FOURTH DIVISION
MCFADDEN, P. J.,
WATKINS and PADGETT, JJ.

NOTICE: Motions for reconsideration must be received no later than 4:30 pm on the 10th day after the decision was issued to be deemed timely filed.
https://www.gaappeals.gov/rules

November 2, 2026

In the Court of Appeals of Georgia

A26A1550. WESTSIDE HEIGHTS ACQUISITION, LLC v. FULTON COUNTY BOARD OF TAX ASSESSORS.

WATKINS, Judge.

After Westside Heights Acquisition, LLC, appealed a 2023 property tax assessment, a Fulton County Board of Equalization hearing officer reduced the fair market value of the property. Westside Heights appealed that determination to superior court, seeking an even lower value. There, the Fulton County Board of Tax Assessors (the "Board") filed a motion to enforce a consent order and judgment entered in Westside Heights's 2022 tax appeal, arguing that Westside Heights's 2023 tax appeal was barred by res judicata, collateral estoppel, and "public policy." The

superior court granted the County's motion, and Westside Heights appeals.[1] For the reasons set forth below, we affirm.

> We apply a de novo standard of review to a trial court's order on a motion to enforce a settlement agreement. Because the issues raised are analogous to those in a motion for summary judgment, in order to succeed on a motion to enforce a settlement agreement, a party must show the court that the documents, affidavits, depositions and other evidence in the record reveal that there is no evidence sufficient to create a jury issue on at least one essential element of the appellant's case.[2]

So viewed, the record shows that in 2022, Fulton County valued a residential apartment complex in Atlanta (the "Property") for ad valorem taxes. Westside Heights appealed the valuation (the "2022 appeal"), and, on June 8, 2023, the parties executed a settlement agreement, providing:

---

[1] Initially, the trial court only ruled that it was granting the Board's motion to enforce the consent order and did not expressly enter final judgment on that order. Westside Heights appealed, but we dismissed that appeal, concluding that the court's "final" order enforcing the parties' settlement agreement was not a final judgment within the meaning of OCGA § 5-6-34(a)(1)(B). See *Westside Heights Acquisition, LLC v. Fulton County Board of Tax Assessors*, Case No. A25A0892 (Aug. 18, 2025 judgment). Following remittitur, the superior court entered a final judgment, closing the case and terminating the litigation. Westside Heights's appeal from that judgment is now properly before us.

[2] *Imerys Clays v. Washington County Bd. of Tax Assessors*, 287 Ga. App. 674, 674–75 (652 SE2d 580) (2007) (citation and punctuation omitted).

> The Parties entered mediation with a Board of Equalization value of $90,312,600 on the subject property. The Parties hereby stipulate and agree to the value of $76,140,000 on the subject property for tax year 2022, the value of $77,550,000 on the subject property for tax year 2023, and the value of $81,780,000 on the subject property for tax year 2024.

The same day, the superior court entered a "Consent Final Order and Judgment" (hereinafter, the "Consent Order"), recognizing that the parties had entered into a settlement and compromise of their disputes. The Consent Order, which approved and adopted the parties' agreement, provides that the fair market value of the Property for ad valorem tax purposes was $76,140,000 as of January 1, 2022, was $77,500,000 as of January 1, 2023, and would be $81,780,000 as of January 1, 2024. The court directed the Board to enter the agreed-upon values in all appropriate tax records and to notify the relevant tax collecting authorities of such values "[a]s soon as possible" after entry of the order.

On June 9, 2023, however, the day after the Consent Order was entered, the Board issued the annual notice of assessment for tax year 2023,[3] valuing the Property at $90,312,600 based on "No Change In Fair Market Value." According to the

[3] See OCGA § 48-5-306.

County, the Notice of Assessment had been prepared and sent to an outside vendor for printing and mailing two to three weeks earlier. The notice included the deadline to file an appeal of the assessment.[4]

Westside Heights appealed the 2023 assessment, asserting that the Property was worth $61,700,000. The case proceeded to a hearing before a Board of Equalization ("BOE") hearing officer in December 2023. The hearing officer summarily determined the value to be $72 million, "based on information presented by both parties and "[u]niformity."

