APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, THIRD DEPARTMENT

Highbridge Development BR, LLC v. Assessor of the Town of Niskayuna

121 A.D.3d 1324 (N.Y. App. Div. 2014) · Decided October 23, 2014

SUMMARY

The Appellate Division affirmed dismissal of a property owner's challenges to tax assessments for the 2008, 2009, and 2010 tax years. It held that the 2010 proceeding was properly dismissed for failure to timely serve the appropriate school district and that the petitioner failed to establish that the 2008 and 2009 assessments were excessive. The court deferred to the trial court's credibility determinations and upheld reliance on the property's recent $3.5 million sale as the best evidence of fair market value.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Peters, P.J.; Garry, J.; Lynch, J.; Devine, J.; Stein, J.
JURISDICTION	New York
DECIDED	October 23, 2014
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed from a judgment of Supreme Court, Schenectady County, dismissing three proceedings under Real Property Tax Law article 7 challenging the 2008, 2009, and 2010 tax assessments of its property.
STANDARD OF REVIEW	The court deferred to Supreme Court's resolution of credibility issues arising from conflicting expert opinions and reviewed the fair-market-value determination to determine whether it was supported by, or against the weight of, the evidence.
PRECEDENTIAL VALUE	published
PARTIES	Highbridge Development BR, LLC v. Assessor of the Town of Niskayuna, South Colonie Central School District

TOPICS

property tax | state and local tax | appellate procedure | standard of review | tax court procedure

PRACTICE AREAS

property tax | state and local tax | real estate | appellate procedure

QUESTIONS PRESENTED

1. Whether the 2010 tax-certiorari proceeding was properly dismissed for failure to timely serve the notice of petition and petition on the superintendent of the appropriate school district under RPTL 708(3).
2. Whether petitioner was entitled to summary judgment on its challenges to the 2008 and 2009 assessments based on its submission of only a conclusory attorney affidavit.
3. Whether petitioner rebutted the presumption of validity at trial and proved by a preponderance of the evidence that the 2008 and 2009 assessments overvalued the property.
4. Whether Supreme Court's determination crediting respondents' appraisal and valuing the property at $3.5 million was supported by the evidence.

HOLDINGS

1. Strict compliance with RPTL 708(3) is required, and failure to timely serve the appropriate school district requires dismissal unless good cause is shown. Petitioner's failure to serve South Colonie Central School District within 10 days was not excused.
2. A property owner challenging a municipal tax assessment is not entitled to summary judgment without substantial evidence overcoming the assessment's presumptive validity; a conclusory attorney affidavit is insufficient.
3. Competent appraisal evidence sufficient to rebut the presumption of validity establishes a credible valuation dispute, after which the court must weigh the entire record and determine whether the owner proved overvaluation by a preponderance of the evidence.
4. Supreme Court's decision to credit respondents' appraisal and value the property at $3.5 million was not against the weight of the evidence.

KEY QUOTATIONS

> *“Failure to strictly comply with the statute’s notice requirements “shall result in the dismissal of the petition, unless excused for good cause shown””* (121 A.D.3d at 1325)

> *“Our analysis begins with the recognition that property valuations by a municipal tax assessor are presumed to be valid”* (121 A.D.3d at 1326)

> *“The best evidence of value . . . is a recent sale of the subject property between a seller under no compulsion to sell and a buyer under no compulsion to buy”* (121 A.D.3d at 1327)

FACTUAL BACKGROUND

Highbridge purchased a 12.33-acre parcel in the Town of Niskayuna in May 2008 for $3.5 million in a simultaneous transaction under which it contracted to resell the property for $7.5 million, but the resale was not consummated. The property had previously been used as an adult retirement home and had received tax-exempt status; after the purchase, the assessor treated it as taxable and assessed it at $3.1 million for 2008 and 2009 and $3.5 million for 2010. At trial, the parties presented competing appraisals based on the sales-comparison approach, with petitioner's appraiser valuing the property at $1.3 million for 2008 and $1.4 million for 2009 and respondents' appraiser valuing it at $3.5 million for both years.

