

Publications

Ohio Supreme Court and Legislative Update

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The Court upheld the BTA's reliance on a short-sale for determining value. The Court expressly rejected the Board of Education's argument that the fact that the sale price was less than what was owned on the mortgage should raise a presumption that the sales does not reflect market value. The Court found that, while a short sale raises the question of distress and duress, the decision of whether such a sale is voluntary is a question of fact. In this case, the BTA had before it sufficient evidence to establish that the sale was voluntary, that the buyer and seller were typically motivated, and that the lender sought to get the best price possible for the property.

Board of Education (BOE) argued that a valuation complaint was jurisdictionally defective because the valuation complaint had been filed by the property owner's spouse. The BOE argued that, although R. C. 5715.19(A)(1) authorizes spouses to file a complaint, case law has demonstrated that the filing of such a complaint does not invoke the Board of Revision's jurisdiction. See *Sharon Village Ltd. v. Licking Cty. Bd. of Revision*, 78 Ohio St.3d 479 (1997). The Court disagreed. The Court found that the statute permits the filing of a complaint by a spouse, that the filing of a complaint does not call for specific legal expertise, that a complaint can be amended, and that "many mistakes can be avoided or corrected by hiring an attorney to prosecute the complaint after it has been filed." *Columbus*, at ¶125. In addition, the Court concluded that it "is sensible as a practical matter to allow a spouse to file on behalf of the other spouse." *Id.* at ¶125.

The Court's decision is significant in that the Court expressly moves away from its holding in *Dayton Supply & Tool*, 111 Ohio St.3d 367, 2006-Ohio-5852. In *Dayton Supply*, the Court found that a corporate officer who prepares and files a complaint on behalf of the cooperation engages in the unauthorized practice of law. The *Dayton Supply Court*,

however, permitted the officer to file the complaint by employing a “multifactor test,” under which the Court determined that the officer could file if the officer a fiduciary duty to the corporation to do so. In Columbus, the Court appears to have abandoned its “multifactor test,” stating that it will not determine who can file on a case-by-case basis. The Court noted that complainants should be able to rely on the statute so long as its provisions do not substantially interfere with the regulation of the practice of law.

Columbus City School Dist. Bd. of Edn. v. Franklin Bd. of Revision, Slip Op. 2012-Ohio-5680.

The Ohio Supreme Court reversed the decision of the 8th District Court of Appeals and found that the failure of the Cuyahoga County Board of Revision to notify the property owner of an increase complaint within 30 days pursuant to 5715.19(B) could be cured by later notice.

The Board of Education filed a complaint for tax year 2006 seeking an increase in value based upon a sale of the property. The owner did not receive notification from the Board of Revision (BOR) of the complaint within the time frame established by 5715.19(B). However, the owner then received notice of hearing, at which time the owner filed a motion to dismiss because of the failure to receive the original notice. The BOR overruled the property owner’s motion and increased the value of the property. The property owner then appealed to the common pleas court wherein the common pleas court remanded the case to the BOR with instructions to provide notice under 5715.19(B). On remand, notice was provided and another hearing was held and the BOR issued a decision increasing the value of the property to the sale price. This decision was appealed to the common pleas court again and the common pleas court affirmed the BOR’s decision to increase the value of the subject property. The property owner then appealed to the Eighth District Court of Appeals.

The Court of Appeals reversed the Board of Revision and found that the lack of proper notice barred hearing the complaint because the defect was jurisdictional. The case was then appealed to the Supreme Court and the Court accepted the appeal. In its decision, the Court found that the 30-day requirement in 5715.19(B) was nonjurisdictional. Additionally, the Court stated that if the 30-day requirement was jurisdictional it would violate basic fairness because an administrative official is the person required to act and whether the administrative official acts is not within the control of the complainant. Therefore, the Court reversed the finding of the court of appeals and remanded to the case to the common pleas court to reinstate its decision increasing the value of the property to the recent sale price.

2200 Carnegie LLC v. Cuyahoga Cty. Bd. of Revision, Slip Op. 2012-Ohio-5691.

School board failed to establish that it has won “race to the courthouse.” It should have introduced “sender’s receipt” with time noted by postal service. Even though all appeals were dismissed, the school board failed to establish that it could not protect its interests.

