OHIO BOARD OF TAX APPEALS

Larry Ross Snodgrass,	)	
	)	
Appellant,	)	
	)	CASE NO. 2003-P-812
vs.	)	
	)	(REAL PROPERTY TAX)
Franklin County Board of Revision,	)	
Franklin County Auditor and the	)	DECISION AND ORDER
Hilliard City School District Board	)	
of Education,	)	
	)	
Appellees.	)	

APPEARANCES:

For the Appellant Property Owner	- Larry R. Snodgrass, pro se 6992 Linbrook Boulevard Columbus, Ohio 43235
For the County Appellees	- Ronald J. O'Brien Franklin County Prosecuting Attorney Paul M. Stickel Assistant Prosecuting Attorney 373 South High Street, 20th Floor Columbus, Ohio 43215
For the Board of Education	- Rich, Crites and Dittmer, LLC Jeffrey A. Rich James R. Gorry 300 East Broad Street, Suite 300 Columbus, Ohio 43215-3704

Entered June 10, 2005

Ms. Margulies, Mr. Eberhart, and Mr. Dunlap concur.

In this matter Mr. Snodgrass appeals a value determination rendered by the Franklin County Board of Revision for sixteen condominiums and four garages for tax year 2002. Mr. Snodgrass asserts that his purchase price is not the best evidence of value because of economic duress. He further claims discriminatory valuation and misconduct in the proceedings below. Upon careful review of the record before us, we find that Mr. Snodgrass has failed to satisfy his assigned evidentiary burden.

Mr. Snodgrass acquired the subject properties on November 12, 2002 - - - only eleven months after the tax lien date of January 1, 2002. He purchased from two separate parties, paying $385,000 in one transaction and $401,000 in the other. Mr. Snodgrass acquired these properties for investment purposes, but also desired to obtain the non-recognition of income benefits provided by Section 1031 of the Internal Revenue Code.[1] The board of education filed an original complaint with the Franklin County Auditor seeking to increase the respective property valuations to reflect the sale prices. Mr. Snodgrass responded with a counter-complaint claiming that he paid too much for the properties. Upon hearing the matter, the Franklin County Board of Revision increased each respective tax valuation by allocating the two purchase prices among each individual tax parcel. Mr. Snodgrass now appeals that determination. The record before us consists of the notice of appeal, the statutory transcript filed by the Franklin County Auditor in accordance with the provisions of R.C. 5717.01, the sworn testimony and other evidence submitted at our merit hearing, and the memoranda filed on behalf of the respective parties.

Before we address the merits of this appeal, however, a preliminary matter requires resolution. The board of education and the county appellees have objected to the inclusion in Mr. Snodgrass' reply brief of additional factual assertions concerning alleged misconduct before the board of revision. In their "Motion To Strike Facts Not In Evidence," they request: "To the extent these facts were not testified to during the BTA hearing they should be stricken from the record in this

[1] Section 1031, Title 26, U.S. Code.

case." In determining this question we take heed of the Supreme Court's decision in *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13, where the court considered documents submitted after the hearing record had been closed, noting:

> "After the BTA hearing, Nestle submitted a copy of a resolution and quitclaim deed by the Franklin County Commissioners. *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*." Id. at 16 - 17. (Emphasis added.)

Moreover, in *Felton v. Felton* (1997), 79 Ohio St.3d 34, the Supreme Court held at paragraph three of the syllabus:

> " A pleading is not admissible into evidence at a hearing to prove a party's allegations and must not be considered as evidence by the court."[2]

And in *The Mennel Milling Company v. Tracy* (June 17, 1997), Hancock App. No. 5-96-26, unreported, discretionary appeal disallowed, 80 Ohio St.3d 1432, the Third District Court of Appeals held:

> "The only information before this court leading to that conclusion [that disputed items were part of a certain system] is set forth in the argument of counsel made in Mennel's brief on appeal. *The statements of counsel made in such briefs are not evidence*." Id. at 7. (Emphasis added.)

[2] We would observe that Black's Law Dictionary, (7th Ed. 1999) defines a pleading as: "A formal document in which a party to a legal proceeding (esp. a civil lawsuit) sets forth or responds to allegations, claims, denials, or defenses." It would thus appear that this definition is broad enough to encompass Mr. Snodgrass' reply brief.

