

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE PROPERTY TAX COMMISSION
SITTING AS THE STATE BOARD OF
EQUALIZATION AND REVIEW
14 PTC 170

IN THE MATTER OF:
THE APPEAL OF:

**MICHEL BADAWI
DEBRA BADAWI**

ORDER

from the decision of the
Mecklenburg County Board
of Equalization and Review
concerning the valuation of
certain real property for tax
tax year 2011.

This appeal was heard before the North Carolina Property Tax Commission (“Commission”) sitting as the State Board of Equalization and Review in the City of Raleigh, Wake County, North Carolina on Thursday, July 9, 2015, pursuant to the Motion filed by counsel for Mecklenburg County for dismissal of the subject appeal of **Michel Badawi and Debra Badawi** (“Appellant” or “Taxpayer”) based upon the doctrines of res judicata and collateral estoppel from the decision of the Mecklenburg County Board of Equalization and Review (“County Board”) regarding the valuation of the subject property for tax year 2011.

Chairman William W. Peaslee presided over the hearing with Commission members Jack C. (Cal) Morgan III and David A. Smith participating.

Mr. Michel Badawi appeared at the hearing pro se. Robert S. Adden, Jr., with the law firm of Ruff Bond Cobb Wade & Bethune, LLP appeared at the hearing on behalf of Mecklenburg County.

At the hearing, Mecklenburg County, through counsel, moved the Commission to dismiss the above-captioned appeal based upon the doctrines of res judicata and collateral estoppel, as set forth in Mecklenburg County’s Motion to Dismiss.

After considering the Motion to Dismiss, and the Final Decision attached thereto, Taxpayer’s contentions in opposition and all matters of record, the Commission voted unanimously to grant Mecklenburg County’s Motion to Dismiss the appeal based upon the doctrines of res judicata and collateral estoppel for the reasons more specifically set forth in this Order below.

ISSUE

Is this appeal barred by the defenses of res judicata and/or collateral estoppel?

APPLICABLE LAW

The doctrine of res judicata bars claims that have been previously adjudicated. The elements of res judicata are as follows: “(1) a final judgment on the merits in an earlier suit, (2) an identity of the causes of action in both the earlier and the later suit, and (3) an identity of the parties or their privies in the two suits.” Caswell Realty Assoc. v. Andrews Co., 128 N.C. App. 716, 720, 496 S.E.2d 607, 610 (1998). “A final judgment, rendered on the merits by a court of competent jurisdiction, is conclusive as to the issues raised therein with respect to the parties and those in privity with them and constitutes a bar to all subsequent actions involving the same issues and parties.” Kabatnik v. Westminster Co., 63 N.C. App. 708 711-712, 306 S.E.2d 513, 515 (1983).

The doctrine of collateral estoppel also bars the Appellant’s current challenge of the value of the subject property. Collateral estoppel applies “where the second action between the same parties is upon a different claim or demand, [and] the judgment in the prior action operates as an estoppel only as to those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered.” King v. Grindstaff, 284 N.C. 348, 356, 200 S.E.2d 799, 805 (1973) (quoting Cromwell v. County of Sac, 94 U.S. 351, 353, 24 L. Ed. 195, 198 (1876)), quoted in In re Wilkerson, 57 N.C. App. 63, 291 S.E.2d 182 (1982). Under the doctrine of collateral estoppel, the Appellant is estopped from challenging the 2011 value of the subject property.

FROM THE NOTICE OF APPEAL AND APPLICATION FOR HEARING FILED IN THIS MATTER, THE MOTION TO DISMISS AND FINAL DECISION ATTACHED THERETO, AS WELL AS TAXPAYER’S CONTENTIONS IN OPPOSITION TO THE MOTION TO DISMISS, THE COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT:

1. The Commission has jurisdiction over the parties and the subject matter of this appeal.
2. This case involves Mecklenburg Tax Parcel # 199-301-24, which is also known as 16101 Woolwine, Charlotte, North Carolina, 28278 (“Property”).
3. Pursuant to N.C. Gen. Stat. § 105-286, Mecklenburg County (“County”) conducted a reappraisal of all real property in Mecklenburg County as of January 1, 2011.
4. In early 2011, the County mailed a Notice of Real Property Assessed Value to Samuel F. Williams and Bonnie H. Williams (“the Williams”), the owners of the Property as of January 1, 2011.

5. The Williams appealed the value to the Mecklenburg County Board of Equalization and Review ("County Board"). The County Board heard the appeal and sent a notice of decision on September 30, 2011 setting the value of the Property at \$1,463,100.

6. The Williams filed a Notice of Appeal with the Property Tax Commission and the appeal proceeded under file number 11 PTC 916. Michel Badawi and Debra Badawi (the "Taxpayer") purchased the property in 2012 from Mr. and Mrs. Williams and assumed the property tax appeal.

7. The case was heard by the Commission on June 20, 2013. The Taxpayer presented evidence at the hearing, including testimony by Michel Badawi and exhibits presented.

