



A New York trial court has declared unconstitutional the New York State Department of Taxation and Finance's chosen methodology for determining under Real Property Tax Law § 575-b the assessed value of solar and wind installations throughout New York, because the Legislature failed to provide adequate guideposts to cabin DTF's discretion in using the Legislature's delegated taxing authority. This case, given its broad statewide impact and New York's focus on promoting renewable energy, could be on a track to the Court of Appeals. Let's take a look at that opinion and what else has been happening in New York's appellate courts over the past week.

## FIRST DEPARTMENT

### CIVIL PROCEDURE, STATUTE OF LIMITATIONS, RELATION BACK

*Y.C. v Catholic Charities of Staten Is., Inc.*, 2025 NY Slip Op 01309 (1st Dept Mar. 06, 2025)

**Issue:** May a Child Victims Act plaintiff file an amended complaint adding a new defendant after the Legislature's 2-year filing window has expired?

**Facts:** Plaintiff sued the City of New York under the Child Victims Act within the 2-year filing window. Following the expiration of the filing window, the plaintiff served an amended complaint adding a new defendant, Catholic Charities of Staten Island, to the case. CCSI moved to dismiss the claims as time-barred, and Supreme Court granted the motion because the amended complaint was filed outside of the Child Victims Act's two-year filing window.

**Holding:** The First Department affirmed the dismissal, holding that the relation back doctrine could not save the otherwise time-barred amended complaint. The Court explained, "Plaintiff cannot show that the City of New York, an original defendant, and CCSI were united in interest. Plaintiff's contention that the City and CCSI were engaged in an agency relationship for purposes of plaintiff's foster care placement is not supported by evidence. Furthermore, mere speculation is insufficient to establish unity of interest. Even if the City and CCSI were both involved in plaintiff's placement, unity of interest would not necessarily follow because both entities have divergent interests in the litigation and may assert different defenses. Plaintiff also failed to show that CCSI would not be prejudiced by her delay in adding it to this lawsuit, as it is entitled to adequate notice of claims against it to prepare a defense and conduct its own investigation of this more than 50-year-old claim." Nor was Plaintiff's original pleading against "Doe" defendants sufficient for relation back purposes. Because Plaintiff could have, with diligence, investigated and determined CCSI's identity prior to the expiration of the two-year filing window, but failed to undertake any reasonable efforts to do so, her amended complaint against CCSI was properly dismissed as time-barred.

### CRIMINAL LAW, JUSTIFICATION FOR *DEBOUR* INQUIRY

*People v Walker*, 2025 NY Slip Op 01194 (1st Dept Mar. 04, 2025)

**Issue:** Did police have a sufficient justification under *People v DeBour* (40 NY2d 210 [1976]) for seizing the criminal defendant after observing him crossing the street in a crosswalk carrying bottles of alcohol that had been opened, but were at that time closed?

**Facts:** In the early morning of New Year's Day 2022, police officers observed defendant crossing the street in a crosswalk "holding two to three glass bottles of alcohol in his left arm, one bearing a 'Hennessy' label. The bottles were unsealed, half-full, and appeared to be capped and closed. [The police] suspected that the defendant was in violation of New York's open container law, although [they] did not see defendant drink from the bottles and did not see that any of the bottles were open." One of the officers "noticed that compared to the left side of his jacket, defendant's right jacket pocket appeared to have a heavy-weighted object. The officer noticed that the pocket was stiff, ended out, and pointed to the ground. [He] concluded that the object was not a cellphone, wallet, keys, or similar object because of its heavy appearance. Although he did not say that the object resembled the outline of a firearm, he suspected the object was a gun." When the officers got out of their car to ask defendant about the bottles of alcohol and began to interact with him, defendant began to run. The officers chased defendant, and eventually tackled him, breaking the bottles of alcohol in the process. The officers recovered a gun from defendant after the chase, and arrested him.

After defendant was charged with criminal possession of a weapon, he moved to suppress the gun "as the fruit of his unlawful seizure. He argued that his conduct was innocuous, not suspicious, and did not justify the police encounter. He argued that [the officers] never saw him drink from the bottles of alcohol, and transporting unsealed but closed bottles of alcohol is not a violation of the open container law. Defendant further argued that the level of the encounter did not justify a forcible stop under . . . *DeBour*, and that [the officer's] observation of an apparent heavy object in defendant's jacket pocket was insufficient to give rise to a reasonable suspicion that he possessed a

gun. Finally, defendant argued that because the initial encounter was not lawful, his flight was insufficient to raise the level of suspicion.” The People opposed, arguing that “the encounter was justified at its inception because it was reasonable for the police to infer that the defendant had violated the open container law when [the officers] saw him carrying half-full bottles of alcohol with broken seals. The People argued that [the officer’s] level of suspicion increased when he saw the bulge in the right pocket of defendant’s jacket, and that the officers were justified in pursuing defendant because his flight added the reasonable suspicion necessary to justify a forcible stop and detention under the third level of *DeBour*.” Supreme Court denied the suppression motion.