Although the hearing officer had significantly reduced the 2023 valuation compared to the County's 2023 notice of assessment, Westside Heights appealed the decision of the BOE's hearing officer to the superior court, requesting a fair market value of $60,147,500.[5] In response, the Board filed a motion to enforce the Consent Order and to dismiss the 2023 tax appeal, arguing that the appeal was barred by the doctrines of collateral estoppel and res judicata. The Board also contended that the Consent Order should be enforced as a matter of public policy.

---

[4] See OCGA § 48-5-311(e)(1)(A)(iii), (e.1)(1)(A).

[5] See OCGA § 48-5-311(g)(1), (g)(3).

After hearing oral argument, the trial court announced its ruling from the bench, stating:

> There are reasons for the county to assess its own steps here. There are reasons to kind of scratch your head and ask [your]self what one frequently asks with regard to government: does the left hand know what the right hand's doing? There are many reasons to be very enthralled by Justice Gorsuch saying that we all have the constitutional right to jump up and complain about our taxes and that taxpayers are entitled to rely on technicalities.[6] No, I don't think the burden was on [Westside Heights] to call the tax office, which in and of itself is — takes some doing, and say, "hey, I think — I think you messed up; we owe more money." With all of that in mind, a deal is a deal. The court hereby ... grants the motion to enforce the settlement agreement[.]

The court subsequently entered a final judgment and order granting the Board's motion to enforce the Consent Order. The court found that "[t]he parties previously resolved issues concerning the Tax Year 2023 valuation" for the Property in the

---

[6] In addressing the County's public policy argument earlier in the hearing, counsel for Westside Heights referenced the First Amendment right to petition the government for redress, quoting a 2007 opinion by then-Judge Gorsuch: "[T]he right ... to petition the government for the redress of tax grievances — has been with us and clearly established since the Sons of Liberty visited Griffin's Wharf in Boston." Thus, based on the context, the court appears to have been referencing *Van Deelen v. Johnson*, 497 F3d 1151, 1158(III) (10th Cir. 2007).

Consent Order entered in the 2022 tax appeal. The court formally adopted and entered the Consent Order as the court's judgment in the 2023 appeal. This appeal followed.

1. Westside Heights argues that the trial court, in reaching its decision, incorrectly applied the doctrine of collateral estoppel. Specifically, Westside Heights contends that collateral estoppel is inapplicable because the facts and law were so "vitally altered" between the entry of the Consent Order and the trial court's ruling enforcing it. We disagree.

> Collateral estoppel precludes the re-adjudication of an issue that has previously been litigated and adjudicated on the merits in another action between the same parties or their privies. Like res judicata, collateral estoppel requires the identity of the parties or their privies in both actions. However, unlike res judicata, collateral estoppel does not require identity of the claim— so long as the issue was determined in the previous action and there is identity of the parties, that issue may not be re-litigated, even as part of a different claim. Furthermore, collateral estoppel only precludes those issues that actually were litigated and decided in the previous action, or that necessarily had to be decided in order for the previous judgment to have been rendered.[7]

---

[7] *Fulton County Tax Comm'r v. GMC*, 234 Ga. App. 459, 465 (507 SE2d 772) (1998) (citation and punctuation omitted).

