NO. CV 02 0125210S	:	SUPERIOR COURT
JOHN F. FEDUS	:	JUDICIAL DISTRICT OF
	:	NEW LONDON
	:	AT NORWICH
v.		
TOWN OF COLCHESTER	:	APRIL 19, 2004

MEMORANDUM OF DECISION ON MOTION TO OPEN JUDGMENT

On June 5, 2002, the plaintiff, John F. Fedus (Fedus), appealed the decision of the board of assessment appeals (Board) for the defendant, town of Colchester, denying his request for a reduction in the assessment of his property located at 35 Fedus Road, Colchester. The assessor for Colchester had valued the subject property at $267,100, as of the last town-wide revaluation on October 1, 2001.

A trial on the issue of valuation was held on August 20, 2003. On December 26, 2003, we issued a decision holding that the plaintiff was aggrieved by the action of the assessor and concluded that the valuation of 35 Fedus Road, as of October 1, 2001 was $247,700.

Subsequent to the entry of judgment on December 26, 2003, and within four months thereof, the plaintiff filed a motion to open and modify the judgment so that it may be applicable, by way of amendment, to the subsequent tax years of October 1, 2002 and October 1, 2003.[1] In the plaintiff's motion, he recites that the defendant does not object to this motion as to the tax year of October 1, 2002, because the plaintiff could have amended his complaint to include that year during the pendency of the appeal. The motion further recites that the defendant refused to reduce the valuation of the subject property as to the October 1, 2003 tax list following the court's decision on December 26, 2003. The plaintiff claims that the assessor, in accordance with the doctrine of res judicata, could not increase the valuation of the subject property in subsequent tax years once the court's determination of value had been made for the list of October 1, 2001.

Pursuant to the motion to open and modify the judgment, the plaintiff has moved for leave to amend the complaint, nunc pro tunc and for retroactive effect. In this motion, the plaintiff seeks to amend the complaint by adding counts two and three covering the additional tax years of October 1, 2002 and October 1, 2003.

The defendant objects to the motion to open and modify the judgment claiming that the doctrine of res judicata is inapplicable to this situation. The defendant, in reliance on Matzul v. Montville, 70 Conn. App. 442, 798 A.2d 1002, cert. denied, 261 Conn. 923, 806 A.2d 1060 (2002), claims that the assessor has the authority pursuant to General Statutes § 12-55 to make interim changes in the assessment of the plaintiff's property.

We turn first to the plaintiff's argument that this court's decision on December 26, 2003 was res judicata, and therefore, the assessor was precluded from increasing the

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[1] Practice Book § 17-4 states: "(a) Unless otherwise provided by law and except in such cases in which the court has continuing jurisdiction, any civil judgment or decree rendered in the superior court may not be opened or set aside unless a motion to open or set aside is filed within four months succeeding the date on which notice was sent . . . ."

valuation of the subject property in tax years subsequent to the court's finding of the subject's value on October 1, 2001.

"The doctrine of res judicata holds that an existing final judgment rendered upon the merits without fraud or collusion, by a court of competent jurisdiction, is conclusive of causes of action and of facts or issues thereby litigated as to the parties and their privies in all other actions in the same or any other judicial tribunal of concurrent jurisdiction." Wade's Dairy, Inc. v. Fairfield, 181 Conn. 556, 559, 436 A.2d 24 (1980).

The plaintiff's use of res judicata to prevent the assessor from increasing the value of the subject property on the tax lists for the years following the court's decision of December 26, 2003 is misplaced. The doctrine of res judicata is a bar to judicial proceedings, not a bar to actions taken by the assessor. As we note from the holding in Wades's Dairy, Inc., res judicata applies only to "all other actions in the same or any other judicial tribunal . . . ." Id. What the plaintiff appears to be saying is that once the court has made a determination of value in a tax appeal, an assessor is bound to accept that value for subsequent tax years until the next town-wide revaluation. We disagree.

General Statutes § 12-111 provides a method for the taxpayer to challenge the valuation of the assessor, in any tax year, by appealing to the board of assessment appeals.[2] A taxpayer, unsuccessful in his or her appeal to the board of assessment appeals, may further appeal the decision of the board to the Superior Court pursuant to General Statutes § 12-117a. Section 12-117a specifically provides a method for a taxpayer, during the initial tax appeal, to include subsequent tax years that mature during the appellate process. Section 12-117a provides: "If, during the pendency of such appeal,

[2] General Statutes § 12-111, which deals with appeals to board of assessment appeals, recites in pertinent part, "[a]ny person . . . claiming to be aggrieved by the doings of the assessor of such town may appeal therefrom to the board of assessment appeals."

a new assessment year begins, the applicant may amend his application as to any matter therein, including an appeal for such new year. . . and such applicant need not appear before the board of tax review or board of assessment appeals . . . to make such amendment effective." If, as the plaintiff contends, a judicial determination of value in an initial appeal is automatically binding on an assessor in subsequent assessment years, the need for the provision in § 12-117a, bypassing an appearance before the board of assessment appeals, would be meaningless. "[I]t is a basic tenant of statutory construction that the legislature [does] not intend to enact meaningless provisions. . . . [I]n construing statutes, we presume that there is a purpose behind every sentence, clause, or phrase used in an act and that no part of a statute is superfluous." (Internal quotation marks omitted.) Fleet National Bank's Appeal From Probate, 267 Conn. 229, 250, 837 A.2d 785 (2004).

