

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

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SUPERIOR COURT  
DISTRICT OF COLUMBIA  
TAX DIVISION

2099 PENNSYLVANIA AVENUE LP :  
: Petitioner :  
: v. : Tax No. 7990-01  
: DISTRICT OF COLUMBIA :  
: Respondent :

**MEMORANDUM AND ORDER**

Before the Court are 2099 Pennsylvania Avenue Limited Partnership's ("the taxpayer") Motion for Summary Judgment and the District's opposition.

This is an appeal from the assessment of real estate taxes for the Second Half Supplemental Tax Year 2001. In its petition, the taxpayer requests that the court order a reduction of tax for the Tax Year 2001 Second Half from \$73,839.53 to \$45,935.00, order a refund in the amount of \$272,073.28 in excess taxes paid, grant interest on the excess taxes paid, and grant "[s]uch other and further relief as this Court may deem just and proper."

The taxpayer moves for partial summary judgment on the ground that the District's own expert has submitted a

report valuing the property on the relevant date as \$68,900,000. The Board of Real Property Assessments and Appeal ("BORPAA") reduced the assessor's valuation of \$79,176,600 to \$73,839,952. The District's expert thus values the property at \$4,939,952 less than the valuation reached by the BORPAA. The taxpayer's expert has valued the property at \$57,500,000. The taxpayer argues that it is entitled to a partial summary judgment "finding that the District's Assessment was incorrect and that the District has the burden of proving the validity of the new valuation contained in its expert report."

### **Analysis**

A motion for summary judgment in the Tax Division is governed by SCR-Civ. Rule 56. SCR-Tax Rule 3. Civil Rule 56(a) gives a party "seeking to recover upon a claim" the right to "move . . . for a summary judgment in the party's favor upon all or any part thereof." See Cohen v. Owens & Co., 464 A.2d 904, 905 n.1 (D.C. 1983). The taxpayer's prayer for relief in the present case is that the court order it a refund in the amount of \$272,073.28, an amount obviously predicated on its own

expert's valuation of the property. Thus, the final judgment requested is an order requiring the District to refund the taxpayer that amount. Nevertheless, part of the taxpayer's claim is that the District's assessment<sup>1</sup> is invalid. If the court adjudges the assessment invalid, the court may "cancel, reduce or increase" the assessment. D.C. Code §§ 47-3303, 47-3305; District of Columbia v. Burlington Apartment House Co., supra, n.1, 375 A.2d at 1056. If the court reduces the assessment, it has the obligation to order a refund of "[a]ny sum finally determined . . . to have been erroneously paid by or collected from the taxpayer . . . ." D.C. Code § 47-3306.

The Court is of the opinion that, if the taxpayer has borne its burden of proof to show that the assessment is invalid, see, e.g., Safeway Stores Inc. v. District of Columbia, 525 A.2d 207, 211 (D.C. 1987), the taxpayer is entitled to partial summary judgment on the part of its claim that contests the validity of the assessment. The

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<sup>1</sup> While "assessment" is sometimes conflated with "valuation", it is the valuation that is the "the foundation of both an assessment and the amount of the tax levied upon such an assessment." District of Columbia v. Burlington Apartment House Co., 375 A.2d 1052, 1056 n.9 (D.C. 1976) (en banc).

Court can then determine at trial what the valuation ought to be, and order a refund if the taxpayer is entitled to it.

Summary judgment must be granted "forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." SCR-Civ. Rule 56(c). The moving party bears the burden of proving that no genuine issue as to any material fact exists and that it is entitled to judgment as a matter of law. See Atkins v. Industrial Telecomm. Ass'n, Inc., 660 A.2d 885, 887 (D.C. 1995).

Once the moving party meets its initial burden of production by making a prima facie showing, the burden of production shifts to the opposing party, which must then rebut that showing. See Thompson v. Seton Investments, 533 A.2d 1255, 1257 (D.C. 1987). While all reasonable inferences are made in the opposing party's favor, that party must rebut material facts with specific evidence in support of a viable legal theory under its version of the

facts. Hill v. White, 589 A.2d 918, 921 (D.C. 1991);  
Thompson, supra, 553 A.2d at 1257.

In the present case, the taxpayer has come forward with evidence in the form of the District's own expert's report. While that report is not in affidavit form, the District makes no argument that the court may not, for that reason, use it making its determination. Rather, the District argues that the taxpayer "has not represented that [it] would use the expert report at trial." This matter, however, is before the Court on a motion for summary judgment. In such a motion, the proponent need not indicate what evidence it will use at trial; it need only come forward with evidence sufficient to present a prima facie case. Taxpayer has done so, presenting expert opinion that the accurate valuation of the property is less than the assessment approved by the BORPAA. The District has come forward with no evidence to create a genuine issue of material fact on the issue of whether the BORPAA's figure is accurate.

"There exists a presumption in favor of a tax assessment by a local taxing authority', which 'can be overcome only by the presentation by either party of

sufficient competent evidence.'" Washington Post Company v. District of Columbia, 596 A.2d 517, 519 (D.C. 1991), quoting Glenn Wall Associates v. Township of Wall, 491 A.2d 1247, 1251 (N.J. 1985). "Once the presumption of validity is overcome by the taxpayer, the [taxing authority] must produce evidence justifying its appraisal." Kruse v. Westford, 488 A.2d 770, 773 (Vt. 1985). In the present case, the taxpayer has overcome the presumption of validity by producing evidence in the form of the District's own expert's opinion. The District has produce no evidence justifying the assessment by the BORPAA. Accordingly, the taxpayer is entitled to a partial judgment declaring that the BORPAA's assessment is invalid.

The taxpayer also asks the Court to conclude that "the District has the burden of [proving] the validity of the new valuation contained in its expert report." Rule 56 governs the issuance of a judgment, in whole or in part. It does not concern the issuance of opinions on which party has the burden of proof on an issue. Accordingly, this aspect of the taxpayer's motion must be denied.

For the foregoing reasons, the Court **ORDERS** that 2099 Pennsylvania Avenue Limited Partnership's Motion for Partial Summary Judgment is **GRANTED** and the Court **FURTHER ORDERS** that partial judgment is entered for the taxpayer on its claim that the Second Half Supplemental Tax Year 2001 real property tax assessment for property located at 2099 Pennsylvania Avenue, N.W. is invalid.

SIGNED IN CHAMBERS

  
A. Franklin Burgess, Jr.  
Judge

**February 23, 2004**

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