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Alcatel-Lucent Aims To Revive Farmland Assessment Appeal

By **Asha Glover**

Law360 (May 4, 2020, 8:25 PM EDT) -- Alcatel-Lucent USA should be allowed to seek a farmland assessment on a wooded portion of its North American headquarters in New Jersey despite not responding to a municipal tax assessor's records request, the company told a state appellate court Monday.

Alcatel should not be barred from appealing the denial of a farmland assessment in 2015 due to the telecommunications giant's failure to respond to the Berkeley Heights tax assessor's request for the property's income and expense data, because the property doesn't produce income, Alcatel attorney Rudy Randazzo told a three-judge panel.

Alcatel-Lucent argued that the assessor's records request, known as a Chapter 91 request, did not apply to the 53 acres of woodlands on the 153.4-acre headquarters property because that segment of the land did not produce any income. The company submitted a separate request for a farmland assessment, which the assessor denied on the grounds that the property wasn't primarily used for agricultural purposes. The entire property was valued at \$31.5 million for 2015.

The text of Chapter 91 does not apply to a farmland assessment or a determination of whether or not a property would need a farmland assessment since the case isn't about one person paying less in taxes, Randazzo said.

"It's about a constitutional imperative to preserve countryside and farmland for all residents," Randazzo said.

Randazzo also argued that dismissing the case on Chapter 91 grounds elevates "form over substance," since the case concerns a farmland assessment, and the state's Farmland Assessment Act is the sole means of determining whether farmland qualifies for exemption. He also said that even if Chapter 91 applied, Alcatel's error was minor.

"At the absolute worst, ALU failed to report a tiny fraction of rental income on less than 1% of a different part of the property," Randazzo said, adding the failure to report here cannot reasonably be deemed false or fraudulent. "That certainly isn't an equitable basis to deny an assessment, particularly where that assessment is a constitutional entitlement."

Adam J. Colicchio, on behalf of the township, urged the court to uphold the Superior Court Appellate Division's July 2019 decision to **bar an appeal** of the farmland assessment denial.

"In Alcatel's reply to our respondents' brief, it describes the township's actions as 'setting a trap' for the taxpayer, one which ensnared an innocent Alcatel thereby depriving them of their rights," Colicchio said. "However, that disregards that here the appellant has unclean hands."

Colicchio said it's been established that in the determination of whether a property is exempt or qualifies for a farmland assessment, the burden is on the taxpayer to respond to an assessor's Chapter 91 request and must provide that data on all income-producing property. He added that the Alcatel property at issue is income-producing because there are payments of rent on subtenant and leasing agreements.

Due to Alcatel's error, the company is precluded from having its appeal heard after failing to provide the requested information, Colicchio said.

Randazzo responded that the key issue in the case is not the valuation of property.

"Alcatel merely asked for a determination of whether or not the [property] met the requirements of the Farmland Assessment Act; that's the question that should be before the court," he said.

The Township of Berkeley Heights and Alcatel-Lucent did not respond to requests for comment Monday.

Alcatel-Lucent USA is represented by Stuart M. Lederman and Rudy Randazzo of Riker Danzig Scherer Hyland & Perretti LLP.

The Township of Berkeley Heights is represented by Adam J. Colicchio of Palumbo Renaud & DeAppolonio LLC.

The case is Alcatel-Lucent USA Inc. v. The Township of Berkeley Heights, docket number A-2629-18, in the Superior Court of New Jersey Appellate Division.

--Editing by Tim Ruel.

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