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parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3071-15T3¹
A-3072-15T3

NATHAN SILVERSTEIN,

Plaintiff-Appellant,

v.

TOWNSHIP OF MIDDLETOWN,

Defendant-Respondent.

Argued November 8, 2017 — Decided January 22, 2018

Before Judges Fasciale and Moynihan.

On appeal from Tax Court of New Jersey, Docket
Nos. 003146-2013 and 000723-2014.

Kevin S. Englert argued the cause for
appellant.

Bernard M. Reilly argued the cause for
respondent.

PER CURIAM

¹ These are back-to-back appeals consolidated for the purpose of
this opinion.

In these consolidated appeals, plaintiff appeals from the Tax Court judgments affirming the 2013 and 2014 tax assessments of defendant's once-grand home on a bluff overlooking the Navesink River in Middletown. Adducing the evidence presented at trial, Judge Mala Sundar, after rejecting the expert testimony presented by both parties, concluded plaintiff failed to satisfy his burden of proving the assessments incorrect. We agree and, applying the applicable law and standards of review, affirm for the reasons set forth in Judge Sundar's thorough and thoughtful written opinion.

We consider first plaintiff's argument that "[t]he evidence considered by the Tax Court demonstrates that the quantum of the assessment is so far removed from the property's true value as to require adjustment" because plaintiff's 2012 purchase price of the property and both parties' experts' valuation of the property was substantially below the assessments of \$5,122,100.²

Although we review a Tax Court's legal determinations de novo, UPS Gen. Servs. Co. v. Dir., Div. of Taxation, 430 N.J. Super. 1, 8 (App. Div. 2013), aff'd, 220 N.J. 90 (2014), our review is highly deferential, Estate of Taylor v. Dir., Div. of Taxation,

² Plaintiff purchased the property for \$3,100,000. Plaintiff's expert opined the property's value was \$2,820,000 and \$2,715,000 for 2013 and 2014, respectively. Defendant's expert valued the property at \$4,000,000 for both years.

422 N.J. Super. 336, 341 (App. Div. 2011). "The judges presiding in the Tax Court have special expertise; for that reason their findings will not be disturbed unless they are plainly arbitrary or there is a lack of substantial evidence to support them." Glenpointe Assocs. v. Twp. of Teaneck, 241 N.J. Super. 37, 46 (App. Div.), aff'd, 12 N.J. Tax 118 (Tax 1990). We also owe "due regard to the Tax Court's expertise and ability to judge credibility." Southbridge Park, Inc. v. Borough of Fort Lee, 201 N.J. Super. 91, 94 (App. Div. 1985).

Judge Sundar held that credibility was a "primary issue" as it related to

each expert's adjustment for the concededly poor condition of significant portions of the [property's] exterior and interior. Each expert's methodology is problematic. Plaintiff's expert disfavored the cost approach as unreliable due to difficulty in estimating depreciation and entrepreneurial profits, yet he included a [fifteen percent] entrepreneurial profit when computing his costs-to-cure claiming that was the standard or acceptable margin. [Defendant's] expert verified his "adjustment for physical condition" by comparing his conclusion of the [property's] value as-new and its value in its existing condition, however this presupposed that his value conclusions were credible.

The judge went on to address "the more pressing problem common to both experts" and found that both adjusted their valuations because of the poor physical condition of the property but neither

expert had the necessary expertise "to make the foundational determination" as to what renovations were required because "neither [was] a contractor, a developer, an architect, or a building construction specialist/expert."

Judge Sundar, in rejecting plaintiff's expert's opinion, distinguished cases in which an expert appraiser – utilizing cost-to-cure to devalue a property – relied on qualified experts who analyzed the costs of renovation, rehabilitation, "design, engineering, construction management, and contingency costs." Although the judge found that plaintiff's expert's application of cost-to-cure to adjust the valuation of the property – because of its "poor condition and required deferred maintenance" – was "reasonable, and indeed, preferable to a subjective adjustment," she rejected the expert's opinion because the evaluation of the items in need of repair or replacement and the estimate of costs was

unpersuasive due to lack of a foundational requirement, namely, credible and reliable evidence establishing the need for, and estimated costs of, a structural gutting and rebuilding of the entire [property's] interior. In this connection, plaintiff's testimony that various contractors advised him of the need to replace windows and doors is unpersuasive and hearsay. His testimony that the roof and brickwork had "problems" is also unpersuasive for purposes of a value conclusion, since he is not an architect, builder or developer.

The judge also recognized plaintiff's expert conceded in his report that, because he was not an engineer and was not "required to hire one, he was not responsible for the structural 'soundness' of improvements or of the 'functional utility of major appliances or mechanical units,'" and "that he did not review material on interior construction and made judgment calls in this regard based on his personal observation, as well as conversations with, and photographs from, the plaintiff."

The judge also rejected plaintiff's expert's valuation for other reasons: finding the "significant adjustment for the farmland assessment status" of a comparable used by the expert "unpersua[sive]"; the variation in the depreciation rates for various accessories used to calculate the expert's adjustments "unexplained"; and the reason for the failure to adjust for a conservation deed restriction in a comparable "unpersuasive."

