Cabin is of a similar design but is significantly smaller. Its value has not yet been appraised.

18. With respect to the Church's lands, Plaintiff and Defendant agree that two acres of real property under and around the buildings is tax-exempt property used for pious purposes.

19. The taxable status of the remaining 7.8 acres of Church grounds remains in dispute. These grounds are used for retreat privacy, road access, parking, and walking meditation.

20. The facilities of the Church are open to members of the congregation and others on an unscheduled "drop-in" basis throughout the calendar year for religious practice and study.

21. Additionally, the current schedule of pious activities and events at the Church includes:

- a. Weekly Sunday meditation practice;
- b. Monthly practice and community work offering weekend;
- c. Twice-monthly extended group liturgical feast practices;
- d. Sangha Service Weekends;
- e. Annual teaching programs by the Senior Minister, including:
 - i. Essential Buddhist Topics (usually late Spring);
 - ii. Vajrayana Seminar (usually late Summer);

f. Web streaming of the main teaching programs from other Mangala Shri Bhuti locations to the Vermont community, including:

i. Words of My Perfect Teacher (January 18-20 and February 1-3, 2008);

ii. Nyingma Summer Seminar (July 28 to August 5, 2008);

iii. Shredra College (four full weekends from September 7 until September 30, 2008);

g. Visits from other teachers of the MSB and related lineages of Tibetan Buddhism (currently scheduled for May 6 to May 24, 2008);

h. Celebration/Group Practice associated with Buddhist religious holidays, including:

i. Losar (Tibetan new year on February 18, 2008);

ii. Buddha's birthday (May 23, 2008);

iii. Saga Dawa Duchen (May 31, 2008);

iv. Chokkor Duchen (July 17, 2008);

v. La Bab Duchen (November 1, 2008);

i. Retreats

i. Individual retreats are currently scheduled in 2008 for the months of February, March, May, June, July, August, September, October, December.

j. Riwo Sangcho Sangha Group Retreat (August 26-31, 2008) (group intensive practice for Church students led by the Senior Minister scheduled to precede the Vajrayana Seminar).

22. The practices and teachings set forth above are attended by congregation members (and other interested persons) from Vermont and the surrounding states, as well as from around the country and world.

23. Fees are charged for all religious programs and retreats held at the center, and are used to pay a portion of the center's operating and maintenance costs. A cancellation fee policy applies to Church members' advance reservations for practice time in the Retreat Cabins. Many congregation members additionally make donations to support the Church's pious activities at the center and/or make donations/pay fees while using the facilities and for meals while in retreat or otherwise practicing at or using the center's facilities. Since fees for programs and retreats are

inadequate to cover the full costs of operating and maintaining the Church, the Church relies on donations to make up the balance of its annual budget.

24. An Associate Minister (known as a “Khenchung”), who lives full-time with his family in the Community Center, ministers to the needs of the MSB Sangha in Vermont and surrounding states from the Property. This Associate Minister is not compensated for his work as a minister pursuant to Church policy. To support his family, he works in a manner consistent with his ministry, spending thirty-five hours per week as a para-educator for disabled students in a nearby public school in Thetford. The Associate Minister and his family share the use of the Community Center (with the exception of the two bedrooms of which they have private use) with the rest of the congregation and program attendees. No senior spiritual teacher of MSB lineage currently resides full time on the Property.

C. Tibetan Buddhism / Church Practice and Doctrine

25. Buddhism is the fifth largest religion in the world, behind Christianity, Judaism, Islam, and Hinduism. It is estimated to have 350 to 500 million adherents worldwide. Since the invasion of Tibet by the Chinese Red Army in 1959, the Tibetan Diaspora has resulted in the establishment of many Tibetan Buddhist congregations in the United States.

26. The Church is a religious organization practicing within the traditions of the Nyingmapa Lineage of Tibetan Buddhism, and was founded by Dzigar Kongtrul Rinpoche, a Buddhist teacher and author of *It's Up to You*.

27. The main religious practice of Buddhism is meditation which is supplemented by study, offering practices and many other liturgical religious practices. The historic Buddha taught meditation (group and solitary) as the main practice on the path to liberation from suffering.

28. Solitary meditation retreat practice, group meditation and study, and liturgical and offering practices are among the primary pious activities of Tibetan Buddhist centers such as the Church. The Church engages in such practices, under the direction of its spiritual teacher, Dzigar Kongtrul Rinpoche.

