

FERALCARE, INC.

V.

STRATFORD, TOWN OF

SUPERIOR COURT

JUDICIAL DISTRICT OF NEW BRITAIN
AT NEW BRITAIN

12/20/2024

ORDER

ORDER REGARDING:

04/30/2024 114.00 MOTION FOR SUMMARY JUDGMENT

The foregoing, having been considered by the Court, is hereby:

ORDER:

The plaintiff, Feralcare, Inc. (Feralcare), and the defendant, the Town of Stratford (Stratford), cross move for summary judgment on Feralcare's municipal real property and personal property tax appeal alleging that Feralcare's real and personal property located at 616 and 626 Surf Avenue in Stratford, Connecticut (the subject property) is exempt from taxation under General Statutes § 12-81(7) because Feralcare qualifies as a charitable organization in that it runs a spay and neutering clinic for cats at the subject property. The court grants the motion for summary judgment in favor of Feralcare and against Stratford.

"It is . . . well established that in taxation cases . . . provisions granting a tax exemption are to be construed strictly against the party claiming the exemption, who bears the burden of proving entitlement to it. . . . Exemptions, no matter how meritorious, are of grace. . . . [Therefore] [t]hey embrace only what is strictly within their terms. . . . We strictly construe such statutory exemptions because [e]xemption from taxation is the equivalent of an appropriation of public funds, because the burden of the tax is lifted from the back of the potential taxpayer who is exempted and shifted to the backs of others. . . . [I]t is also true, however, that such strict construction neither requires nor permits the contravention of the true intent and purpose of the statute as expressed in the language used." (Citations omitted; internal quotation marks omitted.) *St. Joseph's Living Center, Inc. v. Windham*, 290 Conn. 695, 707 (2009); see also *Isaiah 61:1, Inc. v. Bridgeport*, 270 Conn. 69, 73–74 (2004).

"In order to qualify for a property tax exemption under the relevant portions of § 12-81 (7), the property must be owned by, or held in trust for, 'a corporation organized exclusively for scientific, educational, literary, historical or charitable purposes or for two or more such purposes and used exclusively for carrying out one or more of such purposes,' and no 'officer, member or employee' may 'receive any pecuniary profit from the operations thereof, except reasonable compensation for services in effecting one or more of such purposes. . . .' [I]n order for real property used for charitable purposes to qualify for tax exemption under [§] 12-81 (7) . . . the property must: (1) belong to or be held in trust for a corporation organized exclusively for charitable purposes; (2) be used exclusively for carrying out such charitable purposes; (3) not be leased, rented or otherwise used for a purpose other than the furtherance of its charitable purposes; (4) not be housing subsidized by the government; and (5) not constitute low or moderate income housing." (Citations omitted.) *St. Joseph's Living Center, Inc. v. Windham*, *supra*, 290 Conn. 708; see also *Isaiah 61:1, Inc. v. Bridgeport*, *supra*, 270 Conn. 76–77. It is undisputed by the parties, and the court does find, that elements (4) and (5) as set forth above are inapplicable to this matter.

In support of its motion for summary judgment, Feralcare filed an affidavit from its Executive Director, Clara McCabe, alleging that Feralcare is organized exclusively for charitable purposes and that the subject property is not leased or rented for any other purpose. See Docket Entry No. 118.00. Stratford

filed no affidavit or other facts in support of its motion for summary judgment. Thus, the court concludes that there is no material factual dispute with respect to issues (1) and (3) as set forth above.

The only issue disputed by Stratford is whether the subject property is used exclusively for charitable purposes. Stratford's only argument against Feralcare's motion for summary judgment on this issue is Stratford's assertion that Feralcare receives fees for a large portion of the spay and neutering services Feralcare provides. See Docket Entry No. 117.00, at 3. As an initial matter, the court observes that Stratford submitted no facts to the court in support of the factual assertion that Feralcare receives a large portion of its income from fees it receives for spay and neutering services. Executive Director McCabe's affidavit states that Feralcare "provid[es] no and reduced cost veterinary services for animals living in low-income and impoverished households and communities." Docket No. Entry 118.00, at 2. Executive Director McCabe's affidavit also states that Feralcare provided \$388,267 in free veterinary services from 2017-2022, and that Feralcare received \$650,896 in charitable donations from 2017-2021. *Id.*, at 3. Feralcare also received grant funds from the Connecticut Department of Agriculture to support Feralcare's spay and neutering services. *Id.*

Regardless, it is well settled that merely accepting a fee for a charitable service does not undermine the charitable character of that service. "This court never has held that accepting payment or charging a fee, without more, alters the character of a charitable or otherwise tax-exempt organization. In *Yale University v. New Haven*, 71 Conn. 316, 42 A. 87 (1899), we declared what common sense requires: 'A church is none the less a church, because the worshippers contribute to the support of services by way of pew rent. A hospital is none the less a hospital, because the beneficiaries contribute something towards its maintenance. And a college is none the less a college, because its beneficiaries share the cost of maintenance . . .' Likewise, a charitable, nonprofit nursing home is no less charitable simply because some patients pay for all or part of the cost of their care." (Citation omitted.) *St. Joseph's Living Center, Inc. v. Windham*, *supra*, 290 Conn. 736-37. The argument that "merely charging a fee to those who have the means to pay renders [an organization's] purpose not exclusively charitable is not in keeping with our precedents[.]" *Id.*, 736. Thus, this court concludes that the fact that Feralcare receives payments for the care it provides to animals does not mean that the subject property is not exclusively used for charitable purposes. The court finds that the subject property is exclusively used for charitable purposes.

The court finds that there are no material facts in dispute and that Feralcare is entitled to judgment as a matter of law. Feralcare has presented facts demonstrating that it meets the requirements to establish a charitable organization exemption under General Statutes § 12-81(7) and Stratford has failed to present any facts to rebut Feralcare's initial factual showing. Summary judgment shall enter in favor of the plaintiff, Feralcare, Inc., on all counts of the complaint.

Stratford's motion for summary judgment is denied.

The plaintiff may recover costs from the defendant.

Judicial Notice (JDNO) was sent regarding this order.

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Judge: MATTHEW JOSEPH BUDZIK

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