

OHIO BOARD OF TAX APPEALS

Cleveland Board of Education,)	
)	CASE NO. 99-E-383
Appellant,)	
)	
vs.)	(REAL PROPERTY TAX)
)	
Cuyahoga County Board of Revision,)	
Cuyahoga County Auditor, and)	DECISION AND ORDER
The Chilcote Co.,)	
)	Remanded on Appeal Jan. 15, 2002
Appellees.)	Ohio Supreme Court

APPEARANCES:

For the Appellant –	David H. Seed Britton, McGown, Smith, Peters & Kalail, Co., L.P.A. Summit One, Suite 540 4700 Rockside Road Cleveland, Ohio 44131
For the County Appellees -	William D. Mason Cuyahoga County Prosecuting Attorney By: Timothy J. Kollin Assistant Prosecuting Attorney 1200 Ontario Street, 8 th Floor Cleveland, Ohio 44113
For The Chilcote, Company -	Karen H. Bauernschmidt Karen H. Bauernschmidt Co., L.P.A. The Hoyt Block 700 West St. Clair Avenue, Suite 214 Cleveland, Ohio 44113

ENTERED: September 28, 2001

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

This matter is before the Board of Tax Appeals pursuant to a notice of appeal filed by the Cleveland Board of Education (“BOE”) from a decision of the Cuyahoga County Board of Revision (“BOR”) wherein the BOR determined the taxable value of the subject property for tax year 1997.

The subject property is located in the Cleveland taxing district. The value of the property determined by the Cuyahoga County Auditor and BOR as of January 1, 1997 is as follows:

Parcel No. 102-25-018	TRUE VALUE	TAXABLE VALUE
LAND	\$ 136,200	\$ 47,670
BUILDINGS	\$ <u>36,110</u>	\$ <u>12,640</u>
TOTAL	\$ 172,310	\$ 60,310

In support of its contention that the above-referenced values should be increased, the BOE relies upon a December 31, 1996 sale of the subject property for \$425,000. The BOE has submitted copies of the conveyance fee statement and the general warranty deed related to the sale. The BOE asserts these documents meet its burden of persuasion as to the proper value of the subject property.

The Chilcote Company (“Chilcote”) does not deny that the subject property was purchased for \$425,000. Chilcote counters that the BOR correctly determined value and argues that the sale price may not be relied upon because (1) the sale was not made at arm’s-length due to Chilcote’s need to acquire this adjoining parcel for expansion; (2) the property was not advertised on the open market; and (3) the sale price does not reflect the value of the subject property.

An evidentiary hearing was scheduled for this matter; however, counsel for the parties waived appearance at the hearing. Accordingly this matter is submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified herein by the BOR (S.T.), and the briefs of counsel.¹

¹ No brief was filed by the county appellees.

We begin our review of this matter by noting that a party who asserts a right to an increase or decrease in the value of real property has a burden to prove its right to the value asserted. *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336. Consequently, it is incumbent upon an appellant challenging the decision of a board of revision to come forward and offer evidence which demonstrates its right to the value sought. *Cleveland Bd. of Edn., supra; Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493. Once appellant presents competent and probative evidence of value, other parties asserting a different value then have the corresponding burden of providing evidence that rebuts appellant's evidence of value. *Springfield Local Bd. of Edn., supra.*

Furthermore we note that the issue on appeal is the true value of the subject property. Accordingly, this Board will seek to examine the available record and to determine value based on the evidence before it. *Coventry Towers, Inc. v. Strongsville* (1985), 18 Ohio St.3d 120; *Clark v. Glander* (1949), 151 Ohio St. 229. In doing so, we will determine the weight and credibility to be accorded to the evidence presented. *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13.

In order to make an assessment of property at its taxable value, the county auditor must first determine its true value. R.C. 5713.03. 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, at the syllabus. See, also, *State ex. rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410.

