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Rite Aid Corp. v. City of Troy Bd. of Assessment Review

Supreme Court, Rensselaer County, New York - February 5, 2015 - N.Y.S.2d - 2015 N.Y. Slip Op. 25036

Commercial lessee, which operated a free-standing retail pharmacy under 20-year lease, challenged city's real estate tax assessment for three tax years. The Supreme Court, Rensselaer County, granted city's motion to dismiss. Lessee filed motion to reargue.

The Supreme Court, Rensselaer County, held that:

- Capitalization rate offered by lessee's appraiser was not based on sound theory and objective data set forth with sufficient particularity, but
- National survey of capitalization rates conducted by accounting firm was based on sound theory and objective data.

Capitalization rate, which appraiser for commercial lessee, which operated a free-standing retail pharmacy under 20-year lease, derived by reviewing four sales of comparable properties, was not based on sound theory and objective data set forth with sufficient particularity, as would be required to satisfy lessee's initial burden of rebutting the presumption that city's real estate tax assessments were valid. Lessee's appraiser provided information regarding income for two comparable properties but no information regarding expenses, appraiser relied completely on brokers involved in sales of the other two properties for information regarding income and expenses, and appraiser admitted that while a triple-net lease minimized the impact of expenses on the lessor, there were obviously expenses that needed to be paid and estimated.

National survey of capitalization rates conducted by accounting firm, which survey was used by appraiser for commercial lessee that operated a free-standing retail pharmacy under 20-year lease, was based on sound theory and objective data, as required to satisfy lessee's initial burden of rebutting the presumption that city's real estate tax assessments were valid.

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