

**Teleon Realty Corp. et al., Respondents-Appellants, v. City of New York et al., Appellants-Respondents**

**[NO NUMBER IN ORIGINAL]**

**Court of Appeals of New York**

**50 N.Y.2d 824; 407 N.E.2d 1346; 430 N.Y.S.2d 50; 1980 N.Y. LEXIS 2406**

**April 22, 1980, Argued**

**May 29, 1980, Decided**

**PRIOR HISTORY:** [\*\*1] Cross appeals, by defendants as of right and by plaintiffs by permission of the Court of Appeals, from an order of the Appellate Division of the Supreme Court in the First Judicial Department, entered May 14, 1979, which, by a divided court, modified, on the law, and, as modified, affirmed a resettled judgment of the Supreme Court at a Trial Term (Harold Baer, J.; opn 88 Misc 2d 767), entered in New York County upon a submission of a controversy on an agreed statement of facts pursuant to CPLR 3222, fixing plaintiffs' tax liabilities for certain property under *section 421 of the Real Property Tax Law*. The modification consisted of declaring that the residential portion of the property was required to pay as a minimum tax a proportionate share of the tax in dollars payable in the base year with respect to the entire property, and striking so much of the resettled judgment as applied the 1975 amendment to *section 421* in fixing tax liabilities for the tax years commencing 1975-1976. Plaintiffs sought a declaration of their rights under *section 421 of the Real Property Tax Law* with respect to their property, consisting of a 52-story building with several floors of apartments built above [\*\*2] multiple stories of commercial office space and stores. That section provided for certain exemptions from New York City real property taxes to residential dwelling units "during construction and \* \* \* for a period not to exceed ten years \* \* \* following the completion", and the exemption was granted "provided that taxes shall be paid during any such period at least in the amount of the taxes paid \* \* \* during the tax year preceding the commencement of such construction". The Appellate Division concluded that the trial court correctly determined that 1972-1973 was the first year of exemption for plaintiffs' building and that the minimum tax was the dollar amount of tax paid on the property in the base year 1971-1972; that, however, a 1975 amendment to *section 421* (L 1975, ch 857, § 3) was not applicable to plaintiffs' property; that as to the issue of the relationship between tax payments by the commercial portion of the property to the obligation to pay the minimum tax, the fairest approach was to apportion assessments between the commercial portion of the building and the residential portion of the building, and that, as a result, the minimum tax to be paid by the residential portion [\*\*3] of the property should be its appropriate proportion of the dollar tax paid on the whole property for the base year.

*Teleon Realty Corp. v City of New York, 68 AD2d 858.*

**DISPOSITION:** Affirmed.

**HEADNOTES**

**Taxation -- Real Property Tax -- Exemptions**

In an action for a declaratory judgment submitted upon an agreed statement of facts to determine plaintiffs' real property tax liabilities with respect to a 52-story building containing both commercial and residential space, under *section 421 of the Real Property Tax Law*, which provided for certain exemptions from real property taxes to residential units during construction and for 10 years following completion, an order of the Appellate Division, which modified a resettled judgment of Supreme Court fixing the tax liability, by declaring that the residential portion of the property was required to pay as a minimum tax a proportionate share of the tax in dollars payable in the base year with respect to the entire property, is affirmed for the reasons stated in the memorandum at the Appellate Division, which concluded that the trial court properly determined that 1972-1973 was the first year of exemption for plaintiffs' building and the minimum [\*\*4] tax was the dollar amount of tax paid on the property in the base year 1971-1972, but that as to the issue of the relationship between the tax payments by the commercial portion of the property to the obligation to pay the minimum tax, the fairest approach was to apportion assessments between the commercial and residential portions of the building.

**COUNSEL:** *Samuel Kirschenbaum* for respondents-appellants.

*Allen G. Schwartz, Corporation Counsel (Rochelle M. Corson and Edith I. Spivack of counsel)*, for appellants-respondents.

**JUDGES:** Concur: Chief Judge Cooke and Judges Jasen, Gabrielli, Jones, Wachtler, Fuchsberg and Meyer.

**OPINION**

[\*826] **OPINION OF THE COURT**

Order affirmed, without costs, for reasons stated in the memorandum at the Appellate *Division* (68 AD2d 858).