Accordingly, where there exists an actual sale of real property, which is both recent and arm's-length, R.C. 5713.03 requires the county auditor to consider such a sale as the best evidence of the property's true value. *Conalco, supra; Park Investment Co., supra*. While the sale may be the "best evidence" of value, it is not the only evidence. Consequently, the Supreme Court has held there exists a rebuttable presumption that a recent, arm's-length sale is reflective of true value. *Ratner v. Stark Cty. Bd. of Revision* (1986), 23 Ohio St.3d 59, 61. Where the inference is raised that the sale price does not reflect true value, we must at least consider and review other probative evidence of the subject property's true value. *Rucinski v. Cuyahoga Cty. Bd. of Revision* (Mar. 5, 1999), B.T.A. No. 98-S-155, unreported at 4. The burden of persuasion rests with the challenging party to present evidence to rebut the presumption that the sale price reflects true value. *Cincinnati Bd. of Edn., supra* at 327.

Applying this rationale to the instant matter, it is clear that the burden of persuasion is on the BOE, as appellant; that is, the BOE has the burden of providing competent and probative evidence that demonstrates its right to the value sought. In order to meet this burden, the BOE submitted copies of the conveyance fee statement and general warranty deed evidencing that the property owner purchased the subject property in December 1996 for \$425,000. At this point, a rebuttable presumption arose that the sale price reflects the true value of the subject property; and, consequently, a rebuttable presumption exists that the sale has met all the requirements that characterize true value. *Cincinnati Bd. of Edn., supra*. Once this presumption arises, the appellees are required to rebut the presumption by submitting evidence that the sale was either not an arm's-length

transaction, or, due to other circumstances surrounding the sale, that the sale price is not indicative of the true value of the subject property as of the tax lien date.

Chilcote first contends the sale in question was not arm's-length in nature because the purchase of the subject property was necessary for business expansion. In short, Chilcote claims necessitous business circumstances or economic duress. Economic duress has been considered several times by the courts as well as by this Board. In determining whether a sale is the result of compulsion or duress, the "subjective motives" of the buyer and seller must be examined. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Sept. 29, 1992), Franklin App. No. 92AP-281, unreported; *Dublin City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (May 5, 1995), BTA No. 93-T-1107, unreported, affirmed (Mar. 7, 1996), Franklin App. No. 95APH06-718, unreported. In making this determination, we are mindful that the person seeking to rely upon economic duress has the burden of establishing that he or she was not a "willing buyer." *Dublin, supra*. Cf. *Tele-Media Co. v. Lindley* (1982), 70 Ohio St.2d 284.

For example, in *Lakeside Avenue L.P. v. Cuyahoga Cty. Bd. of Revision* (1996), 75 Ohio St.3d 540, the Supreme Court held that certain compelling business circumstances can establish either that a recent sale was not made at arm's-length or that the sale was not representative of value. The Court found in *Lakeside* that the purchaser had no choice but to purchase the property because its business was dependent upon a railroad ramp located on the property. The purchaser could not simply move to another location, as it had to remain where the railroad tracks, and thus its business, were located. The Court noted the purchaser faced the loss of a significant portion of its business that would have resulted in the

purchaser's bankruptcy: "The choice between *** survival on one hand and swift and sure corporate death on the other hand presented Lakeside with no true alternative but to pay the price demanded by the seller." *Id.* at 549. See, also, *United One, Ltd. v. Summit Cty. Bd. of Revision* (May 4, 2001), B.T.A. No. 99-A-1591, unreported (purchase of parcel because location considered critical to business plan does not establish sale is not arm's-length) and *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (July 20, 2001), B.T.A. No. 99-T-1808, unreported (rejecting duress argument despite claims of higher rents, loss of business if moved to a different location and cost of relocation).

Considering the sparse record before this Board, we are unable to find sufficient competent and probative evidence to conclude that Chilcote was required to purchase the property under compelling business circumstances as defined by *Lakeside, supra*. The parties waived the evidentiary hearing before this Board so the only information available for our review is that provided in the statutory transcript.² The statutory transcript contains only a sketchy summary of statements made by Mr. Robert J. Marn, Chilcote's Vice President and Chief Financial Officer, before the BOR. These vague statements are insufficient to establish that Chilcote's business would suffer a significant and unavoidable loss or fail if the subject property was not purchased.

