

OHIO BOARD OF TAX APPEALS

Cleveland Municipal School District)
Board of Education,)
)
Appellant/Appellee,)
)
and) (REAL PROPERTY TAX)
)
Heritage Capital, LLC,) DECISION AND ORDER
)
Appellant/Appellee,)
)
vs.)
)
Cuyahoga County Board of Revision and)
the Cuyahoga County Auditor,)
)
Appellees.)

APPEARANCES:

For the Appellant/Appellee - Britton, Smith, Peters
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For the County - William D. Mason
Appellees Cuyahoga County Prosecuting Attorney
Timothy Kollin
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Entered October 15, 2004

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

This cause is considered by the Board of Tax Appeals upon a motion to remand filed by the Cleveland Municipal School District Board of Education (“BOE”). The BOE argues that the Cuyahoga County Board of Revision (“BOR”) had no jurisdiction over the tax year 2002 complaint filed on behalf of the property owner, Heritage Capital, LLC (“Heritage”), which is the subject of the three instant appeals,¹ because it constituted an impermissible second filing within a triennium not subject to the four circumstances listed in R.C. 5715.19(A)(2). Counsel for Heritage has provided this board with a memoranda contra.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript (“S.T.”) certified to this board by the BOR, and the motion and legal memoranda submitted by counsel.

The subject property is located in the city of Cleveland, Cuyahoga County, Ohio, and appears on the Cuyahoga County Auditor’s records as permanent parcel number 101-11-004.

The record reflects that on March 23, 2001, Heritage filed an original complaint before the BOR concerning the subject’s valuation for tax year 2000. Tax year 2000 was the first year in the triennial cycle for Cuyahoga County.

¹ The three appeals all involve the same subject property and were previously consolidated by this board’s order, dated July 23, 2004. Although the BOE’s motion does not specifically reference BTA No. 2004-V-289, we will nevertheless construe the motion as it relates to all three consolidated cases, which are based upon the tax year 2002 complaint and counter-complaint filed below. “When a complaint filed with a board of revision pursuant to former R.C. 5715.19(A) is dismissed because it is jurisdictionally defective, a counter-complaint filed pursuant to R.C. 5715.19(B) must also be dismissed because the counter-complaint does not vest a board of revision with jurisdiction independent of the original complaint.” *C.I.A. Properties v. Cuyahoga Cty. Bd. of Revision* (2000), 89 Ohio St.3d 363.

The instant appeals were borne from a second complaint filed by Heritage before the BOR concerning the subject's valuation for tax year 2002. On the face of the complaint, counsel for Heritage checked a box on line 14, indicating that the parcel was subject to a previous complaint filed within the triennial, and that an "[o]ccupancy change of at least 15% had a substantial economic impact on the property." S.T. at A.

R.C. 5715.19(A)(2) states:

"As used in division (A)(2) of this section, 'interim period' means, for each county, the tax year to which section 5715.24 of the Revised Code applies and each subsequent tax year until the tax year in which that section applies again.

"No person, board, or officer shall file a complaint against the valuation or assessment of any parcel that appears on the tax list if it filed a complaint against the valuation or assessment of that parcel for any prior tax year in the same interim period, unless the person, board, or officer alleges that the valuation or assessment should be changed due to one or more of the following circumstances that occurred after the tax lien date for the tax year for which the prior complaint was filed and that the circumstances were not taken into consideration with respect to the prior complaint:

"(d) An increase or decrease of at least fifteen per cent in the property's occupancy has had a substantial economic impact on the property."

The apparent purpose of R.C. 5715.19(A)(2) is to reduce the number of complaints filed, while still permitting new tax valuations in interim years provided that certain criteria are satisfied. *Dublin City School Dist. v. Franklin Cty. Bd. of Revision* (1992), 79 Ohio App.3d 781. By virtue of R.C. 5715.19(A)(2), where a prior

complaint has been filed within the same triennial period, a county board of revision has jurisdiction to consider such a claim only where the claimant has satisfied one of the enumerated circumstances. *Columbia Toledo Corp. v. Lucas Cty. Bd. of Revision* (1996), 76 Ohio St.3d 361. Thus, this board must analyze the evidence presented to verify that the taxpayer meets the criteria in R.C. 5715.19(A)(2).

