273 A.D.2d 769, 710 N.Y.S.2d 435, 2000 N.Y. Slip Op. 06500

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Supreme Court, Appellate Division, Third Department, New York.

In the Matter of STATE of New York, Respondent,

v.

TOWN OF HARDENBURGH, Appellant.

(And Four Other Related Proceedings.)

June 29, 2000.

Town, which owned 187 parcels of land in park that was statutorily required to be "forever wild," brought action challenging state tax assessments imposed after state completed revaluation of all taxable property. The Supreme Court, Ulster County, Kavanagh, J., denied state's motion for summary judgment. State appealed. The Supreme Court, Appellate Division, Mugglin, J., held that: (1) town's appraisal report regarding value land was sufficient to meet initial burden of production for rebutting presumption of validity of tax assessor's valuation, and (2) doctrines of collateral estoppel and res judicata did not bar town's action.

Affirmed.

West Headnotes

[1] KeyCite Citing References for this Headnote

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)11 Evidence in General
371k2724 Weight and Sufficiency of Evidence
371k2728 k. Valuation. Most Cited Cases
(Formerly 371k493.7(6))

Town's appraisal report regarding value of 187 parcels of land it owned in park that was statutorily required to be "forever wild" was sufficient to meet initial burden of production for rebutting presumption of validity of tax assessor's valuation; town's appraiser appraised property as assemblage of contiguous economic units defined by natural boundaries, rather than by lines on the tax map, he then determined the value of each economic unit using the comparable sales methodology, and, after making appropriate adjustments, he arrived at a total value of the entire parcel by adding the values of the economic units, and then he determined the value of each of the 187 separate parcels by allocating the total sum among those parcels.

[2] KeyCite Citing References for this Headnote

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)2 Assessors and Proceedings for Assessment
371k2444 Powers and Proceedings in Making

Assessments in General

371k2446 k. Defects and Errors, and Presumption as to Regularity in General. Most Cited Cases

(Formerly 371k319(2))

371 Taxation KeyCite Citing References for this Headnote

371III Property Taxes

371III(H) Levy and Assessment

371III(H)11 Evidence in General

371k2722 k. Presumptions. Most Cited Cases

(Formerly 371k485(3))

Tax assessment fixed by a tax assessor is presumptively valid, but when a taxpayer challenging the assessment comes forward with substantial evidence to the contrary, the presumption is rebutted.

[3] KeyCite Citing References for this Headnote

371 Taxation

371III Property Taxes

371III(H) Levy and Assessment

371III(H)11 Evidence in General

371k2722 k. Presumptions. Most Cited Cases

(Formerly 371k485(3))

371 Taxation KeyCite Citing References for this Headnote

371III Property Taxes

371III(H) Levy and Assessment
371III(H)11 Evidence in General
371k2724 Weight and Sufficiency of Evidence
371k2728 k. Valuation. Most Cited Cases
(Formerly 371k485(3))

In tax assessment cases, the "substantial evidence" standard requires taxpayer to meet a burden of production to overcome presumption of validity of tax assessment by demonstrating existence of valid and credible dispute regarding the market value of the parcel at issue.

[4] KeyCite Citing References for this Headnote

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)5 Valuation of Property
371k2512 Real Property in General
371k2515 k. Market Value and Sale Price; Comparable Sales. Most Cited Cases
(Formerly 371k348(3))

Purpose of valuation in tax assessment matters, whether at the level of the local tax assessor or in tax review proceedings, is to formulate a fair and objective conclusion concerning the fair market value of the property under consideration.

[5] KeyCite Citing References for this Headnote

228 Judgment
228XIV Conclusiveness of Adjudication
228XIV(B) Persons Concluded
228k706 Persons Not Parties or Privies
228k707 k. In General. Most Cited Cases

Prior appellate court decision regarding assessments of parcels in an improved realty subdivision did not collaterally estop town from challenging state tax assessments imposed on parcels of land it owned in park that was statutorily required to be "forever wild," where town was not a party nor in privity with a party in prior action, there was no identity of issues between actions, and town's rights were not conditioned upon or derived from the rights of a party to the prior litigation.

[6] KeyCite Citing References for this Headnote

228 Judgment
228XIII Merger and Bar of Causes of Action and Defenses
228XIII(A) Judgments Operative as Bar
228k540 k. Nature and Requisites of Former Recovery as Bar in General. Most Cited Cases

The doctrine of res judicata bars litigation between the same parties, or others in privity, of any cause of action arising out of the same transaction which either was or could have been asserted in the prior proceeding.

