

OHIO BOARD OF TAX APPEALS

Woodbury Commons, Inc.,)	CASE NOS. 2004-M-899
)	2004-M-900
Appellant,)	
)	(REAL PROPERTY TAX)
vs.)	
)	DECISION AND ORDER
Franklin County Board of Revision,)	
the Franklin County Auditor and the)	
Columbus City School District)	Affirmed on Appeal Sept. 29, 2006
Board of Education,)	Franklin County Court of Appeals
)	
Appellees.)	

APPEARANCES: **2006-Ohio-5096**

For the Appellant -	Lucas, Prendergast, Albright, Gibson & Newman Robert E. Albright Stacey L. Wideman 600 South High Street Columbus, Ohio 43215
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For the County Appellees -	Ron O'Brien Franklin County Prosecuting Attorney Paul Stickel Assistant Prosecuting Attorney 373 South High Street, 20 th Floor Columbus, Ohio 43215
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For Bd. of Edn.-	Rich, Crites & Dittmer, LLC Mark Gillis 300 East Broad Street, Suite 300 Columbus, Ohio 43215
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Entered January 13, 2006

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

These causes and matters come to be considered by the Board of Tax Appeals upon two notices of appeal filed by appellant on September 21, 2004, from a decisions, mailed August 27, 2004, of the Franklin County Board of Revision ("BOR"), appellee herein.

The subject property, an apartment complex, is comprised of three parcels and is located in the city of Columbus, Columbus City School taxing district of Franklin County, Ohio. The pertinent parcels are nos. 010-65706, 010-2296, and 010-3914.

The Franklin County Auditor found the true and taxable values of the subject property for tax year 2003 to be as follows:

Parcel No. 010-65706	True Value	Taxable Value
Land	\$ 277,200	\$ 97,020
Building	\$ 1,507,800	\$ 527,730
Total	\$ 1,785,000	\$ 624,750

Parcel No. 010-2296	True Value	Taxable Value
Land	\$ 11,600	\$ 4,060
Building	\$ 72,500	\$ 25,380
Total	\$ 84,100	\$ 29,440

Parcel No. 010-3914	True Value	Taxable Value
Land	\$ 11,600	\$ 4,060
Building	\$ 72,500	\$ 25,380
Total	\$ 84,100	\$ 29,440

Woodbury Commons, Inc. ("Woodbury"), appellant, is a subsequent owner to RLG Properties, LLC¹ ("RLG"). RLG, during its ownership, filed a complaint with the BOR challenging the auditor's value. The Columbus City School District Board of Education ("BOE") filed a counter-complaint. Upon consideration

¹ The subject property transferred to Woodbury sometime after RLG filed the valuation complaint on March 31, 2004, but before the hearing on that complaint, as the BOR's letter informing the parties of the hearing date was mailed to Woodbury. S.T. Ex. 3. Woodbury, as a subsequent owner, has standing to pursue this appeal. *Cleveland Municipal School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Interim Order, Sep. 22, 2003), BTA No. 2002-V-2170, unreported.

of those complaints, the BOR determined the true and taxable values were correct and did not amend the auditor's values.

Through its notices of appeal, Woodbury challenges the values assigned to the subject property by the BOR. The property owner asserts the correct values for tax year 2003 are as follows:

Parcel No. 010-65706	True Value	Taxable Value
Total	\$ 840,480	\$ 294,168
Parcel No. 010-2296	True Value	Taxable Value
Total	\$ 35,020	\$ 12,257
Parcel No. 010-3914	True Value	Taxable Value
Total	\$ 35,020	\$ 12,257

The matter was submitted to the Board of Tax Appeals pursuant to R.C. 5717.01 upon the notices of appeal, the statutory transcript certified by the Franklin County Auditor as the secretary for the BOR, the testimony adduced at the hearing before this board, and the legal argument provided by counsel for the property owner and counsel for the school board.

During the evidentiary hearing, the presiding attorney examiner reserved ruling on two objections raised during the proceedings. First, counsel for the BOR objected to the introduction of appellant's exhibits A and D, a copy of the loan purchase agreement between RLG and the Williams and Henley Co., and a copy of

the "Agreed Order Resolving Motion of Creditor RLG Properties LLC for Relief from Stay and an Order Authorizing the Sale of Certain Parcels of Real Property" issued by the United States Bankruptcy Court for the Southern District of Ohio, Eastern Division. Counsel for the BOR based his objection on R.C. 5715.19(G), contending that the documents were in existence prior to the BOR's hearing, but not introduced at that time. The prohibition found in R.C. 5715.19(G) was discussed by the Ohio Supreme Court in *CASA 94, L.P. v. Franklin Cty. Bd. of Revision* (2000), 89 Ohio St.3d 622. Distinct from the situation in *CASA 94, L.P.*, the BOR was presented with competent testimony regarding the loan purchase and subsequent bankruptcy filing. The evidence presented in the present matter merely documented testimony previously received. Further, there is a good cause exception within R.C. 5715.19(G). However, as the parties were instructed to provide argument through brief, but chose not to do so, the board deems the objection waived.

The presiding attorney examiner also reserved ruling on the BOE's counsel's request to consider the hearing record in *RLG Properties LLC v. Franklin Cty. Bd. of Revision*, BTA No. 2004-M-922, released this same date. By brief, counsel for the property owner concedes that the properties under consideration in the two appeals were purchased through the same transaction, but contends that the properties are not identical, are not owned by the same entity, and were considered separately by the BOR. While this board often considers testimony presented in a companion case, we do so ordinarily by agreement of the parties. Without some acknowledgment that had the same witness been asked the same questions at the

present hearing, his answers would have been the same, we decline to consider the companion record.