Factual assertions rendered outside the circumscribed rules of evidence are excluded based upon a time-tested practice designed to insure truth in the fact-finding process. In the matter sub judice we offered a merit hearing for the purpose of providing the parties an opportunity to present testimony and other evidence in support of their respective positions. At our merit hearings witnesses are placed under oath and subjected to the rigors of cross-examination. Only then is testimonial evidence deemed admissible. If tribunals were to rely upon factual assertions rendered outside this tried-and-true process, our truth-seeking function could be subverted. Accordingly, we find the "Motion to Strike Facts Not In Evidence" is well taken, and the motion is sustained.

We turn now to the merits of this appeal. We begin by observing that a party who asserts a right to an increase or a decrease in the value of real property has the burden to prove the value it asserts. *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336, *Crow v. Cuyahoga Cty. Bd. of Revision* (1990), 50 Ohio St.3d 55, *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318. Once competent and probative evidence of value is presented, other parties asserting a different value then have a corresponding burden to rebut that evidence. *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, *Mentor Exempted Village Bd. of Edn.,* supra.

Section 2, Article XII, of the Ohio Constitution provides: "Land and improvements thereon shall be taxed by uniform rule according to value ***."

Moreover, R.C. 5713.03 provides:

> "In determining the true value of any tract, lot or parcel of real estate under this section, if such tract, lot or parcel has been the subject of an arm's length sale between a willing seller and a willing buyer within a reasonable length of time, either before or after the tax lien date, the auditor *shall* consider the sale price of such tract, lot or parcel to be the true value for taxation purposes." (Emphasis added.)

The Supreme Court examined the elements that make up an arm's-length transaction in *Walters v. Knox Cty. Bd. of Revision* (1989), 47 Ohio St.3d 23, noting:

> "We have never defined 'arms-length sale.' In its opinion below, the BTA defined it as '*** one which encompasses bidding and negotiation on the open market between a ready, willing and able buyer, and a ready, willing and able seller, both being mentally competent, and *neither acting under duress or coercion.*' According to Black's Law Dictionary (5 Ed. 1979) 100, in an arm's-length transaction '*** each [party] act[s] in his or her own self interest ***.' In sum, an arm's length sale is characterized by these elements: *it is voluntary, i.e., without compulsion or duress*; it generally takes place in an open market; and the parties act in their own self interest." Id. at 25. (Emphasis added.)

In this matter the county appellees have offered two warranty deeds establishing that the properties in question sold on November 12, 2002 for $385,000 and $401,000. Upon introduction of this evidence a rebuttable presumption arises that this transaction meets all the requirements that characterize true value and that the sale price reflects the true value of this property. As the Supreme Court observed in *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325:

> "In prior decisions we have recognized a rebuttable presumption that the sale price reflects the true value of property. The first mention of this presumption was made by Justice Wright, writing for the majority in *Ratner v. Stark Cty. Bd. of Revision* (1986), 23 Ohio St.3d 59, 61, 23 OBR 192, 193, 491 N.E.2d 680, 682. In *Walters v. Knox Cty. Bd. of Revision* (1989), 47 Ohio St.3d 23, 24, 546 N.E.2d 932, 932, Justice Wright, again writing for the majority, quoting *Ratner*, stated: '[W]e do accept the "*** *presumption* that the sale price reflect[s] true value."' (Emphasis *sic*.) Recently, in *Lakeside Ave. L.P. v. Cuyahoga Cty. Bd. of Revision* (1996), 75 Ohio St.3d 540, 544, 664 N.E.2d 913, 916, which was decided after the BTA issued its decision in this matter, Justice Douglas, in the majority opinion, acknowledged that 'the *Ratner* majority recognized that there exists a rebuttable presumption that the sale price reflects true value.' (Emphasis *sic*.) ***
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> "By recognizing the rebuttable presumption that the sale price reflects true value, we, consequently, have recognized that a rebuttable presumption exists that the sale has met all the requirements that characterize true value. ***
>
> "If evidence had been introduced *** which had shown that the sale was not an arm's-length transaction, the rebuttable presumption that sale price reflects true value either would never have arisen or it would have disappeared." Id. at 327-328.