[7] KeyCite Citing References for this Headnote

228 Judgment
228XIII Merger and Bar of Causes of Action and Defenses
228XIII(B) Causes of Action and Defenses Merged, Barred, or Concluded
228k585 Identity of Cause of Action in General
228k585(3) k. What Constitutes Distinct Causes of Action. Most Cited Cases

Prior appellate court decision regarding assessments of parcels in an improved realty subdivision did bar town's action challenging state tax assessments imposed on parcels of land it owned in park that was statutorily required to be "forever wild" on grounds of res judicata, where prior action dealt with a different transaction between different parties with whom town had no privity and who could not raise the claims town asserted in its action.

***436** Galvin & Morgan (Deborah R. Kenneally of counsel, Delmar), for appellant.

Eliot Spitzer, Attorney-General (Thomas B. Litsky of counsel), New York City, for respondent.

Before: CREW III, J.P., GRAFFEO, MUGGLIN, ROSE and LAHTINEN, JJ.

***770** MUGGLIN, J.
Appeal from an order of the Supreme Court (Kavanagh,

J.), entered July 21, 1999 in Ulster County, which, in five proceedings pursuant to RPTL article 7, denied respondent's motion for summary judgment dismissing the petitions.

Petitioner owns 187 mostly contiguous parcels totaling in excess of 27,000 acres of land within the Town of Hardenburgh in Ulster County (hereinafter Town). This acreage comprises a portion of the Catskill Park which, pursuant to statute, is "forever wild" and may not be alienated, leased or worked for profit (*see,* ECL 9-0101, 9-0301 *et seq.*). In 1993, respondent completed a municipal-wide revaluation of all taxable property. Since the land owned by petitioner is considered the same as privately held lands for tax assessment purposes (*see,* RPLT 542), respondent's Assessor reassessed each parcel owned by petitioner. After filing unsuccessful grievances with respect to the assessments, petitioner commenced these proceedings pursuant to RPTL article 7 challenging the assessments for tax years 1993, 1994, 1995, 1997 and 1998 on at least 145 of these parcels. Petitioner's principal contentions are that respondent assessed the parcels in excess of their full values and that the parcels are disproportionately assessed in relation to all other property within respondent. Following the exchange of appraisals, respondent moved for summary judgment dismissing each petition contending that the methodology adopted by petitioner to arrive at market value was improper and that these proceedings were barred by the doctrines of res judicata and collateral estoppel. Finding the existence of genuine triable issues of fact which precluded summary judgment, Supreme

Court denied respondent's motion. Respondent now appeals.

In arriving at the fair market value of petitioner's property, respondent's appraiser employed a parcel-by-parcel analysis, examining each on the basis of size, location, timber and other valuation factors. For comparables, he selected sales of similar-sized parcels of forest lands and after making adjustments he deemed appropriate, he compared those sales to the average lot size of petitioner's parcels to ***437** arrive at a per-acre value which he multiplied by the acreage of the individual parcels owned by petitioner. In contrast, the appraiser for petitioner concluded that, viewed as privately owned property, the highest and best use for this vacant land is timber management, supplemented with recreational usage and with a small potential for residential development. In his appraisal, he asserted that the "artificial division" of such lands into lots on a ***771** tax map has little, if any, significance to buyers and sellers in the marketplace. Therefore, he appraised the property as an assemblage of contiguous economic units, in single ownership, more appropriately defined by natural boundaries (i.e., ridges, rivers, wetlands) than by artificial boundaries (i.e., lines on the tax map). Then, also using the comparable sales methodology, he determined the value of each economic unit and, after making appropriate adjustments (including timber valuation), he arrived at a total value of the entire parcel by adding the values of the economic units, and then he determined the value of each of the 187 separate parcels by allocating the total sum among these parcels.

[1] ☑ Respondent asserts that the valuation methodology adopted by petitioner's appraiser is infirm as a matter of law and does not constitute appropriate evidence to rebut the presumption of validity or to raise any genuine issue of fact. In support of this position, respondent argues that the procedures for the assessment of taxable State lands, part 199 of the rules for Real Property Tax Administration (9 NYCRR 199-4.1 *et seq.*), mandate that local assessors appraise parcel-by-parcel. These sections require the Office of Real Property Services to mail, before the taxable status date, a list of all parcels of State-owned land to the assessor or county director, and, as here, where a revaluation has occurred, for the assessor to enter the full value and assessed value for each parcel on the State's list. This argument lacks merit since (1) it fails to address the real issue herein, namely, the *value* of these parcels, (2) it ignores the fact that the end product of petitioner's appraisal is a valuation of each parcel, and (3) it fails to acknowledge that respondent's Assessor also failed to do a parcel-by-parcel appraisal to the extent that he also relied on a comparison of the average size of petitioner's parcels with sales of comparably sized parcels.

