IN THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

REINVESTMENT II, LLC,)	
)	
Appellant,)	
)	G 1 N N/40 1 40 044 N/10
v.)	C.A. No. N12A-12-011 MJB
)	
BOARD OF ASSESSMENT REVIEW)	
OF NEW CASTLE COUNTY and)	
NEW CASTLE COUNTY, a Political)	
Subdivision of the State of Delaware)	
)	
Appellees.)	

Submitted: June 4, 2013 Decided: September 20, 2013

Upon Appellant's Appeal from the Decision of the Board of Assessment Review of New Castle County, **AFFIRMED.**

OPINION AND ORDER

William J. Rhodunda, Jr., Esq., Rhodunda & Williams, Wilmington, Delaware, Attorneys for Appellant.

Wilson B. Davis, Esq., Assistant County Attorney, New Castle County Office of Law, New Castle, Delaware, Attorney for Appellees.

BRADY, J.

I. FACTS

The Maurice J. Moyer Academy ("Moyer Academy"), a public charter school, commenced operations in 2006 at 610 and 611 East 17th Street ("Property"). The Property originally belonged to the Sills/Moyer Education Fund until the Education Fund defaulted on its mortgage obligation to the Reinvestment Fund. After defaulting, on July 15, 2010 the Sills/Moyer Education Fund transferred the Property to Reinvestment II, a wholly-owned subsidiary of the Reinvestment Fund, via a deed in lieu of foreclosure. Reinvestment II permitted the Moyer Academy to continue operations on the Property through a lease.

K12 Classroom DE, LLC ("K12"), which was appointed by the State of Delaware to manage the Moyer Academy, currently has a lease agreement with Reinvestment II for the Property, on which the Moyer Academy operates.⁶ Based on the current record, which does not include the lease agreement, the record does not reflect what rights, if any, the Moyer Academy has under K12's lease with Reinvestment II. The lease agreement requires an annual rent of \$615,299.44 to be paid to Reinvestment II.⁷ K12 pays this rent through funds it receives from the Department of Education.⁸ Reinvestment II contends that it does not profit from the rent because the rent is needed to maintain the Property.⁹ Additionally, Reinvestment II states that it only took title to the Property to permit the Moyer Academy to continue operating and would

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¹Record (hereinafter "R.") at 3.

 $^{^{2}}Id.$ at 126.

³The Reinvestment Fund is a non-profit Pennsylvania corporation that is considered a national leader in neighborhood revitalization based lending projects. *Id*.

 $^{^{4}}Id$.

 $^{^{5}}Id$.

⁶*Id*. at 53–54.

⁷R. at 126.

⁸*Id*.

⁹*Id*.

prefer to transfer the Property to a willing party such as the State of Delaware, but has been unable to because of the encumbrances on the land from other mortgages.¹⁰

Because the Property is being used for educational purposes, Reinvestment II applied for a property tax exemption under 9 *Del. C.* § 8105, which applies to property that is owned by a school and used for educational or school purposes. This exemption would allow Reinvestment II to avoid paying property taxes for the land on which the Moyer Academy operates. On August 23, 2011, the New Castle County Office of Law denied Reinvestment II's application. Reinvestment II filed a timely appeal of this denial on September 22, 2011 and the Board of Assessment of Review ("Board") held a hearing about this matter on November 8, 2012. The Board's decision resulted in a two-two vote. Therefore, the Board denied Reinvestment II's appeal because a majority of the members of the Board failed to vote in favor of reversal.

II. PARTIES CONTENTIONS

A. Reinvestment II

Reinvestment II argues that the New Castle County attorney made misstatements of law to the Board that improperly influenced its decision, resulting in the Board denying the property tax exemption.¹⁷ Reinvestment II contends that the New Castle County attorney incorrectly stated in both her Letter of Opinion and presentation in front of the Board that the education exemption should be "strictly construed against the property owner." Reinvestment argues that

¹⁰*Id*. at 108.

¹¹*Id.* at 126.

¹²9 Del. C. § 8105.

¹³R. at 126.

 $^{^{14}}Id$

^{15 7 1}

¹⁶Id. at 131; Rules of Procedure of the Board of Assessment Review of New Castle County, Art. VI, Sec. 3.

