

IN THE SUPREME COURT OF OHIO

Appeal From the Ohio Board of Tax Appeals

KEITH A. BROWN AND	:	
NOEL P. BROWN (Deceased),	:	Supreme Court Case No.
	:	Case No. 2007-1718
Appellants,	:	
	:	
v.	:	
	:	Appeal from the
WILLIAM W. WILKINS,	:	
[RICHARD A LEVIN]	:	Ohio Board of Tax Appeals
TAX COMMISSIONER OF OHIO,	:	
	:	BTA Case Number 2006-R-1041
	:	
Appellee.	:	

APPELLEE TAX COMMISSIONER'S MOTION FOR SUMMARY AFFIRMANCE

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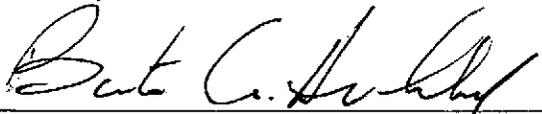
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APPELLEE'S MOTION FOR SUMMARY AFFIRMANCE

The appellee, Richard A. Levin, Tax Commissioner of Ohio, hereby moves the Court to summarily affirm the Decision and Order of the Board of Tax Appeals on the basis of the Court's two previous decisions on the very same issue. *Knust v. Wilkins*, 111 Ohio St.3d 331, 2006-Ohio-5791; and *Lovell v. Levin*, 116 Ohio St.3d 200, 2007-Ohio-6054. The reasons supporting the Motion are more fully set forth in the following Memorandum in Support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY AFFIRMANCE

At the request of the appellants, Keith A. and Noel P. Brown (the Browns), this case is pending oral argument before the full Court scheduled for May 6, 2008. Yet, oral argument is unnecessary because the Court has already fully resolved the sole issue in this case in two prior decisions. *Knust v. Wilkins*, 111 Ohio St.3d 331, 2006-Ohio-5791; and *Lovell v. Levin*, 116 Ohio St.3d 200, 2007-Ohio-6054.

The Court's November 20, 2007 decision in *Lovell* is particularly instructive in two ways. First, by strongly reaffirming and amplifying the holding, rationale and legal analysis of *Knust*, the *Lovell* decision echoes the BTA's holding and analysis in its decision and order in the present case. Second, *Lovell* expressly rejects the very arguments that the Browns advanced in their merit brief filed on November 7, 2007 with this Court.

Moreover, the Commissioner's reliance on *Lovell* stands entirely un rebutted. After the Browns filed their opening merit brief on November 7, 2007, the Commissioner filed his merit

brief on December 21, 2007. Despite the Commissioner's brief's emphasis on the dispositive nature of *Lovell*, the Browns chose not to file any reply brief, and the time for timely doing so has long passed. Nor in their January 7, 2008 request for oral argument before the full Court did the Browns attempt to distinguish, or even mention, *Lovell* (or, for that matter, to advance any reasons in support of their request).

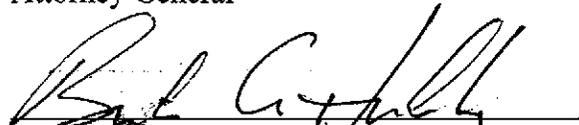
Their silence should speak volumes. By failing even to attempt to distinguish *Lovell*, the Browns could not have more clearly communicated their lack of any reasonable grounds for this Court to overturn the Commissioner's and BTA's reasonable and lawful decisions.

CONCLUSION

For these reasons, the Court should summarily affirm the BTA and the Commissioner on the basis of *Lovell* and *Knust*, *supra*, without the need for oral argument before the full Court or otherwise.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Appellee's Motion for Summary Affirmance and Memorandum in Support was sent by regular U.S. mail to Michael C. Cohan, Stephen E. Pigott, and Kismet Wunder, Cavitch, Familo, Durkin & Frutkin Co., LPA, 1717 East Ninth Street, 14th Floor, Cleveland, Ohio 44114, counsel for appellants, on this 5th day of March, 2008.


BARTON A. HUBBARD
Assistant Attorney General