In response to the county appellees' evidence, Mr. Snodgrass offers testimonial and documentary evidence in support of his contention that he was subject to "economic duress" or "compelling business circumstances" when he negotiated the purchase of the subject properties. And, indeed, the Supreme Court has recognized that certain compelling business circumstances are sufficient to establish that a sales transaction was neither arm's length in nature or representative of true value. In

Lakeside Avenue Limited Partnership v. Cuyahoga Cty. Bd. of Revision (1996), 75 Ohio St.3d 540, the Supreme Court stated:

> "Today, we resolve this ongoing conflict between the BTA and the Court of Appeals for Franklin County by specifically recognizing that compelling business circumstances ***of the type at issue in this case*** are clearly sufficient to establish that a recent sale of property was neither arm's-length in nature nor representative of true value. ***
>
> "Here, Prime Properties offered to sell the subject property to Triton for a stated price. The price was non-negotiable. The property was not offered for sale on the open market. The record is clear that Triton felt compelled to purchase the property for the stated price. Failure to purchase the property would have resulted in the loss of a significant portion of Triton's business, which, in turn, would have resulted in Triton's bankruptcy. Triton attempted to secure financing for the transaction, but even Triton's primary asset-based lender would not finance the acquisition of the property, apparently due to the excessive asking price. Indeed, Triton's primary asset-based lender prohibited Triton from applying any cash or working capital toward the purchase of the property. Lakeside was formed by the principals of Triton to purchase the property for the price that had been demanded by the seller. Lakeside, Triton and others undertook some extraordinary, if not desperate, efforts to obtain sufficient financing for the transaction. ***Under these circumstances***, we reject the BTA's conclusions that Lakeside's acquisition of the property was an arm's-length transaction and that the $1.2 million purchase price was representative of true value. Rather, in light of the undisputed evidence ***in this case***, we find that Lakeside's purchase of the property was not 'voluntary, *i.e.*, without compulsion or duress,' within the meaning of *Walters*, supra, 47 Ohio St.3d 23, 546 N.E.2d 932, syllabus, due to economic pressures that came to bear on Lakeside's decision to acquire the property."
> Id. at 548-549. (Emphasis added.)

Our task, then, is to determine whether the circumstances in this appeal rise to the level of compulsion contemplated in *Lakeside*. Mr. Snodgrass and his real estate representative testified both before the board of revision and at our merit hearing that Mr. Snodgrass was at risk of incurring a substantial income tax liability upon the sale of another parcel of real property. However, that tax liability could be deferred if Mr. Snodgrass could orchestrate a like-kind exchange in accordance with the provisions of Section 1031 of the Internal Revenue Code. The so-called "*Starker*-exchange"[3] permits a taxpayer to defer recognition of the gain from a sale of certain property through adjustments to the taxpayer's basis in newly acquired like-kind exchange property. Prior to 1979 it was generally believed that a simultaneous exchange was required. But *Starker* held to the contrary. Indeed, *Starker* left the time frame within which to acquire other like-kind property open ended:

> "We realize that this decision leaves the treatment of an alleged exchange open until the eventual receipt of consideration by the taxpayer. Some administrative difficulties may surface as a result. Our role, however, is not necessarily to facilitate administration. It is to divine the meaning of the statute in a manner as consistent as possible with the intent of Congress and the prior holdings of the courts. If our holding today adds a degree of uncertainty to this area, Congress can clarify its meaning." Id. at 46.

Congress did subsequently clarify its meaning through enactment of the Tax Reform Act of 1984. It provides that in order to qualify for non-recognition under Section 1031 of the Internal Revenue Code, like-kind exchange property must be

[3] A reference to *Starker v. United States* (C.A.9, 1979), 602 F.2d 1341.

identified within 45 days and the transaction consummated within 180 days from the date of transfer of the original property. Mr. Snodgrass testified that he felt compelled to consummate the transactions in question quickly because the time in which to select like-kind exchange properties was limited. He indicates he was faced with the decision to either acquire the properties at prices he believed were excessive, or pay thousands of dollars in income tax. These circumstances, Mr. Snodgrass argues, constitute compelling business circumstances within the contemplation of *Lakeside*.