The property under consideration is a 6±-acre, 120-unit apartment complex. At hearing, Mr. Robert Martin, one of the owners of Woodbury, explained in testimony the circumstances surrounding the purchase of this apartment complex and two others purchased through the same series of transactions. Mr. Martin explained that the three apartment complexes were owned by a corporation that was delinquent in its payments to its mortgagee. The mortgagee caused the remaining tenants located within the three complexes to be removed, and had the properties boarded. H.R. at 20. The mortgagee then sold its secured mortgage note. RLG purchased the note² and instituted foreclosure proceedings. However, prior to the sheriff's sale, the delinquent title owner filed for bankruptcy protection. H.R. at 14.

With the filing of the bankruptcy, RLG became a creditor of the bankrupt's estate. RLG was then forced to seek relief from the bankruptcy stay, which was eventually granted. H.R. at 28. The release from stay required the debtor (the defaulting corporation) to hold a private auction of the three properties. At that private sale, RLG purchased all three properties for the antecedent debt as well as an additional \$10,000, paid to the bankrupt estate. H.R. at 32.

The mortgage debt was purchased on March 5, 2003. Appellant's Ex. E. However, RLG did not become titleholder until the transfer of title from the bankrupt debtor to RLG on November 10, 2003. Appellant's Ex. C.

² RLG actually purchased the mortgage note from an intermediary. H.R. at 23.

Woodbury argues that the purchase of the mortgage debt, coupled with the eventual transfer of title, constituted a recent, arm's-length sale sufficient for this board to conclude to value for the subject property.

In *Dublin Senior Community L. P. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 455, the Ohio Supreme Court considered a similar situation. In that appeal, the subject property was a congregate care facility known as Indian Run. Indian Run was delinquent on its mortgage obligations, which were financed through a savings and loan that was eventually placed into receivership. The receiver sold the note and mortgage as a part of a package of loans to an intermediary, which in turn sold the mortgage note to the Dublin Senior Community Limited Partnership ("Dublin"). Dublin obtained title to the congregate care facility through foreclosure proceedings.

Dublin argued that the purchase of the note and mortgage was an arm's-length transaction which established the best evidence of true value for the property. The court disagreed, finding that the purchase of the note and mortgage and the purchase of the realty were two separate transactions, neither of which met the criterion of an arm's-length sale:

"Despite Dublin's claims to the contrary, two separate and distinct transactions resulted in Dublin's acquisition of the real property. In the transaction between Dublin and [the original purchaser of the mortgage note], Dublin purchased only the Indian Run note and mortgage and associated documents. The transaction between [the original purchaser of the mortgage note] and Dublin did not transfer the fee simple title to any tract, lot, or parcel of real property. Admittedly, at the time of the purchase of the note and mortgage by Dublin, the mortgage had been declared to be a

first priority in the pending foreclosure and the judgment for the unpaid balance of the note provided Dublin with a credit towards the purchase price that could be used in bidding at the sheriff's sale. Realistically, however, someone other than Dublin could have made the highest bid at the sheriff's sale and received fee simple title to the property. Dublin did not receive fee simple title until it received the sheriff's deed.

"Likewise, R.C. 5713.03 is not applicable to the transaction between Dublin and [the original purchaser of the mortgage note]. R.C. 5713.03 provides that if a 'tract, lot, or parcel has been the subject of an arm's length sale between a willing seller and willing buyer within a reasonable length of time ***, the auditor shall consider the sale price *** to be the true value for taxation purposes.' As we have just decided, there was no sale of a 'tract, lot, or parcel' until Dublin received the sheriff's deed for the property.

"Moreover, the price that Dublin paid at the sheriff's sale is not a relevant consideration in establishing true value. R.C. 5713.04 prevents the price paid at the sheriff's sale from establishing the best evidence of true value, stating that '[t]he price for which such real property would sell at auction or forced sale shall not be taken as the criterion of its value.'" Id. at 458.

We find the court's conclusions applicable to the present appeal. Like the property owner in *Dublin*, RLG did not obtain title to the property through its purchase of the mortgage note. The mortgage note gave RLG a credit towards the eventual purchase price. However, as Mr. Martin noted at hearing, RLG was forced to pay an additional \$10,000 to have the deed transferred.

RLG eventually obtained title to the property through an auction ordered by the bankruptcy court, in effect, a forced sale disqualified by R.C. 5713.04 as criterion of value for establishing value. *Dublin*, Id.; *HAP Enterprises v. Cuyahoga Cty. Bd. of Revision* (May 30, 1991), Cuyahoga App. Nos. 58678, 58679, unreported.

In *Dublin* the property was valued in accordance with appraisal evidence presented before this board. In the present matter, however, Woodbury has presented no other valuation evidence, either before this board or before the BOR. Therefore, given the foregoing, this board finds that the appellant failed in its obligation to prove the right to the value asserted. *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. In such cases, this board may rely upon the values found by the auditor and affirmed by the BOR. *Simmons v. Cuyahoga Cty. Bd. of Revision* (1998), 81 Ohio St.3d 47. Therefore, based on the preponderance of competent and probative evidence, the value of the subject property as of tax lien date 2003 was as follows:

Parcel No. 010-65706

	True Value	Taxable Value
Land	\$ 277,200	\$ 97,020
Building	\$ 1,507,800	\$ 527,730
Total	\$ 1,785,000	\$ 624,750

Parcel No. 010-2296

	True Value	Taxable Value
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Parcel No. 010-3914

	True Value	Taxable Value
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Building	\$ 72,500	\$ 25,380
Total	\$ 84,100	\$ 29,440

It is the order of the Board of Tax Appeals that the Auditor of Franklin County list and assess the subject real property in conformity with this decision and order. It is further ordered that this value be carried forward in accordance with the law.

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