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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

FC BOILERMAKER LLC,	*	**Case No. 2013 CVT 11838**
	*	**Judge Erik P. Christian**
PETITIONER,	*	
v.	*	
DISTRICT OF COLUMBIA,	*	
RESPONDENT.	*	

ORDER

This matter is before the Court on consideration of Respondent's *Motion for Partial Summary Judgment*, filed on June 9, 2016, Petitioner's *Cross Motion for Summary Judgment*, filed August 11, 2016, *District's (I) Reply to Opposition to Summary Judgment and (II) Opposition to Petitioner's Cross Motion for Summary Judgment*, filed August 29, 2016, the representations to the Court on October 25, 2016, and the record herein. The Court finds that summary judgment is proper in favor of Respondent as Petitioner has failed to meet its burden.

I. BACKGROUND

Petitioner has owned real property in the District of Columbia known as Lot 40 in Square 770, with premises known as 4th Street, SE, Washington, D.C. ("Subject Property") since March 2012. Joint Pre-Trial Statement at 2. Respondent assessed the Subject Property for Tax Year 2013 at $9,288,600.00. *Id.* To create the assessment, the Office of Tax and Revenue used the comparable sales approach methodology. Resp't Mot. for Partial Summ. J. at 1. Petitioner filed a New Owner administrative review

appeal on May 1, 2012. Joint Pre-Trial Statement at 2. After an oral hearing, the Real Property Tax Appeals Commission ("RPTAC") reduced the assessment of the Subject Property to $8,708,063.00 for land only. *Id.* On September 27, 2013, Petitioner appealed the reduced RPTAC assessment. *Id.*

On June 9, 2016, Respondent filed a Motion for Partial Summary Judgment. On August 11, 2016, Petitioner filed a Cross Motion for Summary Judgment. On August 29, 2016, Respondent filed the District's (I) Reply to Opposition to Summary Judgment and (II) Opposition to Petitioner's Cross Motion for Summary Judgment. A hearing on the motions was held on October 25, 2016.

Petitioner argues that the RPTAC assessment of the Subject Property is in error as: (1) the assessment failed to properly evaluate what a willing buyer would pay and a willing seller would sell the Subject Property for substantially less than market value; (2) the assessment is in excess of what a willing buyer would pay for the Subject Property if it were vacant; (3) the assessment valuation is discriminatory and amounts to a "taking" in denial of equal protection under the Fifth Amendment of the Constitution of the United States; (4) Respondent did not utilize the best sources of information in creating an assessment for the Subject Property; and (5) the assessment is not in equalization. Pet. ¶ 10. Petitioner alleges that the correct assessment for the value of the Subject Property is $2,770,000.00.

II. STANDARD OF REVIEW

Under D.C. Superior Court Tax Procedure Rule 3, motions for summary judgment filed in the Tax Division are governed by Civil Procedure Rule 56. Judgment shall be rendered in favor of the moving party if it can show that there is no genuine issue as to

any material fact and that the movant is entitled to judgment as a matter of law. *See* D.C. SCR-Civ. 56(c) (2014). The Court reviews the record "in the light most favorable to the non-moving party." *Doe v. Safeway, Inc.*, 88 A.3d 131, 132 (D.C. 2014) (quoting *Jones v. Thompson*, 953 A.2d 1121, 1124 (D.C. 2008)). The Court "may grant the motion only if a reasonable juror, having drawn all inferences in favor of the non-moving party, could not find for [that] party under the appropriate burden of proof." *Wash. Inv. Partners of Del., LLC v. Sec. House*, 28 A.3d 566, 573 (D.C. 2011) (internal citation omitted).

If the moving party makes an initial showing that the record presents no issue of material fact, the burden shifts to the non-moving party to come forward with specific evidence showing that genuine issues of material fact do exist. *Safeway, Inc.*, 88 A.3d at 132 (quoting *Bradshaw v. District of Columbia*, 43 A.3d 318, 323 (D.C. 2012)); *see also Wallace v. Eckert*, 57 A.3d 943, 949 (D.C. 2012) (citation and quotation omitted). The non-moving party may not avoid summary judgment merely with conclusory allegations but rather "must produce at least enough evidence to make out a prima facie case in support of his or her position." *Bruno v. W. Union Fin. Serv.*, 973 A.2d 713, 717 (D.C. 2009) (quotation and citation omitted). To make an evidentiary showing sufficient to survive a summary judgment motion, the party opposing summary judgment "must show that he or she has a plausible ground for the maintenance of the cause of action." *Id.* "[A] party opposing a motion for summary judgment must produce at least enough admissible evidence to make a prima facie case." *Tobin v. John Grotto Co.*, 886 A.2d 87, 90 (D.C. 2005). Conclusory statements of denial by the non-moving party are insufficient to preclude a motion for summary judgment. *Id.* Conclusory statements are contentions made without supporting evidence. *Id.*

III. ANALYSIS

Respondent argues in the Motion for Partial Summary Judgment that Petitioner has failed to produce evidence that the methodology used to assess the Subject Property was flawed and as such there is no genuine dispute of material fact. Moreover, Respondent argues that Petitioner had access to the assessment methodology since November 20, 2012. Respondent proffers that despite the availability of the methodology used for the assessment, Petitioner has not presented any admissible evidence to demonstrate the assessment is flawed and therefore summary judgment is appropriate. In response, Petitioner filed a Cross Motion for Summary Judgment, in which Petitioner alleges that the assessment of the Subject Property is inaccurate or invalid as the assessor did not properly follow the guidance of *The Appraisal of Real Property* which outlines the procedures to use under the comparable sales approach to determine value. Petitioner argues that Respondent did not follow the proper procedures by failing to find an appropriate "set of comparable sales as similar as possible to the subject property to ensure they reflect the actions of similar buyer." Petitioner did not submit affidavits or sworn documentation indicating that the assessment of the Subject Property was incorrect.

