

NO. CV 03 0070735S : SUPERIOR COURT  
JEFFREY J. FOX, ET AL. : JUDICIAL DISTRICT OF  
 : WINDHAM  
 : AT PUTNAM  
v.  
TOWN OF WINDHAM : NOVEMBER 4, 2003

MEMORANDUM OF DECISION  
ON DEFENDANT'S MOTION TO STRIKE

This is a tax appeal pursuant to Connecticut General Statutes § 12-117a contesting the valuation placed on seven separate parcels of real estate located in the town of Windham as follows:

Count I: 1605 West Main Street owned by Jeffrey J. and Marlene Fox

Count II: 29 Columbia Avenue owned by DB Properties Management, Inc.

Count III: 875 Windham Road owned by DB Properties Management, Inc.

Count IV: 1015 Main Street owned by MJ Willimantic Realty LLC.

Count V: 1563 West Main Street owned by ALSA Associates.

Count VI: 407 Jackson Street owned by Savin Gasoline Properties LLC.

Count VII: 213 Main Street owned by Christys Realty Ltd Partnership.

The owners of these separate properties first appeared before the Windham Board of Assessment appeals challenging the assessor's valuation on the list of October 1, 2002. The Board of Assessment Appeals denied each appeal giving rise to the present action.

The town of Windham (Town) moves to strike counts two through seven of the plaintiffs' complaint claiming that these appeals have been improperly joined together, none of the plaintiffs having an interest in the other various parcels of real estate involved in this appeal.

At the hearing on the Town's motion to strike, the Town represented that this appeal involves seven separate real estate appeals in which no one plaintiff has an interest in more than one of the properties being appealed in this action, and that the Board of Assessment Appeals heard seven separate appeals and rendered seven separate decisions denying the appeals.

The plaintiffs represent that all of the properties being appealed are commercial properties, one being a restaurant and one being a gasoline station. The plaintiffs further represent that they are only challenging the valuation of the land underlying the improvements on the seven parcels of land. However, the plaintiffs claim that the pleadings are so drawn that they are challenging the valuation used for valuing the land and the buildings.

The plaintiffs cite General Statutes § 52-104 and Donlon v. Killingly, Superior Court, judicial district of Putnam, Docket No. 95-0051375 (January 11, 1996, *Sferazza, J.*) (15 Conn. L. Rptr 662), for their authority to bring these seven appeals in one action. The Town relies on Hughes v. Stamford, Superior Court, judicial district of Stamford/Norwalk at Stamford, Docket No. CV 94-140001 (December 5, 1995, *Lewis, J.*).

General Statutes § 52-104, joinder of plaintiffs and consolidation of causes recites, in pertinent part, “[a]ll persons may be joined in one action as plaintiffs in whom any right of relief in respect to or arising out of the same transaction or series of transactions is alleged to exist either jointly or severally when, if such persons brought separate actions, any common question of law or fact would arise . . . .”

Donlon v. Killingly, upon which the plaintiffs rely, involves a tax appeal by numerous taxpayers that individually own residential buildings in the Alexander lake area of the town of Killingly. The taxpayers leased the land upon which their respective houses were located, and therefore the appeal pertained only to the value of the buildings, not the land. The court in Donlon noted that the sole purpose for the appeal was to challenge the assessment process which the taxpayers’ claim unfairly includes a ‘site’ component attributable to the proximity to the lake. The court in Donlon denied the town’s motion to strike two counts of the plaintiffs’ complaint based upon misjoinder of causes of action because “the plaintiffs only criticize the method of valuation rather than specific dollar amounts pertinent to their houses individually.” Donlon v. Killingly, supra, 15 Conn. L. Rptr. 662.

In Hughes v. Stamford, sixteen taxpayers filed a fourteen count complaint claiming that the assessor employed an arbitrary and illegal multiplier factor to increase the value of waterfront lots owned by all of the plaintiffs. The town moved to strike the action for improper joinder claiming that none of the individual taxpayers had an interest in the other lots. The court in Hughes granted the motion to strike on the basis that claiming a flawed valuation process “is inconsistent with the proposition that unless each plaintiff in a multi-[count] complaint has an interest in every parcel involved in the appeal, each property owner should be left to an individual appeal.” Hughes v. Stamford, supra, Superior Court, Docket No. CV 94-140001.

The basic issue in a motion to strike for misjoinder of parties is whether there is a commonality of law or facts between all of the plaintiffs to a cause of action. In Donlon, the court denied the motion to strike because it saw a commonality of law as the only issue to be decided. In Hughes, the court granted the motion to strike because it saw no commonality between any of the taxpayers recognizing that the multiplier factor used by the assessor was applied differently to each of the plaintiffs.

We are guided by General Statutes § 52-104 and the court's reasoning in the Hughes case. Both § 52-104 and the court in Hughes focus on whether each of the plaintiffs in a multi-count action have common questions of fact or law at issue before they can be joined in one common action. In this present tax appeal, there is nothing in common with a plaintiff owning property used as a restaurant and a plaintiff owning property used as a gasoline station. Each appeal would present separate factual issues and different considerations affecting valuation. Merely claiming that valuation is the common factor joining all plaintiffs in this action is insufficient to overcome the principle in § 52-104 that requires a common question of law or fact.

Accordingly, the defendant's motion to strike counts two, three, four, five, six and seven are granted.

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Arnold W. Aronson  
Judge Trial Referee