Heritage argues that the BOR did have jurisdiction over the second complaint because one of the four circumstances was alleged on the face of the complaint. Although Heritage is correct that, as a threshold issue, a second complaint needs to specify which circumstance permits the filing of a second complaint,² that is not the end of the BOR's inquiry. It is also necessary for the complainant to demonstrate that one of the four circumstances apply. *Kogelman v. Cuyahoga Cty. Bd. of Revision* (Oct. 19, 2001), BTA No. 2000-N-1895, unreported.

Therefore, this board must examine whether the evidence in the existing record corroborates Heritage's allegation of the specific circumstance, within the meaning of R.C. 5715.19(A)(2)(d). To meet this burden, Heritage must establish the requisite change in occupancy and that the change in occupancy had a substantial economic impact on the property. See *Mellon Bank, NA v. Franklin Cty. Bd. of Revision* (1996), 74 Ohio St.3d 651.

² “The statute [5715.19] clearly places the burden on the taxpayer to allege one of the enumerated circumstances in order to file a second complaint in the same interim period.” *Columbiana Toledo Corp.*, supra. Failure to assert one of the exceptions in R.C. 5715.19(A)(2)(a) through (d) results in a jurisdictional deficiency in the complaint. *Gammarino v. Hamilton Cty. Bd. of Revision* (1994), 71 Ohio St.3d 388.

Before the BOR, Mr. Steve Marton, chief financial officer of Heritage, testified that the subject property became vacant on September 11, 2000. S.T., audio tape. Counsel for Heritage acknowledged to the BOR that the change in occupancy cited as the basis for the second complaint was the September 11, 2000 vacancy. Id. Further, a copy of the 2000 complaint filed on March 23, 2001 on behalf of Heritage indicates that the principal use of the property was as a “vacant building.” S.T. at E.³

In construing R.C. 5715.19(A)(2), the issue is whether the new “circumstances were not taken into consideration with respect to the prior complaint.” *Millstone Dev. Co. v. Franklin Cty. Bd. of Revision* (June 4, 2004), BTA No 2002-V-1989, unreported, affirmed, (Mar. 11, 2004), 10th Dist. No. 03AP-202, 2004-Ohio-1140.

Based upon the record before us, it is apparent that the vacancy that existed at the time the 2002 complaint was filed was the same vacancy that predates the 2000 complaint and that said vacancy was raised and considered by the BOR when it reviewed Heritage’s tax year 2000 complaint. We find that the subject’s vacancy existed unchanged between the filing of the 2000 and 2002 complaints.⁴ Therefore, Heritage’s 2002 complaint does not satisfy the circumstance contained in R.C. 5715.19(A)(2) and the BOR lacked jurisdiction over the complaint.

³ The 2000 complaint is attached as Exhibit 1 to the BOE’s motion to dismiss filed before the BOR. S.T. at D.

⁴ In reviewing the BOR’s hearing worksheet, it appears that the 2000 valuation of the subject property was lowered to \$552,800. S.T. at G. Despite the decrease afforded to the property in the first year of the triennium, it appears that the Cuyahoga County Auditor failed to carry forward the BOR’s decision and assigned a much higher value for 2002. Compare, *Oberlin Manor, Ltd. v. Lorain Cty. Bd. of Revision* (1994), 69 Ohio St.3d 1. However, the sole issue before us is in the instant appeals is the jurisdictional sufficiency of the 2002 complaint.

Upon consideration of the motion and the record before us, the Board of Tax Appeals hereby remands the instant appeals and further instructs the Cuyahoga County Board of Revision to dismiss the underlying complaint of Heritage and reinstate the values originally assigned by the Cuyahoga County Auditor.

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