And, "[a]lthough a consent judgment is brought about by agreement of the parties, it is accorded the weight and finality of a judgment. Thus, a consent decree is an enforceable judgment and can be accorded preclusive effect."[8]

Westside Heights argues that collateral estoppel does not apply in this case because the Consent Order has been rendered obsolete. It is true that our appellate courts have noted the restriction on collateral estoppel recognized in the U.S. Supreme Court's 1948 decision in *Commissioner of Internal Revenue v. Sunnen*[9]: A prior determination is not conclusive "[w]hen the significant facts have been 'vitally altered' since the previous determination, or a change or development occurs in the law that renders the past determination erroneous for future purposes[.]"[10] However, Westside Heights has pointed to no authority, and we have found none, suggesting that a change in uniformity of assessment or value can be such "a subsequent modification" of the "significant" facts as to render a determination in a consent

---

[8] *Brown & Williamson Tobacco Corp. v. Gault*, 280 Ga. 420, 424 (627 SE2d 549) (2006).

[9] 333 US 591, 599–600 (1948).

[10] *Thomas County Bd. of Tax Assessors v. Thomasville Garden Ctr.*, 277 Ga. App. 591, 593–94(2) (627 SE2d 192) (2006) (citation and punctuation omitted).

order — determining value for the specific tax year at issue — "obsolete or erroneous" for "future purposes."

Instead, Westside Heights cites to two Georgia appellate decisions that merely recognized the limitations articulated in *Sunnen* before concluding that collateral estoppel still applied.[11] For example, in *Morgan County Board of Tax Assessors v. Vantage Products Corp.*,[12] the county and a seller of burial grave liners had entered into a 2001 consent order that the burial grave liners that the seller stored until customers redeemed them were not taxable for ad valorem purposes.[13] The county again attempted to collect ad valorem taxes in 2010, arguing that there could have been

---

[11] See *Gwinnett County Bd. of Tax Assessors v. GE Cap. Computer Servs.*, 273 Ga. 175, 178–79(1) (538 SE2d 746) (2000) (discussing *Sunnen* — which "contemplated a situation that is 'vitally altered' between the times of the first and second judgment" — before concluding that such considerations were not present); *Morgan County Board of Tax Assessors v. Vantage Products Corp.*, 323 Ga. App. 823, 827 (748 SE2d 468) (2013) ("We recognize that a past determination may become "obsolete or erroneous, at least for future purposes" due to facts which are "vitally altered" between the first and second judgment, but we do not find that to be the case here."). See also *Thomas County*, 277 Ga. App. at 594(2) (rejecting the county's argument that intervening case law had changed or clarified the criteria for a purely public charity to be entitled to tax-exempt status).

[12] 323 Ga. App. 823 (748 SE2d 468) (2013).

[13] Id. at 824.

substantial fact changes since the 2001 consent order, such as the seller's accounting methodology to track the stored vaults and the ownership of the vaults themselves.[14] Even accepting that hypothesis as true, this Court held that the situation had not been "vitally altered" and that the county was collaterally estopped from relitigating the taxation issue.[15]

Here, the Consent Order specifically addressed the 2023 value of the Property, and the record does not show that the facts were "vitally altered" such that the Consent Order became obsolete.[16] The parties agreed upon a value, and that issue may not be relitigated.

Despite its attempt to frame its argument within the *Sunnen* framework, the crux of Westside Heights's position is that the County waived its right to enforce the Consent Order by issuing the 2023 tax assessment the day after the Consent Order was executed, by failing to notify the relevant tax collecting authorities of the agreed-upon values "as soon as possible," and by participating in the appeal before the BOE

---

[14] Id. at 826–27.

[15] Id. at 827.

[16] See *Morgan County*, 323 Ga. App. at 827.

hearing officer. But Westside Heights has provided no authority to support a determination of waiver.

Although we do not condone the County's failure to point out the Consent Order in the proceeding before the hearing officer, Westside Heights has not shown that the County waived the defense of collateral estoppel. We therefore hold that the superior court did not err in concluding that Westside Heights is barred from relitigating the 2023 value of the Property.

2. Westside Heights also contends that the trial court erred in relying on the doctrine of res judicata and incorrectly accepted that public policy barred the appeal. In light of our conclusion in Division 1 that collateral estoppel bars the 2023 tax appeal, we need not reach these claims of error.

Judgment affirmed. McFadden, P. J., and Padgett, J., concur.