DOCKET NO.: HHB-CV-21-6074527-S

AFL-HBAN SOLAR TRUST C/O THE HUNTINGTON NATIONAL BANK	:	SUPREIOR COURT
	:	JUDICIAL DISTRICT OF NEW BRITAIN
v.	:	TAX AND ADMINISTRATIVE APPEALS SESSION
TOWN OF GRISWOLD	:	MAY 7, 2024

MEMORANDUM OF DECISION

The plaintiff, AFL-HBAN Solar Trust c/o The Huntington National Bank (AFL-HBAN Solar), moves for summary judgment on count one of its complaint against the defendant, the town of Griswold. AFL-HBAN Solar asserts that certain solar panels and related equipment (the subject solar equipment) located at 1240 Voluntown Road in Griswold, Connecticut (the subject property) are exempt from personal property taxation under General Statutes § 12-81(57)(D). AFL-HBAN Solar claims that it has met its initial burden to present material facts demonstrating that it meets the requirements of § 12-81(57)(D) and that Griswold has failed to offer any material facts rebutting AFL-HBAN Solar's initial showing. Therefore, AFL-HBAN Solar argues it is entitled to a judgment that the subject solar equipment is exempt from taxation under § 12-81(57)(D) as a matter of law. The court agrees. The court hereby grants summary judgment on count one of AFL-HBAN Solar's complaint. AFL-HBAN Solar has presented material facts demonstrating that the subject solar equipment at the subject property meet all the requirements of § 12-81(57)(D) and Griswold has failed to rebut AFL-HBAN Solar's initial showing, or otherwise raise any

Electronic notice sent to all counsel of record:
1) E. Kaiman 2) M. Willis on 5/7/24.
A. Jordanopoulos, CT Officer

material factual disputes. Therefore, AFL-HBAN Solar is entitled to judgment as a matter of law in its favor as to count one of its complaint. The court's reasoning is set forth below.

FACTS

The court finds that the following material facts are not in dispute.

AFL-HBAN Solar Trust owns the subject solar equipment at the subject property. The subject solar equipment was assigned the Personal Property Unique ID 2008200 by Griswold.

All of the subject solar equipment participates in Connecticut's Virtual Net Metering (VNM) program pursuant to General Statutes § 16-244u. See Doc. Entry No. 108.00, Affidavit of Chris Little ("Little Aff."), at ¶ 26. The VNM program is administered by the Public Utilities Regulatory Authority (PURA). See Little Aff., Ex. B. Generally, the VNM program allows municipalities to receive a credit on their electric bills for the excess electricity produced by solar equipment not actually owned by the municipality. When solar power equipment produces more electricity than can be used at the equipment's location, the excess electricity is sent to the general power grid to be used by other electric customers and the owner of the solar equipment receives a credit on its next bill equal to the value of the excess electricity produced. This process is known as "net metering." In 2011, the Connecticut legislature allowed municipalities to contract with owners of certain solar equipment to purchase the billing credits generated when solar equipment produces excess electricity redistributed to the general power grid. See P.A. 11-80; see also General Statutes § 16-244u. Because the municipality does not actually own the solar equipment generating the

excess electricity, this arrangement is known as "virtual" net metering. See generally, Little Aff., at ¶¶ 7, 9, 15-16. The municipalities contracting with AFL-HBAN Solar to receive the benefit of the excess credits produced by the subject solar equipment at the subject property are the town of Newtown and the City of Stamford. See Little Aff., at ¶ 27. Under General Statutes 16-244u(1), Newtown and Stamford are known as "beneficial account" holders.

General Statues § 12-81(57) exempts certain solar equipment from local personal property taxes. Section 12-81(57)(D) states, "For assessment years commencing on and after October 1, 2014, any (i) Class I renewable energy source, as defined in section 16-1, other than a nuclear power generating facility, (ii) hydropower facility described in subdivision (21) of subsection (a) of section 16-1, or (iii) solar thermal or geothermal renewable energy source, installed for generation or displacement of energy, provided (I) such installation occurs on or after January 1, 2014, (II) is for commercial or industrial purposes, (III) the nameplate capacity of such source or facility does not exceed the load for the location where such generation or displacement is located or the aggregated load of the beneficial accounts for any Class I renewable energy source participating in virtual net metering pursuant to section 16-244u, and (IV) in the case of clause (iii) of this subparagraph, such exemption shall apply only to the amount by which the assessed valuation of the real property equipped with such source exceeds the assessed valuation of such real property equipped with the conventional portion of the source."

