NO. CV 13 5015763S	:	SUPERIOR COURT
FREDERICK CORNELIUS	:	JUDICIAL DISTRICT OF
v.	:	NEW BRITAIN
LINDA ARNOLD, TAX ASSESSOR TOWN OF FARMINGTON	:	JANUARY 30, 2015

MEMORANDUM OF DECISION ON DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

The plaintiff, Frederick Cornelius (Cornelius), brings this two-count complaint challenging the valuation of his property at 1509 Farmington Avenue in the town of Farmington (town).

In count one of his complaint, the plaintiff claims that on October 1, 2011, he was the owner of the subject property and on that assessment date, the town's assessor valued the subject premises at $238,714. The plaintiff further alleges therein that "[a] tax was laid on the Property which tax was computed on the assessment which was manifestly excessive and could not have been arrived at except by disregarding duties of the assessor established under Connecticut General Statutes § 12-62, and/or § 12-55."

Both the plaintiff and defendant agree that the first count was brought pursuant to General Statutes § 12-119.[1]

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[1] General Statutes § 12-119 provides, in relevant part, as follows: "When it is claimed that a tax has been laid on property not taxable in the town . . . in whose tax list such property

The defendant filed a special defense reciting that the filing of the plaintiff's appeal on February 4, 2013 was more than one year following the assessment date of October 1, 2011 and the plaintiff thereby failed to comply with the provisions of § 12-119.

The defendant moves for summary judgment as to count one based upon the allegations in its special defense.

The plaintiff objects to the motion for summary judgment claiming that the appeal in count one was brought within the one-year time limitation provided for in § 12-119 with the starting date of May 1, 2012, not October 1, 2011.

The plaintiff's first argument is that General Statutes § 12-55 (a) provides that "[o]n or before the thirty-first of January of each year . . . the assessors . . . shall publish the grand list for their respective towns." Furthermore, the plaintiff argues that pursuant to subsection (b) of § 12-55, "[t]he assessor may increase or decrease the valuation of any property as reflected in the last-preceding grand list." The plaintiff interprets this to mean

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was set, or that a tax laid on property was computed on an assessment which, under all the circumstances, was manifestly excessive and could not have been arrived at except by disregarding the provisions of the statutes for determining the valuation of such property, the owner thereof . . . prior to the payment of such tax, may, in addition to the other remedies provided by law, make application for relief to the superior court for the judicial district in which such town . . . is situated. Such application may be made within one year from the date as of which the property was last evaluated for purposes of taxation . . . . In all such actions, the Superior Court shall have power to grant such relief upon such terms and in such manner and form as to justice and equity appertains . . . ."

that the process of valuation is an ongoing process that continues up to April when the assessment list is sent by the assessor to the Secretary of the Office of Policy and Management (OPM).

The plaintiff's second argument is that pursuant to the holding in Wiele v. Board of Assessment Appeals, 119 Conn. App. 544, 554, 988 A.2d 889 (2010), the one-year statute of limitation contained in § 12-119 can be equitably tolled based on the assessor's course of conduct. On this basis, the plaintiff claims that there are factual issues to be determined showing why the assessor's conduct equitably tolls the statute of limitations.

The key language in § 12-119 recites that "[s]uch application [for relief] may be made within one year from the date as of which the property was last evaluated for purposes of taxation . . . ."

The phrase "last evaluated for purposes of taxation" has been interpreted by our case law to mean the date of the last assessment for the purposes of taxation. See Grace N' Vessels of Christ Ministries, Inc. v. Danbury, 53 Conn. App. 866, 870, 733 A.2d 283 (1999). There is no authority for the plaintiff's argument that the one-year limitation to appeal contained in § 12-119 is from the date that the yearly assessment list is submitted by assessors to OPM.

Section 12-62 (b) recites the duties of an assessor in the conduct of the process of revaluation of real estate with ¶ 1 therein setting out that the assessor shall conduct the

revaluation on the assessment date of October 1.

Section 12-55 refers to the publication of the grand list of the municipality, changes made in the assessments and notification of assessments. Subsection (a) therein refers to the assessment year commencing October 1.

Section 12-119 is not an alternative route to challenge the valuation of the taxpayer's real estate as provided for in § 12-117a. Instead, § 12-119 permits a taxpayer to challenge the valuation of his or her real estate based on the claim that the assessor did something illegal to arrive at the valuation. It is well recognized that "[p]ublic policy requires . . . that taxes that have not been challenged timely cannot be the subject of perpetual litigation, at any time, to suit the convenience of the taxpayer. . . ." (Internal quotation marks omitted.) Danbury v. Dana Investment Corp., 249 Conn. 1, 15, 730 A.2d 1128 (1999). Therefore, tax appeals must be made timely.

"In a tax appeal taken pursuant to § 12-119, the plaintiff must prove that the assessment was (a) manifestly excessive *and* (b) . . . could not have been arrived at except by disregarding the provisions of the statutes for determining the valuation of the property. . . . [The plaintiff] must [set forth] allegations beyond the mere claim that the assessor overvalued the property. [The] plaintiff . . . must satisfy the trier that [a] far more exacting test has been met: either there was misfeasance or nonfeasance by the taxing authorities, or the assessment was arbitrary or so excessive or discriminatory as in itself to

show a disregard of duty on their part. Only if the plaintiff is able to meet this exacting test by establishing that the action of the assessors would result in illegality can the plaintiff prevail in an action under § 12-119. The focus of § 12-119 is whether the assessment is illegal." (Citations omitted; emphasis in original; internal quotation marks omitted.) Redding Life Care, LLC v. Redding, 308 Conn. 87, 105, 61 A.3d 461 (2013).

"Practice Book [17-49] provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted 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. . . . In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . . The party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law . . . and the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact. . . . A material fact . . . [is] a fact which will make a difference in the result of the case." (Internal quotation marks omitted.) Robinson v. Cianfarani, 314 Conn. 521, 524-25, _ A.3d _ (2014).

The plaintiff's allegations in count one merely track the language in § 12-119. At oral argument, the plaintiff's main claim was that the assessor engaged in a course of

conduct that was illegal. Neither the plaintiff's claim at oral argument nor his allegations in the complaint provide any factual basis that the assessor's action was illegal. The taxpayer "must present clear and convincing evidence that the assessment is incorrect or that the . . . amount of tax assessed was erroneous or unreasonable." (Internal quotation marks omitted.) Leonard v. Commissioner of Revenue Services, 264 Conn. 286, 302, 823 A.2d 1184 (2003).

The plaintiff's failure to bring the appeal, as alleged in count one, within the one-year period starting with October 1, 2011, supports the defendant's motion for summary judgment.

Accordingly, the defendant's motion for summary judgment as to count one is granted.

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Arnold W. Aronson
Judge Trial Referee