NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1129-12T1

1280 WALL SPE, L.L.C.,

Plaintiff-Appellant,

v.

TOWNSHIP OF LYNDHURST,

Defendant-Respondent.

Argued April 1, 2014 – Decided May 20, 2014

Before Judges Messano and Lisa.

On appeal from the Tax Court of New Jersey, Docket No. 478-06.

Lee S. Holtzman argued the cause for appellant (McCarter & English, L.L.P., attorneys; Frank E. Ferruggia and Mr. Holtzman, of counsel and on the brief; Priscilla Mieir, on the brief).

Kenneth A. Porro argued the cause for respondent (Wells, Jaworski & Liebman, L.L.P., attorneys; Mr. Porro, of counsel and on the brief).

PER CURIAM

Plaintiff, 1280 Wall SPE, LLC, appeals from the September 27, 2012 judgment of the Tax Court that affirmed real property tax assessments for tax years 2006, 2007 and 2008, on six commercial condominium units which plaintiff owned in the

Township of Lyndhurst (defendant). The undisputed testimony at trial before Judge Patrick DeAlmeida, P.J.T.C., revealed that the units were located in a five-story building, originally constructed and operated as rental property. Sometime in 1989, plaintiff's predecessor in interest filed a master deed, subjecting the property to condominium ownership. Each of the six condominium units was assessed separately by defendant, as required by statute. See N.J.S.A. 46:8B-19 ("All property taxes . . . imposed by any taxing authority shall be separately assessed against and collected on each unit as a single parcel, and not on the condominium property as a whole."). During the three tax years at issue, plaintiff owned all six units which it leased to multiple tenants.

Defendant moved immediately before trial to dismiss plaintiff's complaint, essentially arguing that the report of its expert appraiser, Raymond T. Cirz, was fatally flawed because it valued the parcel as a whole and failed to provide assessed values for each unit. Judge DeAlmeida reserved decision on the motion and allowed plaintiff to present its case before ruling.

Cirz was the only witness at trial. He opined that the "highest and best use" of the property was as a multi-tenanted office building. Cirz concluded that the "market value of the

fee simple estate of the property" was $12.5 million, $12.8 million and $12.6 million respectively for tax years 2006, 2007 and 2008. During his direct examination, Cirz did not allocate the total valuation among the six units. When asked on cross-examination how he "would divide up [the] value by the various condo interests," Cirz testified that one could use the "percentage interest each condo interest represents in the whole," as set forth in the individual unit deeds. He acknowledged that he did not "provide an allocation of value between the different units."

Defendant moved to dismiss the complaints at the close of plaintiff's case. Alternatively, defendant argued that the assessments should be affirmed because plaintiff had failed to overcome the presumption of correctness. See, e.g., Pantasote Co. v. Passaic, 100 N.J. 408, 412 (1985) ("On appeal a municipality's original tax assessment is entitled to a presumption of validity."). The judge reserved decision.

Judge DeAlmeida issued a written opinion on September 26, 2012, affirming the assessments because "plaintiff failed to introduce evidence sufficient to overcome the presumption of validity attached to those assessments." The judge reasoned:

> [Plaintiff's] expert's failure to offer an opinion with respect to the individual value of each of the condominium units . . . [was] fatal to plaintiff's claims. Even if the

> court were to accept as accurate the expert's overall opinions of value, the record contains no evidence of a principled analysis of the value of each of the six parcels under appeal. It is, therefore, impossible for the court to conclude that the validity of the assessments on those parcels has been called into question by the expert's testimony.

Judge DeAlmeida noted that our decision in Cigolini Assocs. v. Borough of Fairview, 208 N.J. Super. 654 (App. Div. 1986), presented "facts substantially similar to those . . . in this case[,]" and was "directly applicable . . . ."

Cigolini involved a challenge to nineteen assessments of residential condominium units in a single apartment building which the owner continued to operate as an apartment house, choosing to lease the units because of the lack of market demand. Id. at 657-58. The trial judge adopted the plaintiff's expert's analysis that "ignored the individual nature of the units and the assessments and instead treated the building as a single entity which he valued on an income basis[.]" Id. at 664. We reversed, holding that the plaintiff "must bear the tax consequences of its voluntary business decision to convert the building," reasoning that "any other conclusion . . . would contravene the policy of this State to place condominium owners on the same legal basis . . . as other owners of real property." Id. at 665 (citations omitted).

Judge DeAlmeida rejected "[p]laintiff's attempts to distinguish [its] case from Cigolini . . . ." The judge recognized that "in appropriate circumstances separate lots may be valued as a single economic unit[,]" citing City of Atl. City v. Ginnetti, 17 N.J. Tax 354, 363 (Tax 1998), aff'd, 18 N.J. Tax 672 (App. Div. 2000), and Mobil Oil Corp. v. Greenwich Twp., 9 N.J. Tax 123 (Tax 1986). However, the judge noted that such an "approach to valuation . . . requires both a determination of the overall value of the combined parcels and an allocation of the value to each of the component parcels." (Citing id. at 127). Judge DeAlmeida found that "the second crucial component of the single economic unit analysis . . . is missing from the evidence in this case."

The judge rejected Cirz's "lukewarm endorsement" of allocating the total assessment to the individual units "based on their percentage of interest in the condominium." He found that Cirz "offered no analysis of what the individual assessments would be using this method[,] or whether those assessments would reflect the true market value of the six parcels." As a result, Judge DeAlmeida could not "conclude that the presumption of validity attached to the assessments at issue . . . ha[d] been overcome." See, e.g., Little Egg Harbor Twp. v. Bonsanque, 316 N.J. Super. 271, 285-286 (App. Div. 1998)

("The presumption of correctness of a county board's tax assessment judgment stands, until sufficient competent evidence to the contrary is adduced."). He entered the judgments under review.

Before us, plaintiff contends that Judge DeAlmeida misapplied Cigolini to the facts of the case, thereby failing to value the property at is "highest and best use" as a "single economic unit" in accordance with Cirz's testimony. It also argues alternatively that the judge ignored Cirz's "credible and logical methodology" for allocating the assessed value among the six units, i.e., by applying each unit's percentage interest to the overall fair market value.

We have considered these arguments in light of the record and applicable legal standards. We affirm substantially for the reasons expressed by Judge DeAlmeida in his comprehensive and thoughtful written opinion.

Affirmed.