¹⁷Appellant Op. Br. at 14–15.

¹⁸*Id*. at 7–8.

both the education exemption, 9 *Del. C.* § 8105, and the exemption that is extended to fiduciaries of schools through Section 14.06.401C of New Castle County's municipal code should be construed broadly. Reinvestment II argues that if 9 *Del. C.* § 8105 is construed broadly, then Reinvestment II would be entitled to the education exemption from property taxes. ²⁰

Reinvestment II also asserts that the New Castle County attorney erred when she stated that the exemption provided by § 8105 is limited to land that is not held by way of investment, and further asserted that Reinvestment uses the land to attempt to recoup its investment.²¹ Reinvestment II claims that it does not matter whether the Property is held by way of investment, because 9 *Del. C.* § 8105, it argues, allows land held by way of investment to be exempt so long as the land is owned by a school and used for educational or school purposes.²² Reinvestment II contends that the New Castle County attorney's representation improperly influenced the Board, resulting in the Board denying the property tax exemption.²³

B. New Castle County

The County contends that no legal error took place.²⁴ While conceding the County attorney may have incorrectly stated that the education exemption should be narrowly construed, the County asserts that nothing in the record or in the Board's opinion suggests that the Board

 $^{^{19}}Id.$

 $^{^{20}}Id$. at 10–11.

²¹*Id*. at 12.

²²Appellant Op. Br. at 12–13 ("The only criteria for eligibility set forth in the State Code are ownership by a school and use for educational or school purposes. There is no reference in the State Code to a 'held by way of investment' limitation on an educational exemption. Significantly, § 8105 confines the application of that limitation to properties owned by churches and religious societies. The clause granting exemptions to schools comes *after* the 'held by way of investment' language. By any sense of statutory construction or grammatical interpretation, therefore, the investment limitation can be understood to apply only to the *preceding* statutory language, not to the educational clause that follows its."). Because this Court concludes that the Property does not belong to the Moyer Academy, it is unnecessary to consider Reinvestment II's argument that 9 *Del. C.* § 8105 permits school property to be held by way of investment.

 $^{^{23}}Id.$ at 14–15.

²⁴Appellee Ans. Br. at 7–8.

narrowly construed 9 *Del. C.* § 8105.²⁵ Moreover, the County contends that even if the Board committed a legal error in narrowly construing 9 *Del. C.* § 8105, this Court will engage in a plenary review because this case presently solely a question of statutory interpretation.²⁶

In conducting a plenary review of the Board's statutory construction § 8105, the County urges this Court to apply the plain meaning to the words of statute, while broadly construing the statute as Reinvestment II advocates.²⁷ However, the County contends that after applying the plain meaning to and broadly interpreting § 8105, this Court should find that the Property did not belong to the Moyer Academy, and as a result the exemption should not be granted.²⁸ Additionally, the County contends that the plain meaning of "fiduciary," as used in New Castle County Section 14.06.401C, clearly demonstrates that Reinvestment II is not a fiduciary of the Moyer Academy, and as such is not subject to an exemption under § 8105.²⁹

III. ANALYSIS

Reinvestment II seeks a property tax exemption pursuant to 9 *Del. C.* § 8105, which provides, in pertinent part, that "[p]roperty belonging to . . . any college or school *and* used for education or school purposes . . . shall not be liable to taxation and assessment for public purposes." To receive the exemption, two elements must be meet: (1) the Property must belong to a college or school and (2) the Property must be used for education or school purposes. Here, neither party disputes that the Property is used for educational or school purposes, because the Moyer Academy, which operates as a school, is located on the Property. 32

 $^{^{25}}Id.$

 $^{^{26}}Id$.

²⁷*Id.* at 9–10.

²⁸*Id*. at 16.

²⁹*Id*. at 20–22.

³⁰9 *Del. C.* § 8105 (emphasis added).

³¹Id.

³²Appellee Ans. Br. at 17 ("In this case, there is no dispute that the Property is currently being used for a 'school purpose.'").