**Holding:** The First Department reversed, holding that the “circumstances here do not support a presumption that the defendant intended to consume the alcohol he was carrying; on the contrary, they point to the conclusion that his actions were innocent and lawful. The bottles that the defendant was carrying were all closed and capped, and therefore were not open containers, even if they were unsealed . . . Transporting closed bottles is a legal activity which, without more, does not give rise to a presumption of intent to consume, or a founded suspicion of criminal activity under *DeBour* . . . Critically, the officers never saw defendant drink from any of the bottles. Therefore, these facts did not give rise to a presumption that defendant intended to consume alcohol in public in violation of the statute, and [the officers], at most, acquired the right to approach defendant to request information.”

The bulge observed in defendant’s pocket did not alter that conclusion, the Court held. “The heavy-weighted object in defendant’s right jacket pocket could not have justified defendant’s stop and detention because, absent other circumstances evoking suspicion, indicative of or referable to the possession of a handgun, the observation of a mere bulge or heavy object in a pocket does not imply a reasonable conclusion that the person is armed. A police officer must show that the object or appearance thereof which is the focus of his attention resembled a gun. Thus, absent a showing of anything other than a mere bulge or heavy object in defendant’s pocket, [the officers] could not have acquired a level of suspicion sufficient to detain the defendant.” Supreme Court, therefore, should have granted Defendant’s motion to suppress the gun as the fruit of an unlawful seizure.

## THIRD DEPARTMENT

### CIVIL PROCEDURE, CPLR ARTICLE 78, WRIT OF PROHIBITION

*Matter of Peterec-Tolino v Schick*, 2025 NY Slip Op 01271 (3d Dept Mar. 6, 2025)

**Issue:** Does a writ of prohibition lie to prevent a specific judge from hearing your case?

**Facts:** After the pro se petitioners got into a fight with their homeowners association over the installation of water meters on their home, the petitioners commenced a civil action against the homeowners association and representatives of the water company, “asserting various causes of action, including for intentional infliction of emotional distress, negligent infliction of emotional distress, coercion and fraud.” After a preliminary conference with the Supreme Court judge, the defendants moved to dismiss. Supreme Court granted the motion and dismissed the complaint. Following the denial of petitioners’ reargument motion, Petitioners appealed the dismissal of the complaint. Petitioners, still pro se, simultaneously commenced this CPLR Article 78 proceeding in the Appellate Division, “seeking a writ of prohibition against [the trial judge], barring him from presiding over the civil case in the event that this Court remits the matter through either pending appeal.”

**Holding:** The Third Department dismissed the petitioners’ petition for a writ of prohibition, cautioning that “[r]elief in the form of a writ of prohibition is an extraordinary remedy and, in cases involving the exercise of judicial authority, is available only where there is a clear legal right, and then only when a court acts or threatens to act either without jurisdiction or in excess of its authorized powers. Critically, this extraordinary remedy cannot be used as a means to obtain collateral review of an alleged error of law, particularly where, as here, there is an adequate remedy at law by way of a direct appeal, including where a claim is characterized by a party as an excess of jurisdiction or relates to an alleged bias or prejudice of the trial judge.” The Court explained that the trial judge “was within his jurisdiction and authorized powers to consider the prior determinations of the PSC when evaluating the merits of respondents’ motion to dismiss based on the documentary evidence. Any error in doing so would, at most, be a mere error of law that can be adequately considered and cured by way of a direct appeal without interfering with normal trial and appellate procedures, and, therefore, does not justify the extraordinary remedy of a writ of prohibition. To the further extent that petitioners, relying on excerpts from the preliminary conference, allege bias and prejudice on the part of [the trial judge] that is outside of the purview of Judiciary Law § 14, a writ of prohibition is not a proper vehicle to raise such challenge — which is also, upon a proper application to [the trial judge] as the sole arbiter of recusal, reviewable on direct appeal.”

# TRIAL COURT DECISION OF INTEREST

## REAL PROPERTY TAX LAW, VALUATION OF SOLAR AND WIND FACILITIES

*Airey v State of New York, Sup Ct, Albany County, Farrell, A.J., Mar. 3, 2025, Index No. 903991-24*

**Issue:** Does Real Property Tax Law § 575-b, which required that the assessed value of solar and wind energy systems with a nameplate capacity equal to or greater than one megawatt be determined by a discounted cash flow approach and delegate to the State Department of Tax and Finance the responsibility to create a valuation methodology, unconstitutionally delegate the Legislature's taxing authority?