AFL-HBAN Solar filed an affidavit in support of its motion for summary judgment stating that the subject solar equipment at the subject property qualify as a Class I renewable

energy source as defined in General Statutes § 16-1. See Little Aff., at ¶ 28. AFL-HBAN Solar also states that the subject solar equipment at the subject property was installed after January 1, 2014. See Little Aff., at ¶ 29. Because Griswold's brief in opposition to summary judgment argues only that AFL-HBAN Solar has failed to meet the requirements of subsections (II) and (III) of § 12-81(57)(D)(iii), see Doc. Entry No. 109.00, at 5, the court concludes that Griswold does not dispute (and/or has waived any argument to the contrary) that the subject solar equipment is a Class I renewable source as defined in General Statutes § 16-1 and that the subject solar equipment was installed after January 1, 2014. Thus, the court concludes that the decision of whether summary judgment is appropriate in this matter depends on whether AFL-HBAN Solar can present undisputed material facts demonstrating that it meets the requirements of subsections (II) and (III) of § 12-81(57)(D)(iii).

Griswold filed no affidavit asserting material facts disputing AFL-HBAN Solar's factual assertions. Griswold argues only that AFL-HBAN Solar has failed to meet its initial burden. See Doc. Entry No. 109.00, at 5.

LEGAL STANDARD

The standard governing the court's review of a motion for summary judgment is well settled. "Summary judgment is a method of resolving litigation when pleadings, affidavits, and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . . The motion for summary judgment is designed to eliminate the delay and expense of litigating an issue when there is no real issue to be tried. . . . However, since litigants ordinarily have a constitutional right to have

issues of fact decided by a jury . . . the moving party for summary judgment is held to a strict standard . . . of demonstrating his entitlement to summary judgment." (Citation omitted; footnote omitted; internal quotation marks omitted.) *Grenier* v. *Commissioner of Transportation*, 306 Conn. 523, 534-35, 51 A.3d 367 (2012). "In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . . The party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law . . . and the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact. . . . A material fact . . . [is] a fact which will make a difference in the result of the case. . . ." (Internal quotation marks omitted.) *Stuart* v. *Freiberg*, 316 Conn. 809, 820-21, 116 A.3d 1195 (2015); see also Practice Book § 17-49.

LEGAL ANALYSIS

a. Subsection (II); commercial purposes

In *LSE Canis Minor, LLC* v. *Town of New Hartford*, CV-19-6022324-S, 2021 WL 2525580 (Conn. Super., May 28, 2021), Judge Shaban considered whether solar equipment in New Hartford, Connecticut met the definition of "commercial or industrial" under § 12-81(57)(D)(iii)(II). Judge Saban reasoned as follows, "Section 12-81(57)(D)(iii)(II) provides that the Class I renewable energy source be used 'for commercial or industrial purposes.' The terms, 'commercial or industrial' are generally unambiguous and likely carry their everyday meaning. The term 'commercial' is defined as '[o]f, relating to, or involving the buying and

selling of goods.' Black's Law Dictionary (11th Ed. 2019). Relatedly, 'industry' is defined as '[a] particular form or branch of productive labor; an aggregate of enterprises employing similar production and marketing facilities to produce items having markedly similar characteristics.' Black's Law Dictionary, *supra.*" *LSE Canis Minor*, 2021 WL 2525580, *5. In applying these plain meaning definitions to the facts of the *LSE Canis Minor* case, Judge Shaban stated, "there is no genuine issue of material fact that the facility at issue falls under the 'commercial or industrial' definition. In Macel's affidavit, he notes that the facility's solar power is 'transferred to a commercial distribution grid owned and operated by the Connecticut Light and Power Company, doing business as Eversource Energy.' The Macel affidavit also notes that 'the beneficial amounts for the Facility are accounts owned by the Town of Vernon.' In other words, the facility at issue owned by the plaintiff generates electricity through its solar panels, transfers that energy to Eversource, and then Eversource distributes that energy to the town of Vernon. The transfer of energy as discussed in the plaintiff's affidavits shows that the plaintiff's class I renewable energy source is being used for 'commercial' purposes. Accordingly, given the evidence submitted by the plaintiff, subsection (II) of § 12-81(57)(D)(iii) is fulfilled." Id.