Thus, the Court's review is limited to the second element—i.e., whether the land can properly be considered as "belonging to" a school or college. The property owner seeking the exemption—here, Reinvestment II—carries the burden of establishing eligibility under 9 *Del. C.* § 8105. ³³

A. Standard of Review

Because the issue facing the Court is purely one of statutory construction, without a question of fact, the Board's decision is subject to plenary review.³⁴ Consequently, this Court will not defer to the Board's decision, but instead will consider the proper statutory construction of 9 *Del. C.* § 8105 *de novo*.³⁵ As a result, assuming *arguendo* that the Board erred by applying § 8105 too conservatively or committed some other error—for example, as Reinvestment claims resulted from the New Castle County attorney's alleged "improper influence".³⁶—that error is of no moment because this Court's review is plenary.³⁷

B. Proper Statutory Construction of "Belonging To"

When there is a question regarding the meaning or effect of a statute, this Court will seek to interpret that statute in a manner consistent with the legislative intent of the statute.³⁸ Legislative intent is discerned from the language of the statute.³⁹ When interpreting statutory language, absent a precise definition, this Court will give words their plain meaning, notwithstanding an absurd result.⁴⁰ Additionally, every word, phrase, or sentence of the statute will be given weight and consideration, again, as long as a reasonable result is achieved.⁴¹ In

³³Stirlith Bros. Co. v. Mayor and Council of Wilmington, 189 A. 880, 881 (Del. Ch. 1937).

³⁴University of Delaware v. New Castle County Dept. of Land Use, 2003 WL 220509, at *5 (Del. Super. Ct. Jan 30 2003).

 $^{^{35}}Id.$

³⁶Appellant Op. Br. at 7–8, 10–13.

³⁷New Castle County Dept. of Land Use, 2003 WL 220509, at *5.

³⁸*Id.* at *7.

 $^{^{39}}Id.$

⁴⁰Id.

⁴¹*Id*.

interpreting 9 Del. C. § 8105, this Court recognizes that a more liberal construction should be undertaken, because § 8105 pertains to an exemption for educational purposes. 42

i. "Belonging to" Defined

"Belonging" is not defined by Title 9, Chapter 81 of the Delaware Code, where § 8105 appears. As a result, this Court must consider the words plain meaning. "Belong to" is defined by non-legal dictionaries as "to be someone's property," 43 "to be the property of," 44 and "to be owned by someone." Furthermore, Black's Law Dictionary defines "belong" as "to be the property of a person or thing."46

ii. Indices of "Ownership"

Reinvestment II contends that title to the Property, which the Moyer Academy indisputably does not hold, is not the sole consideration in determining whether the Property belongs to a school or college. 47 Reinvestment II argues that it should be granted the exemption because of the circumstances under which it took title to the Property as well as the fact that it has a lease agreement with K12, which manages the Moyer Academy. 48 Reinvestment II relies on Alpha Rho Zeta of Lambda Chi Alpha, Inc. v. Inhabitants of City of Waterville, 49 a decision of the Supreme Judicial Court of Maine, to support its contention that the Property should be considered as belonging to the Moyer Academy. 50 In Inhabitants of City of Waterville, the city levied property taxes on several fraternities that occupied and held title to houses located on

⁴²University of Delaware v. New Castle County Dept. of Finance, 891 A.2d 202, 205 (Del. Super. Ct. 2006).

⁴³Cambridge Dictionaries Online, http://dictionary.cambridge.org/us/dictionary/british/belong-to-sb (last visited Sept. 18, 2013). ⁴⁴ *Dictionary.com*, http://dictionary.reference.com/browse/belong (last visited Sept. 18, 2013).

⁴⁵MacMillian Dictionary, http://www.macmillandictionary.com/us/dictionary/american/belong-to (last visited Sept. 18, 2013).

⁴⁶Black's Law Dictionary 175 (9th ed. 2009).

⁴⁷Appellant Op. Br. at 9–10.

⁴⁸Appellant Reply Br. at 8.

⁴⁹Alpha Rho Zeta of Lambda Chi Alpha, Inc. v Inhabitants of the City of Waterville, 477 A.2d 1131,1136–38 (Me. 1984). Interestingly, New Castle County also relies on this case to support its position that Reinvestment II is not entitled to the claimed property tax exemption. Appellant Reply Br. at 7.

⁵⁰Appellant Op. Br. at 9–10.