We next turn to the defendant's position that an assessor may make an interim change in the valuation of a taxpayer's property at any time between revaluation years.

In Matzul v. Montville, supra, 70 Conn. App. 442, the court analyzed the decision of DeSena v. Waterbury, 249 Conn. 63, 731 A.2d 733 (1999), and laid to rest any question about the ability of an assessor to make interim valuations. "We conclude, therefore, that the [DeSena] court properly found that the assessor had the authority, pursuant to § 12-55, to make the interim change in the assessment of the plaintiffs' property." Matzul v. Montville, supra, 70 Conn. App. 449. Although § 12-55 may not be used by a taxpayer to compel interim revaluations, it does provide authority for an assessor to do so. Id., 448-49.[3]

[3]As noted in DeSena, the legislature imposed a restriction on the assessor with the enactment of what is now General Statutes § 12-63d, prohibiting an assessor from changing an assessed value "solely on the basis of the sale price of such parcel in any sale or transfer of such parcel." (Internal quotation marks omitted.) DeSena v. Waterbury, supra, 249 Conn. 84.

Finally, we turn to the issue of whether the plaintiff may amend his complaint following the decision of this court related only to the revaluation year of October 1, 2001 so that the subsequent tax years of October 1, 2002 and October 1, 2003 may be included in that judgment. In deciding the issue here, we are guided by the following legal standard.

"[A] trial court may allow, in its discretion, an amendment to pleadings before, during, or as here, after trial to conform to the proof. . . . . Whether to allow an amendment is a matter left to the sound discretion of the trial court. This court will not disturb a trial court's ruling on a proposed amendment unless there has been a clear abuse of that discretion." (Citations omitted; internal quotation marks omitted.) Voll v. Lafayette Bank & Trust Co., 223 Conn. 419, 433, 613 A.2d 266 (1992). An element for the court to consider in deciding to allow an amendment to the complaint is whether the amendment is prejudicial to the opposing party. Saphir v. Neustadt, 177 Conn. 191, 208, 413 A.2d 843 (1979). We also note in Saphir v. Neustadt, that where an amendment to a complaint is permitted, the amendment relates back to the date of the complaint. Id., 208-209.

In considering whether to allow the amendment filed by the plaintiff, we are guided by three factors. The first factor is the provision in § 12-117a that allows the complaint to be amended without the taxpayer being required to appear before the board of assessment appeals for new tax years maturing during the pendency of the appeal. The second factor is the provision in § 12-117a that "[t]he court shall have power to grant such relief as to justice and equity appertains, upon such terms and in such manner and form as appear equitable . . . ." The third factor is the provision in § 12-117a that "[t]he amount to which the assessment is so reduced shall be the assessed value of such

property on the grand lists for succeeding years until the tax assessor finds that the value of the applicant's property has increased or decreased."

As to the first and third factors, the only significant difference that we see existing between the provision of § 12-117a that allows amendments to appeals to include subsequent tax years, and the provision of § 12-117a that requires the reduced amount of the assessment in the initial appeal to be carried forward until the assessor finds that the value of the taxpayer's property has increased or decreased, is that the former is a pre-judgment provision, whereas the latter is post judgment.

The assessor's post judgment increase in the valuation of the plaintiff's property, would have to have been done in accordance with § 12-55, which provides that if the assessor increases the valuation of the taxpayers's property above the valuation set in the preceding grand list, the assessor must give the taxpayer written notice of the change and inform the taxpayer that he or she may file an appeal with the board of assessment appeals. In oral argument before this court, on plaintiff's motion to open judgment, plaintiff's counsel represented that the assessor gave no such statutory notice to the plaintiff. The defendant has not refuted this claim.

The risk to the taxpayer, in the pre-judgment process of a § 12-117a appeal, is that by failing to amend the complaint to include new tax years, the taxpayer runs the risk of the assessor doing exactly what was done here, which is to increase the valuation of the subject property pursuant to the authority granted to him under § 12-55 without the constraints of the valuation found by the court in the initial appeal.

On balance, we have a taxpayer who did not take advantage of the provisions of § 12-117a to preserve his claim of overvaluation by including successive tax years that had matured during the pendency to his appeal and an assessor that increased the assessment of the taxpayer without complying with § 12-55, subsequent to the court's

reduction of value to the taxpayer's property. These opposing failures brings us to the second factor recited above that this "court shall have the power to grant such relief as to justice and equity appertains . . . ." General Statutes § 12-117a.

Since the assessor has been gracious enough to accept this court's finding of value on the October 1, 2001 list as applied to the October 1, 2002 list, we find no prejudicial affect on the town and, in the interest of justice and equity, we grant the plaintiff's motion to amend the complaint to include the tax years of October 1, 2002 and October 1, 2003.

Accordingly, we grant the plaintiff's motion to open the judgment and allow the plaintiff to amend his complaint to include the tax years of October 1, 2002 and October 1, 2003 without costs to either party.

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Arnold W. Aronson
Judge Trial Referee