But in *Lakeside* the property in question was not offered for sale in the open market, as were the properties in this matter. Nor was the purchase price subject to negotiation in *Lakeside*. In this matter Mr. Snodgrass' real estate representative testified: "There were approximately one to two counters per closing."[4] What is more, in *Lakeside* evidence was adduced to establish that the purchaser faced bankruptcy and "swift and sure corporate death" if it failed to acquire the property in question.[5] Here there is no evidence that Mr. Snodgrass' very existence was threatened. As we stated in considering a similar argument in *Rader v. Franklin Cty. Bd. of Revision* (May 7, 1999), BTA No. 1998-P-652, unreported:

> "No such exigency appears here. Mr. Rader was free to choose from among all properties within his price range offered for sale in the marketplace. And, Mr. Rader's motivation was merely to pay less tax. Lakeside faced extinction. The *Lakeside* case implicitly recognizes that all claims are not sufficient to abrogate the arm's-length nature of a sale. The Supreme Court chose the phrase: 'circumstances of the type at issue in this case.' Opinion,

[4] H.R. - 78.
[5] *Lakeside*, supra, 549.

> 548. This serves to distinguish the compelling circumstance before it from a wide array of lesser circumstances. It suggests lesser circumstances may not be sufficient to destroy the arm's-length nature of a transaction. Mr. Rader's desire to meet his tax savings goal does not, in our view, rise to the level of 'compelling circumstance' described in *Lakeside*." Id. at 6.

Moreover, the *Lakeside* court had before it corroborating evidence to support the assertion that the purchase price was excessive. The *Lakeside* court noted that Triton's primary asset-based lender prohibited Triton from applying any cash or working capital toward the purchase of the property. We find insufficient evidence in the record before us to establish that the prices paid for the properties now in question were clearly excessive. We conclude, as we did in *Rader*, that the level of compulsion in this matter simply falls short of the level of compulsion in *Lakeside*. Absent guidance from the General Assembly or Supreme Court providing insight into the question of which lesser circumstances will serve to obviate the arm's-length nature of a transaction, we are unwilling to extend *Lakeside* to circumstances such as we have before us in this appeal.

We next consider the question of whether these transactions were recent. Mr. Snodgrass acquired the subject properties on November 12, 2002 - - - only eleven months after the tax lien date of January 1, 2002. We observed in *Westlake City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Oct. 6, 1995), BTA No. 1994-A-309, unreported:

> "*** [T]here exists no bright-line test for determining whether a sale is recent, as contemplated in R.C. 5713.03. However, we do receive some guidance from the Supreme Court, which has recognized that a sale may be considered recent for purposes of R.C. 5713.03, even though the sale occurs some significant period of time before or after the tax lien date. Specifically, in *R.R.Z. Associates v. Cuyahoga Cty. Bd. of Revision* (1988), 38 Ohio St.3d 198, the Court affirmed this Board's decision that the property's sale price twelve months prior to the tax lien date provided a good indication of the property's true value. In *Hilliard City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio St.3d 57, the Court held that property sold twelve months after the tax lien date constituted a proper measure of the property's true value. In *W.S. Tyler Co. v. Lake Cty. Bd. of Revision* (1991), 57 Ohio St.3d 47, the Court held that a sale of property eleven months after the tax lien date was within a reasonable time of the tax lien date and that therefore the sale price was reflective of true value. Finally, the Court, in *Zazworsky v. Licking Cty. Bd. of Revision* (1991), 61 Ohio St.3d 604, held that property sold on March 16, 1989, provided the best evidence, absent the influence of any factors otherwise, of the property's true value for the tax year 1988." Id. at 5-6.

Mr. Snodgrass has failed to offer competent, credible, probative evidence to demonstrate that intervening economic changes caused an increase in value between the tax lien date of January 1, 2002 and November 12, 2002. Accordingly, we find that this sale is recent within the contemplation of R.C. 5713.03.