Colby College's campus. The court concluded that the college was the owner of the property at issue, because the college demonstrated sufficient indices of ownership.⁵¹ The indices demonstrated included the fact that Colby College had the power to (1) control alienation of the property, (2) expel fraternities from the property, (3) control who resides on the property, and (4) control the costs of staying on the property.⁵²

Here, unlike the property owners in *Inhabitants of City of Waterville*, Reinvestment II has not demonstrated that the Moyer Academy has similar indices of ownership. Although K12 has a leasehold interest in the Property, the record is devoid of any evidence that the Moyer Academy has any rights under the lease. Moreover, that lease has not been provided into the record and the Moyer Academy's rights, if any, under that lease were never disclosed.⁵³ As a result, the Court cannot determine whether the Moyer Academy has sufficient indices of ownership to satisfy the plain-meaning definitions for "belong" and "belong to" cited *supra*.⁵⁴

iii. Reinvestment as a Fiduciary

Section 14.06.401C of New Castle County's municipal code provides that "[t]he right to claim exemption shall extend to property, the title to which is held by a . . . conservator, or other fiduciary for any person who would otherwise be entitled to claim exemption under this Section." Although in appealing to this Court Reinvestment II only tangentially discusses whether it can properly be considered a fiduciary of the Moyer Academy, 55 Reinvestment II

⁵¹*Id*.

⁵²*Id*.

⁵³Reinvestment II also relies on a previous tax exemption determination made by New Castle County in support of its position that title is not required to establish ownership under Section 8105. Appellant Op. Br. at 10–11. That case, which involved the Delaware College Prepatory Academy ("DCPA"), is distinguishable from the case *sub judice*, because there DCPA formed a wholly-owned holding company that was essentially a "legal device" created by and operated exclusively for the benefit of DCPA. R. at 129. DCPA, unlike the Moyer Academy, held full ownership of the holding company. *Id*.

⁵⁴See supra notes 43–46 (defining "belong" and "belonging").

⁵⁵Reinvestment II's entire argument, on appeal, regarding its status as a fiduciary is as follows:

asserted below that it does qualify as a fiduciary under Section 14.06.401C.⁵⁶ Thus, as a final consideration, this Court must determine whether Reinvestment II is the Moyer Academy's fiduciary, thereby qualifying Reinvestment II to receive the educational property tax exemption pursuant to Section 14.06.401C.

The term "fiduciary," like "belonging," is not defined by the controlling statute.⁵⁷ Therefore, this Court must consider the words plain meaning.⁵⁸ Webster's Dictionary defines "fiduciary," in pertinent part, as "holding, held, or founded in trust or confidence," and "of, having to do with, or involving confidence or trust."⁵⁹ Furthermore, Black's Law Dictionary provides the following definitions of fiduciary: "[1] A person who is *required* to act for the benefit of another person on all matters within the scope of their relationship: one who owes to another the duties of good faith, trust, confidence, and candor"; and "[2] One who *must* exercise a high standard of care in managing another's money or property."⁶⁰ In addition to these dictionary definitions, Delaware case law pertaining to fiduciary status is robustly

There is no reason that the County could have instructed the Board that the provisions of 14.06.401(C), relating to ownership of property by trustees and fiduciaries, should be construed liberally, in accordance with the clear mandate of Delaware law, to support Reinvestment's application for an educational tax exemption. That was a fundamental question of fact for the Board's determination. While some members of the Board apparently agreed with the Board's attorney, . . . that Reinvestment was not such a fiduciary, two members explicitly concluded that it was and was therefore entitled to the exemption it sought. But Reinvestment was entitled to have the Board advised of its right to have that point considered, and that it was an error of law for the County to advise the Board that it should not apply a liberal construction to that essential eligibility criterion.

Appellant Op. Br. 8–9.

⁵⁶In arguing below, Reinvestment II made more substantive arguments relating to its alleged status as a fiduciary than it raises on appeal, stating:

[I]n light of the State's involvement, the passage of laws to try and keep the Moyer School going, and Reinvestment's efforts to keep it going for two years after they have been the title owner of the property, and their continued efforts to see that Moyer continue on certainly meet[s] all the requirements of a fiduciary.

R. at 113–14.

⁵⁷New Castle County Municipal Code Section 14.06.401C.

⁵⁸New Castle County Dept. of Land Use, 2003 WL 220509, at *6.