Judge Sundar's careful analysis — supported by the record — is entitled to our deference. Her rejection of plaintiff's expert's valuation complied with our Supreme Court's charge that an unsubstantiated expert's opinion should not be accepted by a court. Glen Wall Assocs. v. Twp. of Wall, 99 N.J. 265, 280 (1985).

It is well established that challenged real estate tax assessments are "entitled to a presumption of validity." MSGW

Real Estate Fund, LLC v. Borough of Mountain Lakes, 18 N.J. Tax 364, 373-80 (Tax 1998). It is incumbent on the taxpayer challenging the municipality's original assessment to rebut the validity of the assessment. Ibid. The judge's rejection of the key valuation evidence presented by plaintiff left plaintiff unable to meet his burden.

We also reject plaintiff's argument that the judge failed to recognize that the foundation supporting an expert's opinion must be practically and realistically limited, and failed to ascertain from the evidence an appropriate value for the property. The judge recognized the legal tenets on which plaintiff relies in advancing these arguments and asserted that she did not lightly affirm the assessments. She carefully considered the other evidence presented and rejected same. She did not find plaintiff's purchase price at auction to be credible evidence of the property's fair market value in light of the way auctions are conducted and found subjective plaintiff's expert's opinion that auctions of "palatial homes" result in competitive prices. She also rejected defendant's expert's opinion, detailing the expert's failure to make adjustments for certain amenities, include the data from accepted cost manuals to support his cost-based adjustments, and adjust a comparable for a conservation deed restriction; and for

various deficiencies she detailed regarding the expert's cost approach.

We conclude Judge Sundar's decision that she was unable to independently value the property is supported by the record. The judge recognized she was duty-bound to make a value determination based on the credible evidence in the record. See Ford Motor Co. v. Twp. of Edison, 127 N.J. 290, 312 (1992) (explaining that when a court "rejects the ultimate conclusions as to the true value proffered by the parties' experts, it should make an independent determination of true value on the basis of those portions of the experts' testimony which the court finds credible"). Although a Tax Court "has the duty to apply its own judgment to valuation data submitted by experts in order to arrive at true value," its "right to make an independent assessment is not boundless; it must be based on evidence before it and data that are properly at its disposal." Glenpointe Assocs., 241 N.J. Super. at 46. A Tax Court judge "must not arbitrarily assign a value to the property which is not supported in the record." Ibid. Moreover, "[t]he probative value of an expert's opinion depends entirely upon the facts and reasoning adduced in support of it." Kearny Leasing Corp. v. Town of Kearny, 6 N.J. Tax 363, 376 (Tax 1984), aff'd, 7 N.J. Tax 665 (App. Div. 1985). "Stated otherwise, an 'expert's conclusion rises no higher than the data which provide the

foundation.'" Gale & Kitson Fredon Golf, LLC v. Twp. of Fredon, 26 N.J. Tax 268, 281 (Tax 2011) (quoting Town of West Orange v. Estate of Goldman, 2 N.J. Tax 582, 588 (Tax 1981)).

Judge Sundar rightfully refused to accept the expert's opinions she found to be unsubstantiated. Absent any credible admissible evidence of valuation, she was unable to make a proper assessment. The record supports the judge's finding that the evidence used to justify the experts' valuations of this property was lacking, especially considering this property – unique in its location, age, architecture and condition. The judge did not expect an impractical and unrealistic quantum of evidence. She expected well-supported conclusions.

Plaintiff failed to provide the Tax Court with adequate and sufficient evidence from which the court could derive the property's value; as such the assessment must stand. See id. at 278-87, 289.

We determine plaintiff's arguments regarding the judge's evidentiary rulings are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). "[A] trial court's evidentiary rulings are entitled to deference absent a showing of an abuse of discretion" State v. Nantambu, 221 N.J. 390, 402 (2015) (alteration in original) (quoting State v. Harris, 209 N.J. 431, 439 (2012)). The home inspection report –

including the photographs contained therein – was not timely disclosed in discovery, and its author did not testify, so the report was hearsay that fit no exception. The judge acted within her discretion in excluding same. The use of the conservation easement deed to impeach the expert's valuation of a comparable property was proper. Plaintiff objected to the use of the deed to cross-examine plaintiff's expert only because it was not disclosed by defendant. Any prejudice caused by plaintiff's "surprise" was ameliorated by the judge's offer to allow plaintiff time to examine the deed and to produce rebuttal evidence. In fact, after the case was carried to the next day, plaintiff's counsel – having had the opportunity to review the deed – declined an opportunity to further examine the expert and was "satisfied with the testimony." Inasmuch as it was the nature of the easement that impacted the property value, it is of no moment, as plaintiff now contends, that the deed was not a certified true copy. Plaintiff offered no proof – despite being given time to produce rebuttal evidence after the easement was used to impeach his expert – that the easement was not genuine.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION