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Taxation—When Construction is Commenced Under New York City Administrative Code

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same vicinity may be received on direct examination of an expert on value as a criterion in evaluating the land in controversy.[8]

The Court of Appeals, in the instant case, unanimously affirmed the decision of the Appellate Division. They held that the sale prices of the land to the promoters and the subsequent resale to the co-operative corporation in which the promoters had no equity, was an indication of the value of the premises. The builder of the co-operative was not compelled to buy unless he chose to do so on account of the advantage of the location. It is not to be expected that a prospective builder would pay more than necessary for the purchase of suitable land and the fact that the corporation was able to sell the co-operative to the tenant owners at a price high enough to secure a profit indicates that the land and buildings were adapted to the site and worth what they cost when they were acquired and constructed.

There are many variables in the assessing process which make the determination difficult and controversial. Assessors are commonly directed to seek the price that the property would command in a voluntary arms length sale. The assessor's in the instant case did exactly that and the Court upheld their determination. Under New York State Tax Law, Section 8,[9] assessment of realty for tax must be at the actual value of the property to the taxpayer. The price he was willing to pay was surely an indication of the actual value and could be used as the basis for determining real estate assessments.

When Construction Is Commenced Under New York City Administrative Code

The New York City Administrative Code contains the following provision: "A building in course of construction, commenced since the preceding twenty-fifth day of January and not ready for occupancy on the twenty-fifth day of January following, shall not be assessed unless it shall be ready for occupancy or a part thereof shall be occupied prior to the fifteenth day of April."[10] As a result, builders have a fifteen month tax exemption, a period calculated to coincide with the time in which the building would not be producing income.

In *Sutton-53rd Corp. v. Tax Commission of New York City*,[11] plaintiff made objection to the Tax Commission's assessment of $3,875,000 on his property and improvement on the grounds that $3,000,000 of said amount was exempted under the above-quoted provision. It was undisputed that plaintiff's building was not ready for occupancy until April 18, 1952. The issue was whether construction had commenced *prior*, or *subsequent* to, January 25,

8. Village of Lawrence v. Greenwood, 300 N.Y. 231, 90 N.E.2d 53 (1949).
9. New York State Tax Law § 8:
All real property subject to taxation shall be assessed at the full value thereof.
10. § 157-1.0.
11. 7 N.Y.2d 416, 198 N.Y.S.2d 298 (1960).

1951. If the former, the Tax Commission's assessment would stand. If the latter, plaintiff would be exempted.

The uncontested evidence was that the following steps had been completed prior to the status date, January 25, 1951. The site had been excavated. Certain areas in the excavation, designated pier holes, had been chipped out to expose the bedrock. The next step, pouring of concrete into the pier holes, had also been partially completed (ninty-eight of two hundred and fifty).

The plaintiff insisted that these "piers", as the pourings were called, were not for the purpose of erecting a foundation, but were placed to protect the bedrock from the effects of the elements. However, it was also true that the piers were the resting place of concrete forms called pedestals. The pedestals transferred the weight of the building to the bedrock, through the intermediate, the piers.

The question thus presented to the Court was whether the pouring of the piers amounted to commencement of construction as the Commission contended, or a mere preliminary. Special Term found for the plaintiff and the Appellate Division affirmed.[12] The Court of Appeals reversed, holding that for the purposes of this statute construction commenced upon the introduction and use for construction purposes, of material foreign to the soil which eventually becomes a part of the completed improvement. In this case, placement of ninety-eight of two hundred and fifty concrete piers was considered commencement as a matter of law.

The test which the Court applied was first announced in 1915, in the case of *People ex rel. New York Central & H. R.R. Co. v. Purdy*,[13] where the Court adopted the dissenting opinion of Scott, J. at the appellate level.[14] Since that decision and until the present case, only once has there been an instance where the facts called for invocation of the test.[15] In all three cases there was latitude for dispute as to what act in the building process constituted a commencement of construction. There was, therefore, an obvious necessity for a yardstick. The one which the Court has adopted is both reasonable and practical. It is reasonable because it denotes as the starting point the raising of the building from the ground. It is easily applied because it searches for one affirmative act. Finally, the statute involved has been amended in language, but not in substance, since the earlier decisions. There being no change made to define "in the course of construction," it would seem to be a sound assumption that the judiciary's test was found satisfactory.

The lone dissent argued that this was not such a clear case as would justify a holding, as a matter of law, that construction had commenced, and since

12. 8 A.D.2d 791, 188 N.Y.S.2d 129 (1st Dep't 1959).
13. 216 N.Y. 704, 111 N.E. 1097 (1915).
14. 167 App. Div. 637, 153 N.Y. Supp. 300 (1st Dep't 1915).
15. Shelton Holding Corp. v. Goldfogle, 220 App. Div. 451, 221 N.Y. Supp. 583 (1st Dep't 1927).

there were questions of ultimate fact, the lower court's decision should be affirmed.

COMMUNIST PARTY NOT AN EMPLOYER UNDER UNEMPLOYMENT INSURANCE LAW

The refusal of the Unemployment Insurance Appeal Board to honor a claim for Unemployment Insurance gave rise to one of the most unusual cases in the history of the courts of New York, an unsuccessful suit by a taxpayer for the privilege of paying an excise tax, *In re Albertson's Claim*.[16]

In this consolidated proceeding the Industrial Commissioner of New York State as administrator of the Unemployment Insurance Law, Albertson, the claimant, and Albertson's former employers, the Communist Parties of the U. S. A. and of New York were all parties.

In March, 1957, the registration of the Communist Party as an "employer" under the New York Unemployment Insurance Law[17] was suspended and no further payments were accepted from the Party.

Following earlier employment with the Communist Party,[18] Albertson lost his job in a delicatessen and applied for benefits under the New York Unemployment Insurance Law.

Albertson was not employed by the Communist Party at the time of its suspension as an employer. The Industrial Commissioner decided that, since the status of the Communist Party as an "employer" under the Unemployment Insurance Law had been revoked by the Federal Communist Control Act of 1954,[19] the claim for benefits by Albertson was to be rejected since he could not qualify as an ex-employee of a bonafide "employer," although his employment had terminated before the formal suspension of the Party.

Albertson appealed this decision and the Communist Party appealed from the determination that they were no longer to be treated as employers within the definition of the Unemployment Insurance Law.[20] The Appellate Division reversed both decisions and the controversy came before the Court of Appeals upon the appeal of the Industrial Commissioner as administrator of the Unemployment Insurance.[21]

The Court of Appeals held that the fact that Albertson had spent the time required to qualify for unemployment insurance as an employee of the disqualified Communist Party was not enough to bar his claim. The Court of Appeals, however, upheld the refusal of the Industrial Commissioner to treat the Communist Party as an "employer" and his refusal to accept payment of the tax to the unemployment fund.

16. 8 N.Y.2d 77, 202 N.Y.S.2d 5 (1960).
17. N.Y. Labor Law Art. 18.
18. It never appears in the record of this case that Albertson was a member of the Party itself, or served it in any but a minor capacity.
19. 50 U.S.C. §§ 841, 842.
20. N.Y. Labor Law § 512.
21. 8 A.D.2d 918, 187 N.Y.S.2d 200 (3d Dep't 1959).