⁵⁹Webster's Third Int'l Dictionary 845 (3d ed. 1993).

⁶⁰Black's Law Dictionary 702 (9th ed. 2009) (emphasis added).

developed.⁶¹ The Delaware Supreme Court has explained that "the concept of a fiduciary relationship, which derives from the law of trusts, is more aptly applied in legal relationships where the interests of the fiduciary and the beneficiary incline toward a common goal in which the fiduciary is *required* to pursue solely in the interests of the beneficiary of the property."⁶²

Reinvestment II cannot properly be considered a fiduciary of the Moyer Academy based on the current record. Unlike the definition provided by Webster's Dictionary, Reinvestment II has failed to establish that its relationship with the Moyer Academy "h[as] to do with, or involve[es] confidence or trust." Furthermore, the definitions provided by Black's Law Dictionary, which stress that the fiduciary "is *required* to act for the benefit of another person," and "*must* exercise a high standard of care in managing another's money or property," also do not comport with Reinvestment II's position as the Property's owner. Finally, and most importantly, Delaware courts similarly state that a "fiduciary is *required* to pursue . . . the interests of the beneficiary of the property." Here, Reinvestment II is simply a landlord, with K12 as its tenant. Thus, K12, which manages the Moyer Academy pursuant to a contract with the Department of Education, is the party with whom Reinvestment II has a lease. As stated above, the record provides no direct, legal relationship between Reinvestment II and the Moyer Academy, let alone a fiduciary relationship where Reinvestment II is *required* to pursue the Academy's interests. Because Reinvestment II has not established that it is required to act in

⁶¹E.g., Crosse v. BCBSD, Inc., 836 A.2d 492, 495 (Del. 2003).

⁶²Id. (quoting Corrado Bros. v. Twin City Fire Ins. Co., 562 A.2d 1188, 1193 (Del. 1989)) (emphasis added).

⁶³Webster's Third Int'l Dictionary 845 (3d ed. 1993).

⁶⁴Black's Law Dictionary 702 (9th ed. 2009) (emphasis added).

⁶⁵Appellant Op. Br. at 3 ("K12 Classroom DE, LLC ('K12') manages the Academy and is Reinvestment's tenant."). *McMahon v. New Castle Associates*, 532 A.2d 601, 605 (Del. Ch. 1987) (explaining that the relationship between landlord and its commercial tenant was contractual, not fiduciary).

⁶⁷McMahon, 532 A.2d at 605 ("Here the [landlord-tenant] relationship between the parties is a straightforward commercial relationship arising from contract. It is in all of its aspects an arms-length relationship. . . . There is no basis in our developed law to accord that expectation the status of 'special trust' that would render the legal remedy

the Moyer Academy's best interest, it cannot properly be considered the Moyer Academy's fiduciary. As a result, based on the current record—which omits what rights the Academy has under the lease, if any—the educational property tax exemption provided by § 8105 does not

extend to Reinvestment II through Section 14.06.401C.

IV. CONCLUSION

While this Court recognizes that a broad interpretation must be given to 9 Del. C. §

8105,68 because Reinvestment II has failed to disclose whether the Moyer Academy has any

rights under its lease with K12 that would give the Moyer Academy sufficient control to

constitute a basis to find the property "belongs" to the Moyer Academy, the Court is unable to

properly determine whether the Moyer Academy satisfies the plain, definitional meaning of

"belonging to." As a result, this Court concludes that Reinvestment II has failed to establish that

it is entitled to the educational property tax exemption under 9 Del. C. § 8105.69

IT IS SO ORDERED.

M. Jane Brady

Superior Court Judge

for breach of contract inadequate. The duty to act honestly and in conformity with statutory law that forms the gist of the claim is, in the circumstances presented, a duty fully recognized at law.").

⁶⁸University of Delaware v. New Castle County Dept. of Finance, 891 A.2d 202, 205 (Del. Super. 2006).

⁶⁹In the event that Reinvestment II has evidence that the Moyer Academy has rights under the lease with K12, Reinvestment II should make another application to the Board of Assessment Review of New Castle County. The Court, however, cannot find that the Moyer Academy has a sufficient ownership interest to qualify for the property tax exemption under 9 Del. C. § 8105.