29. In the Tibetan Buddhist tradition, many meditations are often practiced in large groups in specially-designed meditation halls. Within these halls, daily meditation may be practiced by such groups by sitting in silence on “meditation cushions” and/or in the context of elaborate ritual/liturgical meditations over the course of an hour, day, weekend, weeks, or even a month or longer. Tibetan Buddhists supplement basic meditation practices with the practices of chanting of liturgies, offerings (food, flowers, incense, etc.), group “feast” practices, and ceremonies, which are utilized as means of inspiration, or as means to develop awareness and clarity, to cultivate compassion, and to understand the nature of mind and, thereby, progress through the stages of freeing oneself and all other beings from suffering. Group meditation practices may periodically be broken up by sessions of walking meditation, either around the meditation hall or outside in nature. For this reason, the historic Buddha established many of his main religious teaching centers in natural surroundings when available, an approach that has

been followed by most subsequent Buddhist traditions including those of the Church. The natural environment in Vermont is conducive to these religious practices.

30. Fundamental to Buddhism and the MSB lineage are the need to take refuge in the Buddha, Dharma and Sangha with the Buddha (as both the historical Buddha Shakyamuni and all “awakened ones”), Dharma as the teachings and practices of Buddhism and Sangha as the community of fellow practitioners. In Tibetan Buddhist Lineages, it is taught that the transmission of the teachings from Living Teachers of the Lineage is essential for each practitioner’s progress on the path. It is doctrinally necessary to treat the Living Teachers of the Lineage in an appropriate manner (effectively viewing them as inseparable from the Buddhas), which almost universally includes providing special quarters that are segregated and used solely by them.

31. Tibetan Buddhism also places strong emphasis on retreat meditation practice in areas that separate the meditator/retreatant from the normal concerns of daily life. Traditionally, in Tibet, such retreat meditation practice was conducted in caves or in specially-designed meditation structures located on mountain ranges, in forests, and in valleys away from cities and towns, or in special retreat structures near, but segregated from, meditation centers. Retreat practice is central to the pious practices of the Church. Such isolated retreats may include occasional personal visits from an individual’s teacher and are usually monitored by specifically trained authorized representatives of the Church.

32. In addition to meditation practice, the Tibetan approach to Buddhism emphasizes the systematic study of the history of the Buddhist religion, meditation treatises, and texts on the Dharma. Group study and teachings usually take place at Buddhist meditation centers designed to accommodate these important pious activities.

Discussion

Plaintiff Mangala Shri Bhuti appeals from a decision of the Town of Vershire Board of Civil Authority, which examined plaintiff’s property room-by-room and concluded that approximately 53.56% of the property was tax-exempt based on pious use. Plaintiff claims that all of its property, or at least a greater portion of its property, should be exempt under 32 V.S.A. § 3802(4). The appeal to the Superior Court is de novo, under 32 V.S.A. § 4467 and V.R.C.P. 74.

The parties are in agreement that certain portions of plaintiff’s property are exempt, based on pious use, under § 3802(4). The portions for which the exemption is not in dispute include the Pavilion, the Teacher’s Suite, and the Shrine/Prayer Room of the Community Center, plus 2 acres of the 9.8 acres of real estate. The portions for which the exemption is in dispute include additional rooms within the Community Center (such as the front porch, the entryway, hallways, passageways, staircase, coat closet, kitchen area, utility room, and certain open areas), the two retreat cabins, and the remaining 7.8 acres of real estate.

The question presented is whether some or all of the areas in dispute are exempt under the two statutes, 32 V.S.A. § 3802(4) and § 3832(2). The statutes must be read in pari material.

The paramount goal is to give effect to the intent of the legislature, and we gather legislative intent from a consideration of the whole and every part of the statute. *Herrick v. Town of Marlboro*, 173 Vt. 170, 173 (2001) (citations omitted). “Statutes granting an exemption from taxation are construed strictly against the party claiming an exemption, . . . yet reasonably so as not to defeat their purpose.” *In re Abbey Church*, 145 Vt. 227, 229 (1984) (citations omitted).

The first statute, 32 V.S.A. § 3802, authorizes the exemption as follows:

The following property shall be exempt from taxation:

(4) Real and personal estate granted, sequestered or used for public, pious or charitable uses; real property owned by churches or church societies or conferences and used as parsonages and personal property therein used by ministers engaged in full time work in the care of the churches of their fellowship within the state; . . .

The second statute, § 3832(2), limits the scope of the exemption as follows:

The exemption from taxation of real and personal estate granted, sequestered or used for public, pious or charitable uses shall not be construed as exempting:

(2) Real estate owned or kept by a religious society other than a church edifice, a parsonage, the outbuildings of the church edifice or parsonage, a building used as a convent, school, orphanage, home or hospital, land adjacent to any of the buildings named in this subsection, kept and used as a parking lot not used to produce income, lawn, playground or garden and the so-called glebe lands.

Section 3832 was enacted after § 3802(4), and limits its scope of application. *In re Abbey Church*, 145 Vt. at 229. The purpose of § 3832 was “to respond to ‘a growing complaint about the removal from taxation of real estate held for tax exempt purposes.’” *Our Lady of Ephesus House v. Town of Jamaica*, 2005 VT 16, ¶16, 178 Vt. 35, 42 (citing *Troy Conference Acad. v. Town of Poultney*, 115 Vt. 480, 490 (1949)).

The Vermont Supreme Court, in reviewing claims of exemption under § 3802(4), has focused on the primary use. See *Our Lady of Ephesus House* at ¶ 40 (court must determine “primary use” to determine if it is an exempt use); *Institute of Professional Practice v. Town of Berlin*, 174 Vt. 535, 538 (2002) (crucial factor is the primary use to which the property is put); *In re Aloha Foundation*, 134 Vt. 239, 241 (1976) (same).

In this case, the Town of Vershire examined the primary use of every room within the Community Center, and then allocated the space between exempt and nonexempt property, based on an assessment of exempt and nonexempt uses under § 3832(2). The Supreme Court has affirmed a trial court decision allocating space within one large building (a large horse barn), between exempt and nonexempt uses, in *Our Lady of Ephesus House*. However, the Court did

not decide whether such an allocation was appropriate as a matter of law, because neither party had contested the trial court's decision on that issue. 2005 VT 16, ¶ 32, note 2.

In this court's view, *Our Lady of Ephesus House* presented unusual circumstances, where an allocation within a building made sense, because the large barn had been used as a riding ring, but small portions of the building had then been converted to church purposes. In most cases, however, it will be more appropriate to assess the primary uses on a building-by-building basis, and not attempt to evaluate the pious uses of each room and hallway.

The statute listing property of a religious society that may be found to be exempt, 32 V.S.A. § 3832(2), uses terms that refer to buildings, such as "a church edifice," "a parsonage," "the outbuildings of the church edifice or parsonage," "a building used as a convent," etc. Although some of these terms could refer to portions of larger buildings, the statute does not seem to contemplate an assessment of the uses for each room within a building. Rather, the statute appears to call for an assessment of the uses within each building, and a determination of tax status based on the primary uses for each building.

Here, the court agrees with the plaintiff, Mangala Shri Bhuti, that all of the uses of the Community Center are connected, and that they support the pious use of the building. Even if the pious activities take place primarily in some of the larger meeting rooms, the entryway, hallways, stairs, and bathrooms, etc., all play a supporting role. The record does not support the Town's approach of allowing an exemption for areas such as the Shrine Room, but also disallowing an exemption for connected areas such as passageways, stairways, and the like. Where substantial portions of the building are used primarily for pious purposes, and where all parts of the building are used for ancillary, or supporting purposes, then the statute allows a tax exemption for the entire building.

The use of the bedrooms, by a resident associate minister, the co-directors, and their families, may present a closer question, because it is not clear that those rooms qualify as a "parsonage" under § 3832(2), and it does not appear that any of the residents are "ministers engaged in full time work in the care of the churches of their fellowship within the state" under § 3802(4). Nevertheless, these people serve as co-directors of the facility, and they provide retreat support and caretaking of the facilities. It is reasonable to conclude that the use of the bedrooms provides important support for the primary, pious uses of the building.

On the other hand, the court agrees with the Town that the plaintiff has not shown a right to exemption for either the retreat cabins or the additional acreage. Apparently church members use the retreat cabins for solitary meditation, and they also use the additional land for walking meditation. However, plaintiff has not shown how these activities contribute to the benefit that the church's activities provide to the general community. Although the use of the cabins may provide significant benefit to the individual retreatants, plaintiff has not shown that such use plays a substantial or necessary role in the operation of the church itself. Although the cabins conceivably could be considered "outbuildings of the church edifice," under § 3832(2), it is not clear that they play any critical role in supporting the church activities. The same is true for the rest of the 7.8 acres that are not immediately adjacent to the Community Center itself.

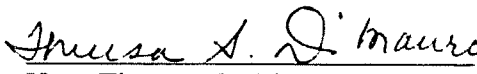
To the extent plaintiff claims that any denial of its full claim to the exemption is a violation of its constitutional right to freedom of religion, the Supreme Court rejected a similar argument in *Our Lady of Ephesus House*, at ¶ 40. Where the plaintiff seeks the exemption under § 3802(4), the court must conduct a property-specific analysis under § 3832(2), which limits the exemption to property used for specific purposes.

In summary, the court finds and concludes that the Community Center, along with 2 acres immediately surrounding the Community Center, is exempt from taxes under § 3802(4), but that the retreat cabins and the remaining 7.8 acres are not exempt.

ORDER

Each party's motion for summary judgment is granted in part and denied in part. The Town of Vershire's decision, allocating 53.56% of plaintiff's property as tax exempt, is reversed in part and remanded to the Town's Board of Civil Authorities, for a reassessment and reallocation of property to be considered tax exempt, consistent with the above discussion.

Dated at Chelsea, Vermont, this 20 day of August, 2008.


Hon. Theresa S. DiMauro,
Presiding Judge