11-2-2015

Lancaster City Schools, et al. v. Fairfield County Board of Revision

Ohio Board of Tax Appeals

OHIO BOARD OF TAX APPEALS

LANCASTER CITY SCHOOLS, (et. al.), Appellant(s), vs. FAIRFIELD COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2014-3462 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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Entered Monday, November 2, 2015

Mr. Williamson, Ms. Clements, and Mr. Harbarger concur.

Appellant appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel number 053-50095-00, for tax year 2013. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717, the record developed at this board's hearing, and any written argument submitted by the parties.

The subject property was initially assessed a true value of $156,240. The affected board of education ("BOE") filed a complaint, which requested that the subject property's value be increased to $400,000 purportedly to reflect the price at which it transferred in October 2012. The property owner, Zane Properties Corporation ("Zane"), did not file a counter-complaint. At the BOR hearing, the BOE and

Zane submitted evidence and argument in support of their respective positions. The BOE submitted a conveyance fee statement and warranty deed, which demonstrated that Zane purchased the subject property from Ruff Rentals, LLC ("Ruff") for $400,000 in October 2012. Zane submitted the testimony of Sky Gettys, an officer of Zane, who testified that the subject property was located in close proximity to an affiliated entity, Fairfield Medical Center ("FMC"), and that Zane purchased the subject property in order to facilitate an expansion at FMC. The BOR subsequently issued a decision, which retained the initially assessed value, and this appeal ensued.

After a brief hearing before this board, the parties submitted written argument to more fully explain their respective positions. By way of its merit brief, the BOE argued that Zane failed to rebut the presumptions accorded to the transfer in October 2012 and, as such, requests that this board increase the subject property's value consistent with the sale. By way of its merit brief, Zane argued that it was under economic duress to purchase the subject property in order to complete the planned expansion at FMC and, as a result, the transfer was not an arm's-length transaction. It is important to note that Zane attached documents to its initial merit brief. To the extent that those documents were not submitted at the BOR hearing or this board's hearing, we cannot consider such evidence. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13, 15 ("Because these documents were not part of the original record from the BOR and were submitted after the BTA hearing, they must be disregarded by the BTA.").

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129. Then, typically, "the only rebuttal lies in challenging whether the elements of recency and arm's-length character between a willing seller and a willing buyer are genuinely present for that particular sale." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13. The existence of a facially qualifying sale may be confirmed through a variety of means, e.g., purchase agreement, deed, conveyance fee statement, property record card. See, e.g., *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 124 Ohio St. 3d 27, 2009-Ohio-5932; *Mason City School Dist. Bd. of Edn. v. Warren Cty. Bd. of Revision*, 138 Ohio St.3d 153, 2014-Ohio-104. The Supreme Court has made it clear that no "bright line" test exists when establishing recency and that the mere passage of time does not, per se, render a sale unreliable. See, e.g., *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006-Ohio-1059. Compare *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St. 3d 92, 2014-Ohio-1588.

In this matter, neither party disputes the minimal details of the transfer. As noted above, Zane argued that the price that it paid overstated the subject property's value because Zane was compelled to purchase the subject property for FMC's expansion. The Supreme Court has discussed the concepts of economic duress and compulsion in the context of determining the utility of a sale in establishing value. In *Lakeside Avenue Ltd. Partnership v. Cuyahoga Cty. Bd. of Revision* (1996), 75 Ohio St.3d 540, 1996 Ohio 175, the Supreme Court held that "compelling business circumstances of the type at issue in this case are clearly sufficient to establish a recent sale of property was neither arm's-length in nature nor representative of true value," characterizing the uniquely "compelling business circumstances" as one in which "Lakeside never had any real choice but to purchase the property in question. The choice between Triton's survival on the one hand and swift and sure corporate death (bankruptcy) on the other hand presented Lakeside with no true alternative but to pay the price demanded by the seller." Id. at 548-549. The limited nature of this holding must be recognized, since every sale of property necessarily involves a motivated seller and buyer. It is only when it is proven that one party is vested with such disparate bargaining power as to essentially hold the other party "hostage" to a particular price that a

sale may be deemed to fall within the circumstances contemplated by the court in *Lakeside Avenue*. This view is borne out by the court's decision in *Cleveland Mun. School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 107 Ohio St. 3d 250, 2005-Ohio-6434, distinguishing in *Lakeside Avenue*: "Here, it was evident that the owners, Servetas and Stavridis, had invested time, effort, and money in this location, and there would be a loss incurred for the fixtures that would be left behind if they were forced to move. However, there was nothing in the record to indicate that the owners had made any efforts to determine whether the business could have been relocated and the costs of such relocation. The testimony in *Lakeside* was that failure to purchase the property would have resulted in Triton's bankruptcy. While the owners of the Greek Isles Restaurant would have lost much of their investment in the fixtures if they had had to move, there was no evidence that the restaurant could not be relocated or that losing this location would cause the owners to file bankruptcy." Id. at ¶19. See, also, *Cobblestone Square Co., Ltd. v. Lorain Cty. Bd. of Revision*, 106 Ohio St. 3d 305, 2005-Ohio-5128.

Here, the record is void of competent and probative evidence that failure to purchase the subject property would have resulted in Zane's or FMC's "swift and sure corporate death." We conclude, therefore, that *Lakeside*, supra, has no application to this matter.

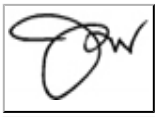
Furthermore, we have previously considered and rejected Zane's principal argument and held that "the mere allegation of a purchaser's desire to accumulate property in a particular area, however, is not itself tantamount to economic duress." *Ronald McDonald House Charities of Central Ohio v. Franklin Cty. Bd. of Revision* (Oct. 9, 2014), BTA No. 2014-116, unreported. See, e.g., *Bd. of Edn. of the Northwest Local Schools v. Hamilton Cty. Bd. of Revivion* (Apr. 4, 2014), BTA Nos. 2010-3462, et al., unreported; *Bd. of Edn. for Washington Local Schools v. Lucas Cty. Bd. of Revision* (Feb. 2, 2010), BTA No. 2007-K-1482, unreported; *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Feb. 25, 2005), BTA No. 2003-G-663, unreported; *27981 Euclid Co., LLC v. Cuyahoga Cty. Bd. of Revision* (June 4, 2004), BTA No. 2002-R-1688, unreported.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn.*, supra, at 15 (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In so doing, we find that Zane failed to rebut the presumptions accorded to the sale in October 2012. Absent an affirmative demonstration that such sale was not a qualifying sale for tax valuation purposes, we find that it was a recent, arm's-length sale upon which we rely to determine the subject property's value.

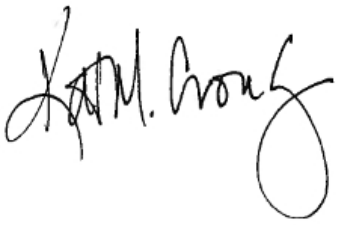
It is therefore the order of this board that the subject property's true and taxable values, as of January 1, 2013, were as follows:

TRUE VALUE
$400,000
TAXABLE VALUE
$140,000

It is the order of the Board of Tax Appeals that the subject property be assessed in conformity with this decision and order.

BOARD OF TAX APPEALS		
RESULT OF VOTE	YES	NO
Mr. Williamson		
Ms. Clements		
Mr. Harbarger		

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.



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Kathleen M. Crowley, Board Secretary