8. The Commission ruled in favor of Mecklenburg County and upheld the \$1,463,100 value determined by the County Board.¹

9. The Taxpayer did not appeal the Final Decision entered by the Commission on June 28, 2013 to the North Carolina Court of Appeals.

10. In 2013, the Taxpayer appealed the 2013 value of the property to the Mecklenburg County Board of Equalization and Review ("County Board").

11. By decision dated May 19, 2014, the County Board affirmed the value of \$1,460,400 for the Property for tax year 2013.

12. Pursuant to the SL 2013-362 Review, Mecklenburg County made a \$2,700 property tax valuation adjustment to the Property

13. The Taxpayer filed a Notice of Appeal and Application for Hearing with the Commission challenging the County Board's decision.

14. In the Notice of Appeal and Application for Hearing (Form AV-14), Taxpayer wrote that he was appealing "For Tax Year 2011," and "Owner's Appraisal or Opinion of Value: Real Property \$1,080,000."

15. The Commission's determination regarding the 2011 value of the subject property set forth in the final decision, entered on June 28, 2013, operates as an estoppel to Taxpayer's claims in this appeal that the value should be different.

16. The Taxpayer had the value of the subject property fully adjudicated by the Commission.

¹See final decision entered by the Commission on June 28, 2013 in the appeal designated as 11 PTC 916.

17. The Taxpayer failed to appeal that prior final decision to the North Carolina Court of Appeals.

18. All of the elements of the doctrine of res judicata have been met in this appeal.

19. Under the doctrine of collateral estoppel, the Taxpayer is estopped from challenging the 2011 value of the subject property.

20. The Taxpayer is barred based upon the doctrines of res judicata and collateral estoppel from continuing to challenge the 2011 value.

21. The subject appeal is dismissed based upon the doctrines of res judicata and collateral estoppel.

**BASED ON THE FOREGOING FINDINGS OF FACT, THE COMMISSION
MAKES THE FOLLOWING CONCLUSIONS OF LAW:**

1. The doctrine of res judicata bars claims that have been previously adjudicated. The elements of res judicata are as follows: “(1) a final judgment on the merits in an earlier suit, (2) an identity of the causes of action in both the earlier and the later suit, and (3) an identity of the parties or their privies in the two suits.” Caswell Realty Assoc. v. Andrews Co., 128 N.C. App. 716, 720, 496 S.E.2d 607, 610 (1998).

2. The doctrine of collateral estoppel also bars the Appellant’s current challenge of the value of the subject property. Collateral estoppel applies “where the second action between the same parties is upon a different claim or demand, [and] the judgment in the prior action operates as an estoppel only as to those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered.” King v. Grindstaff, 284 N.C. 348, 356, 200 S.E.2d 799, 805 (1973) (quoting Cromwell v. County of Sac, 94 U.S. 351, 353, 24 L. Ed. 195, 198 (1876)), quoted in In re Wilkerson, 57 N.C. App. 63, 291 S.E.2d 182 (1982). Under the doctrine of collateral estoppel, the Appellant is estopped from challenging the 2011 value of the subject property.

3. The final decision of the Commission in appeal file number 11 PTC 916 was a final judgment on the merits of Appellant’s appeal of the 2011 valuation of the subject property.

4. The causes of action in appeal file number 11 PTC 916 are the same as in this action.

5. The parties are the same in both appeals filed with the Commission in these cases.
6. Accordingly, all of the elements of the doctrine of res judicata have been met in this appeal.²
7. Under the doctrine of collateral estoppel, the Taxpayer is estopped from challenging the 2011 value of the subject property.³
8. The subject appeal is dismissed based upon the doctrines of res judicata and collateral estoppel.

WHEREFORE, IT IS THEREFORE ORDERED BY THE COMMISSION that Mecklenburg County's Motion to Dismiss this appeal is granted based upon the doctrines of res judicata and collateral estoppel.



NORTH CAROLINA PROPERTY TAX COMMISSION

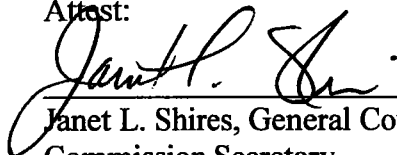


William Peaslee, Chairman

Commission Members Morgan and Smith concur. Vice Chairman Wheeler did not participate in the hearing or deliberation of this appeal.

Entered: ~~August 20, 2015~~

Attest:



Janet L. Shires, General Counsel and
Commission Secretary

² "A final judgment, rendered on the merits by a court of competent jurisdiction, is conclusive as to the issues raised therein with respect to the parties and those in privity with them and constitutes a bar to all subsequent actions involving the same issues and parties." Kabatnik v. Westminster Co., 63 N.C. App. 708, 711-712, 306 S.E.2d 513, 515 (1983).

³ King v. Grindstaff, 284 N.C. 348, 356, 200 S.E.2d 799, 805 (1973)(quoting Cromwell v. County of Sac, 94 U.S. 351, 353, 24 L. Ed. 195, 198 (1876)), quoted in In re Wilkerson, 57 N.C. App. 63, 291 S.E.2d 182 (1982).