On October 10, 2011, the BOR issued a decision that ordered reductions in the valuation of property owned by Western Hills County Club (Western Hills). The school board attempted to appeal that decision to the BTA by sending the appropriate notices by certified mail on October 14. On that same date, Western Hills physically presented its notices of appeal to the common pleas court and the BOR.

The school board filed a motion to dismiss Western Hills' appeal in the common pleas court, and Western Hills filed a motion to dismiss the school board's appeal at the BTA. The school board argued — successfully to the common pleas court, apparently, but unsuccessfully to the BTA — that it had filed its appeal first because it had placed its notices in the mail earlier on October 14 than Western Hills had filed its appeals at the courthouse and the BOR. The BTA determined that the time of mailing was immaterial and also called into question the probative force of the school board's evidence of the time of mailing — an affidavit by the paralegal who mailed the appeal and an ATM receipt for cash obtained shortly before mailing. Because in the BTA's view Western Hills had filed its appeal first, the BTA dismissed the school board's appeal.

R.C. 5717.05 provide that:

When the appeal has been perfected by the filing of notice of appeal as required by this section, and an appeal from the same decision of the county board of revision had been filed under section 5717.01 of the Revised Code with the board of tax appeals, the forum in which the first notice of appeal is filed shall have exclusive jurisdiction over the appeal.

The Court noted that while this case might present the question of whether the time of mailing controls which forum has jurisdiction, the BTA found that the school board had failed to provide creditable evidence to support the time of mailing since it failed to provide the "sender's receipt" from the postal service. The Court affirmed the BTA's decision to provide no weight to the paralegal's affidavit and affirmed the BTA's dismissal.

The Court addressed the fact that the "sender's receipt" would not usually show the time of mailing, but indicated that it "might" document the time or include a hand-written notation of a postal employee as to the time of filing. For purposes of documenting the time at which a notice of appeal is filed by certified mail, the sender's receipt should be introduced with the time documented.

The Court also addressed the school board's argument that as a result of two dismissals that it has lost a forum in which to litigate its appeal. The school board had sought dismissal in common pleas court and the property owner had opposed it. The BTA issued its decision after the common pleas court magistrate had issued a decision, but before final judgment by the court. The school board failed to seek relief from the common pleas court. The Court was not persuaded that the school board could not protect its interests.

Oak Hills Local School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision, Slip Opinion No. 2012-Ohio-5750.

Legislative Update

House Bill (HB) 510 addresses timing issues for implementation of valuation statute modified by HB 487. Legislation also clarifies application of revised statute to Low Income Housing Tax Credit (LIHTC) property by legislatively adopting reasoning of Court in *Woda Ivy Glen* decision.

On December 20, 2012, (effective March 27, 2013), Governor Kasich signed legislation that amended R.C. 5713.03 to address the uniformity concerns as to when the changes in HB 487 would be effective. (See prior decision of *The Evaluator*.) In HB 487, the uncodified language in section 757.51 stated that “[t]he amendment by this act of section 5713.03 of the Revised Code applies to the first tax year, after tax year 2012, to which division (A) or (B) of section 5715.24 of the Revised Code applies in the county.” The effect would have been that the changes applied on a county-by-county basis tied to the next reappraisal or update raising concerns about uniform valuation of property.

HB 510 removed the references to the R.C. 5715.24 and indicates that the changes are effective to 2013 in all counties across the state regardless of each county’s next reappraisal or update. It is assumed that the intention of this change is for the 2013 tax lien date, but it may be argued that it is effective for the 2013 filings made for the 2012 tax lien date. This is an issue that is likely to be litigated.

Additional changes to 5713.03 were also made include adding additional language to insure that Low Income Housing Tax Credit (LIHTC) properties still must be valued according to the Supreme Court’s decision in *Woda Ivy Glen Ltd. Partnership v. Fayette Cty. Bd. of Revision*, 121 Ohio St.3d 175, 2009-Ohio-762. Specifically, the additional language follows the previous clarification requiring that an auditor is to value the true value of the fee simple estate, as if unencumbered and states “but subject to any effects from the exercise of police powers or from other governmental actions.”