



2009

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Recommended Citation

Coppersmith, David (2009) "Recent Developments: Supervisor of Assessments v. Stellar GT: A Midcycle Revaluation of Real Property for Tax Assessment Purposes Must Be Caused by a Statutorily Specified Factor," *University of Baltimore Law Forum*: Vol. 39 : No. 2 , Article 13.

Available at: <http://scholarworks.law.ubalt.edu/lf/vol39/iss2/13>

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RECENT DEVELOPMENT

SUPERVISOR OF ASSESSMENTS V. STELLAR GT: A MID-CYCLE REVALUATION OF REAL PROPERTY FOR TAX ASSESSMENT PURPOSES MUST BE CAUSED BY A STATUTORILY SPECIFIED FACTOR.

By: David Coppersmith

The Court of Appeals of Maryland held that the mid-cycle revaluation of real property must be caused by one of the factors specified in Section 8-104(c) of the Tax-Property Article of the Maryland Code. *Supervisor of Assessments v. Stellar GT*, 406 Md. 658, 961 A.2d 1119 (2008). Specifically, the court held that the mid-cycle revaluation of real property caused by its sale price, rather than a factor specified in the statute, amounted to an impermissible retroactive reassessment. *Id.* at 675, 961 A.2d at 1129.

In October 2003, the Montgomery County Office of the Maryland Department of Assessments and Taxation (“Department”) valued Georgian Towers, a high-rise apartment building then owned by Borger Management (“Borger”), in anticipation of Georgian Towers’ 2004 assessment notice. Prior to the valuation, Borger submitted information to the Department listing all renovations that occurred during 2003. Although these renovations added at least \$50,000 in value to the property, an assessor from the Department never visually inspected the property after the renovation information was submitted. Georgian Towers’ assessment notice was issued by the Department in December 2003, with the property valued at \$52.6 million. In March 2004, Borger sold Georgian Towers to Stellar GT (“Stellar”) for approximately \$89 million. Following the sale, in June 2004, the Department revalued the property based upon the sale price and sent an assessment notice to Stellar, informing Stellar that the property had been revalued from \$52.6 million to \$89 million, resulting in a substantial tax increase.

Stellar appealed the mid-cycle revaluation, first to the Property Tax Assessment Appeals Board and then to the Maryland Tax Court, both of which affirmed the Department’s mid-cycle revaluation. Stellar then sought judicial review in the Circuit Court for Montgomery

County, which affirmed the Tax Court's decision. Stellar subsequently appealed to the Court of Special Appeals of Maryland, which reversed, holding that the Supervisor of Assessments ("Supervisor") used the sale price as a retroactive justification for reassessment in violation of Section 8-104 of the Tax-Property Article of the Maryland Code ("Section 8-104"). The Supervisor petitioned the Court of Appeals of Maryland for a writ of certiorari, which was granted.

While the Department assesses real property in Maryland once every three years, Section 8-104 allows for a mid-cycle revaluation if one of six specific events enumerated within the statute causes a change in the property's value. *Stellar GT*, 406 Md. at 661-62, 961 A.2d at 1121 (citing MD. CODE ANN., TAX-PROP. § 8-104(c) (West 2001)). These events include (1) a change in zoning classification by the owner; (2) a change in use or character; (3) substantially completed improvements are made which add at least \$50,000 in value to the property; (4) an error in calculation or measurement of the real property caused the value to be erroneous; (5) a residential use assessment is terminated pursuant to Section 8-226 of the Tax-Property Article of the Maryland Code; or (6) a subdivision occurs. *Stellar GT*, 406 Md. at 662, 961 A.2d at 1121 (citing MD. CODE ANN., TAX-PROP. § 8-104(C)).