PROCEDURAL HISTORY

Supreme Court denied petitioner's pretrial motion for summary judgment concerning the 2008 and 2009 tax years and reserved decision on respondents' motion to dismiss the 2009 and 2010 petitions for untimely service on the appropriate school district. After a nonjury trial involving competing expert appraisals, Supreme Court dismissed the 2008 petition for failure to exhaust administrative remedies, the 2009 petition on the merits, and the 2010 petition for failure to timely serve notice on the appropriate school district. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Wyeth Holdings Corp. v. Assessor of the Town of Orangetown, 84 A.D.3d 1104, 1106 (2d Dep't 2011)
- Matter of Board of Mgrs. of Copley Ct. Condominium v. Town of Ossining, 19 N.Y.3d 869, 871 (2012)
- Matter of Gatsby Indus. Real Estate, Inc. v. Fox, 45 A.D.3d 1480, 1481 (4th Dep't 2007)
- Matter of Orchard Hgts., Inc. v. Yancy, 15 A.D.3d 854, 854 (3d Dep't 2005), leave denied, 4 N.Y.3d 710 (2005)
- Matter of FMC Corp. (Peroxygen Chems. Div.) v. Unmack, 92 N.Y.2d 179, 187-189 (1998)
- Matter of Niagara Mohawk Power Corp. v. Assessor of Town of Geddes, 92 N.Y.2d 192, 196 (1998)
- Matter of OCG L.P. v. Board of Assessment Review of the Town of Owego, 79 A.D.3d 1224, 1225 (3d Dep't 2010)
- Matter of Adirondack Mtn. Reserve v. Board of Assessors of the Town of N. Hudson, 106 A.D.3d 1232, 1234, 1236 (3d Dep't 2013)
- Matter of Rite Aid Corp. v. Otis, 102 A.D.3d 124, 126-127 (3d Dep't 2012), leave denied, 21 N.Y.3d 855 (2013)
- Matter of LCO Bldg. LLC v. Michaux, 53 A.D.3d 1062, 1062-1063 (3d Dep't 2008), leave dismissed, 11 N.Y.3d 837 (2008)
- Fusco v. Assessor of City of Utica, 178 A.D.2d 995, 995 (4th Dep't 1991)
- Matter of Corvetti v. Winchell, 75 A.D.3d 1013, 1014 (3d Dep't 2010), leave denied, 16 N.Y.3d 701 (2011)
- Matter of Eckerd Corp. v. Semon, 35 A.D.3d 931, 932 (3d Dep't 2006)

- Matter of Northern Pines MHP, LLC v. Board of Assessment Review of the Town of Milton, 72 A.D.3d 1314, 1315-1317 (3d Dep't 2010)
- Matter of Lowe’s Home Ctrs., Inc. v. Board of Assessment Review and/or Dept. of Assessment Review of Tompkins County, 106 A.D.3d 1306, 1307 (3d Dep't 2013)
- Matter of General Elec. Co. v. Assessor of Town of Rotterdam, 54 A.D.3d 469, 471-472 (3d Dep't 2008), leave denied, 11 N.Y.3d 711 (2008)
- Matter of Allied Corp. v. Town of Camillus, 80 N.Y.2d 351, 356 (1992)
- W.T. Grant Co. v. Srogi, 52 N.Y.2d 496, 511 (1981)
- Matter of Rite Aid of N.Y. No. 4928 v. Assessor of Town of Colonie, 58 A.D.3d 963, 966 (3d Dep't 2009), leave denied, 12 N.Y.3d 709 (2009)
- Matter of Brooks Drugs, Inc. v. Board of Assessors of City of Schenectady, 51 A.D.3d 1094, 1095 (3d Dep't 2008), leave denied, 11 N.Y.3d 710 (2008)
- Matter of Regency Realty Assoc., LLC v. Board of Assessment Review of the Town of Malta, 75 A.D.3d 950, 952 (3d Dep't 2010)
- Matter of Ace Hardware Corp. v. Little, 63 A.D.3d 1345, 1348 (3d Dep't 2009)
- Matter of Johnson v. Kelly, 45 A.D.3d 687, 688 (2d Dep't 2007)
- Matter of Young v. Town of Bedford, 37 A.D.3d 729, 730 (2d Dep't 2007)
- Matter of Shubert Org. v. Tax Commn. of City of N.Y., 60 N.Y.2d 93, 96-97 (1983)