**Facts:** Enacted in 2021, Real Property Tax Law § 575-b required that the assessed value of solar and wind energy systems with a nameplate capacity equal to or greater than one megawatt be determined by a discounted cash flow approach. Under the statute, the Legislature delegated the authority to identify and formulate a valuation methodology to comply with that requirement to the State Department of Tax and Finance, in consultation with the New York State Energy Research and Development Authority and the New York State Assessors Association. When DTF did so, however, petitioners argued that the model it created failed to account for investment tax credits ("ITCs"), bonus depreciation and accelerated depreciation, and renewable energy credits ("RECs"), which "resulted in significantly decreased revenue causing wind and solar systems to be undervalued by millions of dollars."

Petitioners, a group of town supervisors and two individuals in the County of Schoharie, commenced a hybrid CPLR Article 78 and declaratory judgment action seeking a judgment declaring Real Property Tax Law ("RPTL") § 575-b unconstitutional because, among other things, it was an unlawful delegation of the Legislature's taxing authority. "Petitioners argue that the Legislature failed to provide sufficient guidance in its enactment of RPTL § 575-b and left it to DTF's unfettered discretion to determine which revenue streams would or would not be included when developing the model the statute directs to be established." Respondents countered that "the Legislature did not delegate its authority to tax to DTF because it is within the Legislature's power to designate the method of valuation to be used and because the Legislature provided sufficient factors for DTF to consider when developing the model." Both sides moved for summary judgment, and Supreme Court held an evidentiary hearing on the motion.

**Holding:** Following the hearing, Supreme Court held that the Legislature had unconstitutionally delegated its taxing authority to DTF by failing to provide adequate guideposts on what to include or exclude from the required solar and wind valuation model. The Court explained that under RPTL § 575-b, "DTF is empowered to 'take into account economic and cost characteristics of such solar and wind energy systems located in different geographical regions of the state and consider regionalized market pressures in the formulation of the appraisal model and discount rates . . . ' (RPTL § 575-b [1][c]). No other guidelines or parameters were provided or proscribed by the Legislature. During oral argument Respondents admitted that RPTL § 575-b was passed through a budget bill without any debate, discussion or hearings by the Legislature."

Noting that the Legislature may delegate discretion to an administrative agency "only if it limits the field in which that discretion is to operate and provides standards to govern its exercise," the Court held that "Petitioners have demonstrated the invalidity of RPTL § 575-b beyond a reasonable doubt. The testimony and evidence before the Court firmly establish that the Legislature incompetently left it for DTF to determine whether 'a tax should be levied, or at what rate, or upon what property' with respect to state and federal tax credits with respect to solar and wind energy systems. The Legislature failed to enact reasonable safeguards and standards in directing the assessment of solar and wind energy systems using a discounted cash flow approach. It is further clear from the evidence received, without reasonable safeguards and standards from the Legislature, DTF was granted discretionary authority to determine what revenue, income and expenses to include or exclude from the DCF approach, dramatically impacting the assessed value of these solar and wind systems and thereby determining what would and would not be taxed." In particular, the Court held that the testimony established that "the 2024 Model developed by DTF fails to account for all revenues while accounting for all expenses. This is not a minor inconsistency or minor disagreement. The difference is a magnitude of 340% . Indeed, the Petitioners' expert testified persuasively that the DCF analysis he used was corroborated by the cost approach valuation he developed, which resulted in an assessed value of \$107 million dollars, ensuring that his data was valid and could be relied upon to determine assessed value."

Unlike other provisions of the RPTL, which govern the assessment of low-income housing and unit production values for gas and oil, which provide sufficient guideposts for how those items should be valued for assessment purposes, the Court held, "RPTL § 575-b offers no direction as to what constitutes income, revenue, or expenses. The Legislature's failure to provide for what property should and should not be taxed and its failure to provide sufficient direction, standards and safeguards on the imposition of taxes on solar and wind energy facilities has created confusion and disarray with respect to how RECs and ITCs should be treated." Thus, the Court concluded, "[i]t is for the Legislature, not DTF, to determination whether RECs and ITCs should be taxed and included as part of the discounted cash flow approach for valuing solar and wind energy facilities. For the foregoing reasons, the Legislature has abdicated its constitutional responsibility and has delegated its taxing power to an administrative agency in violation of the New York State Constitution."

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