Next, Chilcote asserts that the sale was not made at arm's-length because the sale was a private sale between adjoining landowners and because the subject property was not

² In the present appeal, this Board has not been provided with the "full minutes" of the BOR's hearing on the complaint. Instead, we have been presented with a one-page summary of the hearing. See S.T. Ex. H. Despite this apparent omission, it remains the obligation of the parties to this appeal, prior to making the election to submit it upon the existing record, to verify that the statutory transcript includes *all* of the information presented to a county board of revision. See *Olentangy Local School Dist. v. Delaware Cty. Bd. of Revision* (Sept. 25, 1998), B.T.A. No. 97-K-727, unreported at 3, fn. 1.

offered for sale on the open market. In *Walters v. Knox Cty. Bd. of Revision* (1989), 47 Ohio St.3d 23, the Court defined an arm's-length sale to be one that "'encompasses bidding and negotiation in 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 coercion.'" In short, the Court found an arm's-length sale to be 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.

While an arm's-length sale generally occurs in an open market, this Board has previously held that, although the lack of advertisement on the open market may influence the price paid for the subject property, it does not necessitate a finding that the subject sale was not arm's-length in nature. *Plain Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (June 9, 1995), B.T.A. No. 94-S-361, unreported; *Dublin City School District Bd. of Edn., supra*. Accordingly, merely because the subject property was not openly advertised as being for sale does not mandate a finding that the sale was other than arm's-length.

Nor does Chilcote's contention that the sale did not involve the negotiation process establish that the sale was not arm's-length. The fact that a seller's price is non-negotiable does not necessarily prevent the transaction from qualifying as an arm's-length transaction. *Plain Local Schools Bd. of Edn., supra*.

Finally, Chilcote claims that the one-page memorandum of comparable sales it presented to the BOR rebuts the sale price as the true value of the property. The author of the memorandum did not testify at the BOR regarding this information and nothing is known about the author's qualifications. This Board is unable to determine the competence

or probity of appraisal information submitted without the qualifications of the author. *Meadowood Apartments of Wellsville Ltd. v. Columbiana Cty. Bd. of Revision* (Aug. 23, 1996), B.T.A. No. 95-A-1045, unreported at 5. This memorandum merely lists four sales. It makes no comparison between the sale properties and the subject property. This Board has rejected valuation reports where the report is sketchy regarding the comparability of the sales to the subject property and the author did not testify. *Birnbaum v. Cuyahoga Cty. Bd. of Revision* (Dec. 10, 1999), B.T.A. No. 97-B-693, unreported at 7. Therefore, the Board accords no evidentiary value to this memorandum.

In conclusion, we find that BOE has proven, by competent and probative evidence, that the December 31, 1996 sale of the subject property was made at arm's-length, and that the \$425,000 sale price provides the most reliable indication of value as of tax lien date. Chilcote has not presented credible and probative evidence sufficient to rebut the sale price. Upon review of all of the foregoing, we must conclude that the BOE has presented this Board with credible, probative evidence sufficient to persuade us that a change in the value of the subject property should be granted. *Cincinnati, supra; Dublin Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 450, 454. Therefore, the Board of Tax Appeals finds, upon a preponderance of the evidence, that the true and taxable values of the subject property should be as follows for tax year 1997:

Parcel No. 102-25-018	TRUE VALUE	TAXABLE VALUE
LAND	\$ 300,000	\$ 105,000
BUILDINGS	\$ <u>125,000</u>	\$ <u>43,750</u>
TOTAL	\$ 425,000	\$ 148,750

The Auditor of Cuyahoga County is hereby ordered to list and assess the subject property in conformity with this Board's decision and order and to carry forward the determined values in accordance with law.

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