Next, Mr. Snodgrass asserts that similar properties in the immediate vicinity pay varying property taxes. We would observe, however, that Mr. Snodgrass' comparison is based largely upon assessment data - - - not data from recent arm's-length sales transactions. As we observed in *Haydu v. Portage Cty. Bd. of Revision* (June 18, 1993), BTA No. 1992-H-576, unreported: "Tax valuations are not

sales, and a comparative analysis thereof is always subject to the objection that the tax valuations of the compared properties are not themselves market value." Id. at 8. Moreover, in *Meyer v. Cuyahoga Cty. Bd. of Revision* (1979), 58 Ohio St.2d 328, the Supreme Court stated:

> "The system of taxation unfortunately will always have some inequality and nonuniformity attendant with such governmental function. It seems that perfect equality in taxation would be utopian, but yet, as a practicality, unattainable. We must satisfy ourselves with a principle of reason that practical equality is the standard to be applied in these matters, and this standard is satisfied when the tax system is free of *systematic and intentional* departures from this principle." Id. at 335. (Emphasis added.)

We also draw attention to the Supreme Court's decision in *Pingue v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St.3d 62, where the purchase price from the sale of forty-four noncontiguous condominium units was found to constitute the best evidence of true value, despite the fact that other virtually identical condominium units within the same development were valued based upon their substantially higher individual selling prices. Moreover, Mr. Snodgrass has failed to properly account for differences in "elements of comparison" between his condominium and the other properties. The Appraisal of Real Estate (12th Ed. 2001) 426, the authoritative publication of the Appraisal Institute, provides: "Elements of comparison are the characteristics of properties and transactions that help explain the variance of prices paid for real estate." The Appraisal of Real Estate further states at page 430:

"Elements of Comparison:

"The first step in any comparative analysis is to identify which elements of comparison affect property values in the subject market. Each of the basic elements of comparison must be analyzed to determine whether an adjustment is required. ***

" Adjustments for differences are made to the price of each comparable property to make that property equivalent to the subject in market appeal on the effective date of the opinion of value. Adjustments for differences in elements of comparison may be made to the total property price, to a common unit price, or to a mix of both, but the unit prices used must be applied consistently to the comparable properties. The magnitude of the adjustment made for each element of comparison depends on how much that characteristic of the comparable property differs from the subject property. Appraisers should consider all appropriate elements of comparison and avoid adjusting for the same difference more than once."

Under these circumstances, we are unable to find that the fact that similar properties in the immediate vicinity may pay varying property taxes necessarily entitles Mr. Snodgrass to a reduction in his valuations.

Finally, we find we lack jurisdiction over alleged misconduct before another tribunal. With regard to our value-finding function, we find insufficient evidence in the record before us to establish that asserted misconduct resulted in an incorrect property valuation. To the contrary, we find that Mr. Snodgrass has failed to offer sufficient competent, credible, probative evidence to rebut the sale evidence offered by the county appellees, and has otherwise failed to satisfy his assigned evidentiary burden to prove the value he asserts. *Cleveland Bd. of Edn.*, supra, *Crow*, supra, *Mentor Exempted Village Bd. of Edn.*, supra, *Springfield Local Bd. of Edn.*,

supra.

Accordingly, and for each of the foregoing reasons, we find the taxable value of the subject properties to be as follows as of the tax lien date of January 1, 2002:

PERMANENT PARCEL NUMBER	LAND	BUILDING	TOTAL
560-239484	$2,100	$14,770	$16,870
560-239485	$2,100	$14,770	$16,870
560-239488	$2,100	$14,770	$16,870
560-239489	$2,100	$14,770	$16,870
560-239490	$2,100	$14,770	$16,870
560-239491	$2,100	$14,770	$16,870
560-239494	$2,100	$14,770	$16,870
560-239495	$2,100	$14,560	$16,660
560-240224	$2,100	$14,840	$16,940
560-240225	$2,100	$14,490	$16,590
560-240228	$2,100	$14,770	$16,870
560-240229	$2,100	$14,770	$16,870
560-240230	$2,100	$14,490	$16,590
560-240231	$2,100	$14,490	$16,590
560-240234	$2,100	$14,770	$16,870
560-240235	$2,100	$14,770	$16,870
560-240407	$180	$1,370	$1,550

560-240408	$180	$1,370	$1,550
560-240409	$180	$1,370	$1,550
560-240419	$180	$1,370	$1,550

The Franklin County Auditor is directed to reflect these values upon his records and to cause the same to be carried forward in accordance with applicable law.

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