This court agrees with Judge Shaban's analysis and reaches the same conclusion in this matter. AFL-HBAN Solar avers, "the solar facilities at issue are located upon real property in Griswold, Connecticut. Not all of the electricity generated by the Solar Facilities

is consumed on site. Instead, as with every solar facility that participates in the VNM[1] program, the electricity not consumed on site is sold to a licensed electric distribution company, in this case, Eversource. To pay for such electricity, the utility company applies corresponding VNM credits to the monthly electric bills of the customer that has contracted with the solar facility for those credits (here, the Town of Newtown, Connecticut, in the case of Newtown #1 and #2, and City of Stamford in the case of Stamford #1)." Little Aff., at ¶ 15. Like Judge Shaban, this court concludes that the foregoing facts meet § 12-81(57)(D)(iii)(II)'s statutory requirement that the subject solar equipment be used for "commercial" purposes. AFL-HBAN Solar uses the subject solar equipment at the subject property to generate electricity, transfers that energy to Eversource, and then Eversource distributes that energy to Newtown and Stamford. The transfer of energy as discussed in Mr. Little's affidavit shows that AFL-HBAN Solar's class I renewable energy source is being used for "commercial" purposes. Accordingly, this court concludes that AFL-HBAN Solar has presented undisputed material facts establishing that it meets the requirements of § 12-81(57)(D)(iii)(II).

[1] The court does not credit Mr. Little's statements to the effect that Eversource would only allow a solar facility to participate in the VNM program if it was in compliance with § 12-81(57)(D). Mr. Little does not disclose any basis upon which the court can conclude that Mr. Little has an adequate basis to state what Eversource's policies may be and Mr. Little's averments on this issue are unsupported by any evidence.

b. Subsection (III); aggregate production v. aggregate load

Section 12-81(57)(D)(iii)(III) requires that "the nameplate capacity of such source or facility does not exceed the load for the location where such generation or displacement is located or the aggregated load of the beneficial accounts for any Class I renewable energy source participating in virtual net metering pursuant to section 16-244u . . . ." Judge Shaban concluded that this requirement was not ambiguous and that it means that "the nameplate capacity or output of the subject solar panel facility does not exceed the load used for the location where the generation occurs *or* that the output does not exceed the total aggregate load for the end user who is receiving the virtual net metering credits." (Emphasis in original.) *LSE Canis Minor*, 2021 WL 2525580, *6. This court agrees with Judge Shaban's construction of the meaning of § 12-81(57)(D)(iii)(III).

In this matter, this court concludes that AFL-HBAN Solar has presented sufficient facts to demonstrate that the aggregate energy produced by the subject solar equipment does not exceed the aggregate electricity load used by the Newtown and Stamford accounts associated with the subject solar equipment. See Little Aff., at ¶¶ 35-37. Mr. Little's affidavit states specific amounts of electricity produced by the subject solar equipment for three tax years as compared to the specific amount of aggregate electric load used by the Newtown and Stamford accounts associated with the subject solar equipment. Id. The court concludes that these portions of Mr. Little's affidavit provide an adequate factual basis to demonstrate that the total output of the subject solar equipment does not exceed the total aggregate load used by the end user who is receiving the virtual net metering credits, in this

case, Newtown and Stamford. Therefore, the court concludes that AFL-HBAN Solar has presented sufficient material facts to meet its initial burden of demonstrating that the subject solar equipment at the subject location is in compliance with § 12-81(57)(D)(iii)(III). Griswold has offered no material facts whatsoever rebutting or contradicting AFL-HBAN Solar's facts.

CONCLUSION

As set forth above, the court concludes that the plaintiff, AFL-HBAN Solar Trust c/o The Huntington National Bank, has met its initial burden to present material facts demonstrating that it meets the requirements of § 12-81(57)(D) and that Griswold has failed to present any material facts rebutting AFL-HBAN Solar's initial showing. Therefore, AFL-HBAN Solar is entitled to judgment as a matter of law that the subject solar equipment at the subject location is exempt from taxation under General Statutes § 12-81(57)(D). For all the foregoing reasons, the court grants summary judgment in favor of the plaintiff, AFL-HBAN Solar Trust c/o The Huntington National Bank, on count one of its complaint against the defendant, the town of Griswold.

Budzik, J.