

BEFORE THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU

TERRACES AT LAWSON CREEK
(JUNEAU I VOA LLC, JUNEAU II VOA
LLC, and INTREPID VOA LLC),

Appellant,

vs.

CBJ ASSESSOR,

Appellee,

Appeal # 2019-01

ORDER ON MOTION TO DISMISS

Upon considering the Assessor's motion, VOA's opposition, and the Assessor's reply, the Assembly grants the Assessor's motion for the following reasons. Neither party requested oral argument.¹

The Assessor moved to dismiss VOA's 2019 property tax appeal based on the doctrine of collateral estoppel because the same issues were fully litigated and decided against VOA in Appeal 2018-01. VOA opposed. VOA and the Assessor agree on the law. The parties also agree that the 2019 appeal is not different than the 2018 appeal.² However, VOA opposes because of two reasons: (1) collateral estoppel cannot be premised on the final administrative decision in 2018-01 and (2) VOA appealed a CBJ Assessor decision to superior court, presumably the 2018-01 decision that the Assembly affirmed on January 28, 2019.³

1 *See* Alaska Rules of Appellate Procedure 505 and 605.5.

2 Joint Response to Preliminary Issues.

3 *See* R. 1147-1177.

Collateral estoppel bars the same parties from arguing about the same issues that were previously litigated on the merits. Specifically, collateral estoppel bars the relitigation of an issue when

(1) the party against whom the preclusion is employed was a party to or in privity with a party to the first action; (2) the issue precluded from relitigation is identical to the issue decided in the first action; (3) the issue was resolved by a final judgment on the merits; and (4) the determination of the issue was essential to the final judgment.⁴

Both parties also cite to *State v. Baker*, which described that collateral estoppel can apply in tax litigation.⁵ *Baker* summarized the application of the collateral estoppel doctrine by stating “[i]f the very same facts and no others are involved in the second case, a case related to a different tax year, the prior judgment will be conclusive as to the same legal issues which appear, assuming no intervening doctrinal change.”⁶

1. Whether the Assembly’s final decision on Appeal 2018-01 has preclusive effect like that of a final judgment issued by a court for the purpose of collateral estoppel.

VOA asserts that the Assembly’s final decision on Appeal 2018-01 is meaningless for collateral estoppel purposes because it was only an administrative decision and not a final judgment by a court. VOA provides no authority for its assertion.⁷ The Assessor

⁴ *Alaska Contracting & Consulting, Inc. v. Alaska Dept. of Labor*, 8 P.3d 340, 344-345 (Alaska 2000).

⁵ *State v. Baker*, 393 P.2d 893 n. 37 (Alaska 1964) (citing *Comer v. Sunnen*, 333 U.S. 591, 601 (1948)).

⁶ *Id.* at 900.

⁷ *See Danco Expl., Inc. v. State, Dep't of Nat. Res.*, 924 P.2d 432, 435 (Alaska 1996) (describing that a party waives an argument when it was only given cursory treatment and for which no authority was cited).

counters by providing authority that a final administrative decision has preclusive effect. This issue relates to the third element of collateral estoppel.

A final administrative decision has the same effect as a court judgment when considering its preclusive effect in subsequent actions.⁸ Courts in Alaska recognize that “principles of finality may be applied to the decisions of administrative agencies if, after case-specific review, a court finds that the administrative decision resulted from a procedure that seems an adequate substitute for judicial procedure and that it would be fair to accord preclusive effect to the administrative decision.”⁹ For example, if a party fails to appeal an administrative decision to the superior court, that decision can bar the parties from relitigating the underlying factual and legal issues actually litigated before the administrative body.¹⁰ Notably, if the procedures employed by the administrative body contain the essential elements of adjudication and allow for a full and fair determination of the disputed issues, a final decision on the merits of the disputed issues generally precludes the same issues and facts from being relitigated in future actions.¹¹ The CBJ Appellate Code, 01.50.160, explicitly provides that an appeal decision becomes effective 30 days after it is adopted and distributed.

⁸ *Matanuska Elec. Ass’n v. Chugach Elec. Ass’n, Inc.*, 152 P.3d 460, 466 (Alaska 2007) (citing RESTATEMENT (SECOND) OF JUDGMENTS § 83).

⁹ *Id.* at 468. See also *Johnson v. Alaska State Dept. of Fish and Game*, 836 P.2d 896, 906 (Alaska 1991) (“In Alaska, as in most jurisdictions, issue preclusion may apply to administrative adjudications”).

¹⁰ *Johnson*, 836 P.2d at 908-909.

¹¹ *Id.*

In Appeal 2018-01, the parties had a full and fair opportunity to develop their factual and legal positions regarding whether the Terraces at Lawson Creek qualified for a religious or charitable purpose exemption consistent with AS 29.45.030(a)(3). Notably, the parties had opportunities to supplement the record, fully briefed the issues, had opportunities to object to the hearing officer's proposed decision, and had an opportunity to appeal the Assembly's final decision to superior court.

Now for tax year 2019, VOA filed a notice of appeal raising the same issues. The parties are the same. The facts are the same. The law is the same. The positions and issues were fully litigated and rejected on the merits in Appeal 2018-01. Thus, the Assembly's final decision on Appeal 2018-01 has the same preclusive effect as a final judgment by a court for the purposes of collateral estoppel.

2. Whether the Assembly's final decision on Appeal 2018-01 was appealed to superior court.

VOA also appears to assert that the Assembly's final decision on Appeal 2018-01 was appealed to superior court, and thus there is no final decision for application of collateral estoppel. VOA provides no factual basis for that assertion. The Assessor counters that VOA did not appeal the Assembly's prior decision (Appeal 2018-01) to superior court and the parties' stipulation suggests that VOA did not appeal the prior decision. This issue also relates to the third element of collateral estoppel.

The Assembly is not aware of an appeal of its decision on Appeal 2018-01. VOA's notice of appeal requested this appeal be stayed pending VOA's decision to Appeal 2018-

01 to superior court¹² and the parties' stipulation suggests that VOA did not file an appeal of Appeal 2018-01.¹³ Thus, without any factual basis of an appeal of 2018-01, the Assembly's final decision has preclusive effect for the purposes of collateral estoppel.

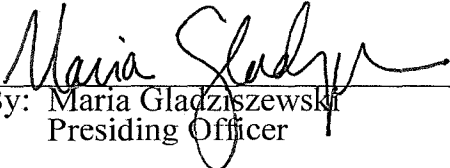
If VOA has a factual basis for filing an appeal of Appeal 2018-01, it should object pursuant to CBJC 01.50.140(b)(4).

In summary, VOA seeks to relitigate the same issues that were raised and decided in Appeal 2018-01 against VOA without any intervening doctrinal change. VOA failed to appeal Appeal 2018-01 to superior court. Collateral estoppel bars VOA. The Assessors motion to dismiss is GRANTED.

This is a final decision of the Assembly and may be appealed to superior court consistent with CBJC 01.50.190.

DATED this 1st day of August, 2019.

ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA


By: Maria Gladyszewski
Presiding Officer

12 Notice of Appeal for 2019-01 (Feb. 15, 2019) (“The Appellants respectfully requests that the Clerk place this matter on hold pending a determination of prior year appeals at the Superior Court.”).

13 Joint Response to Preliminary Issues (May 9, 2019) (“2. What is the effect of the Appellant not appealing the Assembly’s 2018 appeal decision to the Superior Court? Answer: The Appellant is barred from requesting an exemption for 2018 as the result of not appealing. Appellant is not barred from seeking property tax exemption in subsequent years.”).