The District of Columbia Office of Tax and Revenue has the power to determine a tax assessed value of real property located in the District of Columbia. Joint Pretrial Mot. § B. "The Mayor shall take into account any factor that may have a bearing on the market value of the real property, including, but not limited to, sales information on similar types of real property, mortgage, or other financial considerations, reproduction cost less accrued depreciation because of age, condition, and other factors, income-

earning potential (if any), zoning, and government imposed restrictions." *Id.*; *accord* D.C. Mun. Regs., tit. 9, § 307.1. "Assessments shall be based upon the sources of information available to the Mayor, which may include actual view." D.C. Code § 47-820(a)(2).

> The appraiser may apply one or more of the three generally recognized approaches of valuation when considering the above factors. Those three approaches are the replacement cost, comparable sales, and income methods of valuation. Usually the appraiser considers the use of all three approaches, but one method may be most appropriate depending on the individual circumstances of the subject property.

District of Columbia v. Wash. Sheraton Corp., 499 A.2d 109, 112 (D.C. 1985) (internal citations omitted). This approach has been codified in District of Columbia Municipal Regulations. See D.C. Mun. Regs., tit. 9 § 307.03-307.05 (permitting Deputy Chief Financial Officer, in conducting assessments, to utilize comparable sales approach to valuation, the replacement cost approach to valuation, and the income approach to valuation). A petitioner bears "the burden of proving that an assessment is incorrect or illegal, not merely that alternative methods exist giving a different result." *Safeway v. District of Columbia*, 525 A.2d 207, 211 (D.C. 1987). The tax assessed value of a parcel of real property is correct unless a real property owner can show a flaw or error in the determination of the value of the real property. *Wolf v. District of Columbia*, 597 A.2d 1303, 1312 (D.C. 1991).

Here, following an administrative appeal, RPTAC reduced the assessment of the Subject Property to $8,708,063.00. *Id.* Petitioner argues that the true value of the Subject Property is $2,770,00.00 for the first half of Tax Year 2013 based on a valuation determined by District of Columbia certified appraisers for Evaluation and Review Associates, Inc. ("the Appraisal"). Pet'r's Cross Mot. for Summ. J. at 5. The Appraisal

was created as an opinion for Petitioners on the market value of the leased fee interest in the Subject Property in "as is" condition on May 10, 2011. Pet'r's Ex. 6.

Neither of the appraisers whom created the Appraisal, Thomas P. Gallup and Jane M. Driven, nor any employee of Evaluation and Review Associates, Inc., are listed as witnesses on Petitioner's Witness list in the Joint Pre-Trial Statement. Joint Pretrial Mot. § E. The Appraisal does not contain language indicating that it was sworn to under penalty of perjury. Pet'r's Ex. 6. A sworn statement is one that is signed and acknowledged for its veracity by the attester under penalty of perjury. 28 U.S.C.S. § 1746; *Cormier v. D.C. Water & Sewage Auth.*, 959 A.2d 658, 664-65 (D.C. 2008) (concluding that Super. Ct. Civ. R. 56, shall parallel the federal rule for sworn statements, 28 U.S.C.S. § 1746). An "unsworn statement is no evidence at all." *Heard v. Johnson*, 810 A.2d 871, 885 n. 6 (D.C. 2002) (finding an unsworn, unsigned statement to be only an allegation rather than evidence of any wrongdoing). Unsworn statements presented as evidence have been found to be mere "conclusory statements unsupported by any facts." *Woldeamanuel v. Georgetown Univ. Hosp.*, 703 A.2d 1243, 1245 (D.C. 1997) (*citing Potts v. District of Columbia*, 697 A.2d 1249, 1252 (D.C. 1997) (finding an unsworn statement from an expert witness insufficient to defeat a motion for summary judgment).

Thus, the Appraisal is not evidence. Moreover, as Petitioner did not indicate that Mr. Gallup or Ms. Driven, the authors of the Appraisal, would be called at trial, and the lack of a sworn statement to the veracity of the Appraisal, the Court does not view the Appraisal as evidence. D.C. Code § 14-101(a). Therefore Petitioner's argument that the assessment performed by Respondent was flawed has not been substantiated by admissible evidence. "[A] party opposing a motion for summary judgment must produce

at least enough admissible evidence to make a prima facie case." *Tobin,* 886 A.2d at 90. Conclusory statements of denial by the non-moving party are insufficient to preclude a motion for summary judgment. *Id.* The Court does not have sufficient admissible evidence by which to determine whether the assessment of the Subject Property was flawed, thus summary judgment is proper in favor of Respondent.

IV. CONCLUSION

As the only issue before this Court is whether the methodology used to create the assessment of the Subject Property was valid, the Court finds insufficient admissible evidence on the record to demonstrate a flaw in the methodology. Thus, the Court grants Respondent's Partial Motion for Summary Judgment. Petitioner bared the burden of evincing that the assessment of the Subject Property for Tax Year 2013 was inaccurate, but failed to produce admissible evidence in such regard. Thus, Petitioner's Cross Motion for Summary Judgment is denied.

WHEREFORE, it is this 29th day of December, 2016,

ORDERED, that Respondent's *Motion for Partial Summary Judgment* is **GRANTED**; and it is further

ORDERED, that Petitioner's *Cross Motion for Summary Judgment* is **DENIED**.

SO ORDERED.

ERIK P. CHRISTIAN
J U D G E
(Signed-in-Chambers)

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