The Supervisor contended that upon learning of substantially completed improvements, not captured in an existing assessment and adding value to the property, the Supervisor must revalue the property, regardless of how that knowledge was acquired. *Stellar GT*, 406 Md. at 670, 961 A.2d at 1126. Specifically, the Supervisor contended that Section 8-104 does not restrict the use of information concerning an increase in value. *Id.* Conversely, Stellar contended that a sale of real property is not one of the circumstances listed under Section 8-104 to cause a revaluation, even if a statutory factor that could initiate the revaluation was uncovered. *Id.*

The court explained that the word "cause" within Section 8-104(c) means "a reason for an action or condition." *Id.* at 671, 961 A.2d at 1126 (quoting MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 196 (11th ed. 2005)). The court determined that the cause of Georgian Towers' revaluation was the sale price, rather than a review of the premises, the documents available from the permit office, or the documents submitted by the owner. *Stellar GT*, 406 Md. at 671, 961 A.2d at 1126. The Department did not seek the relevant building

permits until after it had decided that the sale price indicated the regular assessment must have been erroneous. *Id.* at 671, 961 A.2d at 1127 (quoting *Stellar GT v. Supervisor of Assessments*, 178 Md. App. 624, 634, 943 A.2d 100, 106 (2008)). Additionally, the assessor did not conduct a visual inspection of the renovation work, despite Borger submitting information indicating that the renovations that were completed in 2003 increased the value of the property by more than \$50,000. *Stellar GT*, 406 Md. at 671, 961 A.2d at 1127 (quoting *Stellar GT*, 178 Md. App. at 634, 943 A.2d at 106).

The court found that the legislature chose to link mid-cycle reassessment to “the occurrence of certain specified events...likely to presage a change in value”, rather than any change in value. *Stellar GT*, 406 Md. at 672, 961 A.2d at 1127 (quoting *Supervisor of Assessments of Balt. City v. Chase Assocs.*, 306 Md. 568, 577, 510 A.2d 568, 572 (1986)). In *Chase Associates*, the court determined that “cause” within Section 8-104 is equated with “linkage”, rather than “trigger” as opined by the Tax Court. *Stellar GT*, 406 Md. at 673, 961 A.2d at 1128 (citing *Chase Assocs.*, 306 Md. at 577, 510 A.2d at 572). The court, here, disagreed with the Supervisor’s contention that the existence of one of the statutory factors, even if the revaluation was not based upon that factor, enabled revaluation. *Stellar GT*, 406 Md. at 673, 961 A.2d at 1128.

The court found that a sale cannot be linked to a mid-cycle revaluation, and therefore, the Supervisor must assert that a link exists between substantially completed improvements and the new value. *Id.* at 673, 961 A.2d at 1128 (citing *Montgomery County Bd. of Realtors, Inc. v. Montgomery County*, 287 Md. 101, 103, 411 A.2d 97, 98 (1980)). The court explained that to avoid retroactive reassessment, a revaluation must not be linked to a sale, but to one of the enumerated statutory factors, which the Supervisor admitted did not cause the revaluation of Georgian Towers. *Stellar GT*, 406 Md. at 675, 961 A.2d at 1129. The Supervisor stated that the major guide in arriving at the \$89 million assessment was the sale price, and the renovation costs were not taken into account in revaluing the property. *Id.* at 671, 961 A.2d at 1126-27.

The Supervisor also contended that Section 8-401 of the Tax-Property Article of the Maryland Code (“Section 8-401”) enables revaluation of real property during the next calendar year, regardless of what precipitated the revaluation. *Id.* at 675-76, 961 A.2d at 1129. Section 8-401(f) relates to the effect of failing to send notice within

thirty days of the assessment becoming final, which creates an irrebutable presumption that the prior value has not changed. *Id.* at 678, 961 A.2d at 1130 (quoting MD. CODE ANN., TAX-PROP. § 8-401(f) (West 2001)). The court rejected this argument, determining that Section 8-401 is dependent on Section 8-104 for the permissible factors for reassessment and does not enable revaluation for any factor other than those statutorily specified. *Stellar GT*, 406 Md. at 678, 961 A.2d at 1130-31.

The Court of Appeals of Maryland's decision in *Stellar GT* protects owners and potential buyers of real property from retroactive reassessments by the Department of Assessments and Taxation. The court limited the causes for a mid-cycle reassessment of real property to those factors specifically enumerated within Section 8-104(c), restricting the use of information concerning an increase in the value of real property. The Department of Assessments and Taxation is prohibited from revaluing real property mid-cycle solely because its sale price is higher than the current assessment. This decision puts the Department on notice that, upon learning of substantially completed improvements which add value to real property, it must review either the real property itself or documentation of the improvements, and take this information into account for the reassessment.