[2] ☑[3] ☑[4] ☑ Next, we examine respondent's assertion that petitioner's appraisal raises no factual issue for trial. It is well settled that a tax assessment fixed by a local tax assessor carries with it a presumptive validity (*see, Matter of FMC Corp. [Peroxygen Chems. Div.] v. Unmack,* 92 N.Y.2d 179, 187, 677 N.Y.S.2d 269, 699 N.E.2d 893; *Matter of Gullo v. Semon,* 265 A.D.2d

656, 656-657, 696 N.Y.S.2d 554, 556, *lv. denied* 94 N.Y.2d 757, 704 N.Y.S.2d 532, 725 N.E.2d 1094). But, this presumption is rebuttable and disappears when a petitioner challenging his tax assessment offers substantial evidence to the contrary (*see, Matter of FMC Corp. [Peroxygen Chems. Div.] v. Unmack, supra,* at 187, 677 N.Y.S.2d 269, 699 N.E.2d 893). In the realm of tax assessment, the term "substantial evidence" requires the petitioner to come forward with evidence which establishes the existence of a ***772** valid and credible dispute regarding the market value of the parcel at issue (*see, id.,* at 188, 677 N.Y.S.2d 269, 699 N.E.2d 893). This substantial evidence standard is a threshold of minimal height. To ascertain if it exists, "a court should simply determine whether the documentary and testimonial evidence proffered by petitioner is based on 'sound theory and objective data' " (*id.,* at 188, 677 N.Y.S.2d 269, 699 N.E.2d 893, quoting *Matter of Commerce Holding Corp. v. Board of Assessors of Town of Babylon,* 88 N.Y.2d 724, 732, 649 N.Y.S.2d 932, 673 N.E.2d 127). We hold that Supreme Court correctly decided that petitioner's appraisal satisfies this burden and that issues of fact concerning overvaluation and inequality remain for trial. The purpose ****438** of valuation in tax assessment matters, whether at the level of the local tax assessor or in tax review proceedings, is to formulate a fair and objective conclusion concerning the fair market value of the property under consideration (*see, Matter of General Elec. Co. v. Town of Salina,* 69 N.Y.2d 730, 732, 512 N.Y.S.2d 359, 504 N.E.2d 686). Clearly, this is a factual matter driven by the probative value and weight to be given to the competing

appraisals.

[5] ☑ We next find incorrect respondent's argument that the doctrines of collateral estoppel and res judicata bar these proceedings. Respondent asserts that since petitioner stands in the same position as an individual taxpayer (citing *Matter of Town of Shandaken v. State Bd. of Equalization & Assessment,* 63 N.Y.2d 442, 483 N.Y.S.2d 161, 472 N.E.2d 989), that our decision in *Matter of Akerman v. Assessor of Town of Hardenburgh,* 211 A.D.2d 916, 621 N.Y.S.2d 154, *appeal dismissed* 86 N.Y.2d 836, 634 N.Y.S.2d 444, 658 N.E.2d 222, collaterally estops petitioner from maintaining these proceedings and is res judicata.

Petitioner had no opportunity to contest the determination in *Akerman* since it was not a party nor in privity with a party (*see, Comi v. Breslin & Breslin,* 257 A.D.2d 754, 757, 683 N.Y.S.2d 345), nor were petitioner's rights conditioned upon or derived from the rights of a party to the prior litigation (*see, D'Arata v. New York Cent. Mut. Fire Ins. Co.,* 76 N.Y.2d 659, 664, 563 N.Y.S.2d 24, 564 N.E.2d 634). Furthermore, there is no identity of issues between *Akerman* and the case at bar since *Akerman* dealt with the assessments of parcels in an improved realty subdivision and not wild, vacant land. Consequently, the doctrine of collateral estoppel is inapplicable.

[6] ☑[7] ☑ The doctrine of res judicata bars litigation between the same parties, or others in privity, of any cause of action arising out of the same transaction which

either was or could have been asserted in the prior proceeding (*see, Matter of Edward Joy Co. v. Hudacs,* 199 A.D.2d 858, 859, 606 N.Y.S.2d 74). Since *Akerman* dealt with a different transaction between different parties with whom petitioner had no privity and who could not raise the claims petitioner asserts herein, the *Akerman* decision does not bar the present litigation on grounds of res judicata.

***773** We have examined the balance of the contentions made by respondent and find them to be equally unpersuasive.

ORDERED that the order is affirmed, without costs.

CREW III, J.P., GRAFFEO, ROSE and LAHTINEN, JJ., concur.

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