

ORIGINAL

IN THE SUPREME COURT OF OHIO

2200 CARNEGIE LLC )  
 )  
 Appellant )  
 )  
 vs. )  
 )  
 CUYAHOGA COUNTY BOARD )  
 OF REVISION, et al )  
 )  
 Appellees )

CASE NO. 2011-2147  
  
On Appeal from the  
Cuyahoga County Court of Appeals,  
Eighth Appellate District

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**MERIT BRIEF OF APPELLE CUYAHOGA COUNTY  
BOARD OF REVISION AND CUYAHOGA COUNTY FISCAL OFFICER**

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## LEGAL ARGUMENT

*Appellee's Proposition of Law No. 2: Compliance with the notice of provision set forth in R.C. 5715.19(B) is a jurisdictional pre-requisite. Lack of subject matter jurisdiction cannot be cured.*

### **Response in Opposition to Appellee's Proposition of Law No. 2:**

- A. The failure of the board of revision to provide notice of the filing of a valid complaint as required by R.C. 5715.19(B) is not a jurisdictional defect, but rather, it is a procedural error, that was remedied after the common pleas court order remanding the case to the board of revision for proper notice and a hearing.**

The Appellee Cuyahoga County Board of Revision ("BOR") agrees with the Appellant Board of Education ("Appellant BOE") that the failure of the BOR to provide notice to the taxpayer of the increase tax complaint as required by R.C. 5715.19(B) does not require dismissal of the complaint. The procedural history of this case is important to understanding the county appellees' support of the Appellant BOE's position on appeal. The board of revision accepted Appellant BOE's tax complaint and set it for hearing. The BOR sent a letter dated April 27, 2007 to the taxpayer 2200 Carnegie at an address on East Ninth Street in Cleveland giving notice that a complaint was filed on the property. (See S.T. Exhibit C) Subsequently the BOR sent a letter dated July 27, 2007 to the taxpayer at the Prospect Avenue address giving notice of the oral hearing scheduled for Aug. 30, 2007 on the complaint. (See Supplement to the Briefs of Appellee 2200 Carnegie, LLC at pg.10.) R.C. 5715.19 (B) provides in pertinent that within thirty days after receiving notice property owners may file a complaint objecting to the amount stated in the previously filed complaint. Thus, the property owner has an opportunity to file a counter-complaint. Although the BOR failed to send notice to 2200 Carnegie that the BOE had filed a complaint, the owners were notified by letter dated July 27, 2007 that an oral hearing was scheduled.

The procedural history of this case shows that 2200 Carnegie appealed the BOR decision to the common pleas court (*2200 Carnegie v. Cuyahoga County Board of Revision, et al*, Court of Common Pleas Case No.09-702890, “*2200 Carnegie I*”). On appeal 2200 Carnegie argued that it did not receive notice of the filing of the complaint as required by R.C. 5715.19 (B). The common pleas court agreed and remanded the case to the board of revision with instructions to send notice of the filing of the complaint as required by R.C. 5715.19 (B). It is undisputed that pursuant to the court’s order the board of revision sent the required notice of the complaint to 2200 Carnegie and a notice of the scheduled oral hearing. (See Appendix 1).

County Appellees contend that 2200 Carnegie’s argument that the failure to give it notice of the original filing of the increase tax complaint deprived the BOR of jurisdiction fails to acknowledge that the common pleas court remand order corrected the error. The procedural requirement was met when the case was returned to the BOR and a letter dated September 25, 2008 was sent to the taxpayer along with a copy of the complaint and notice of the scheduled hearing. After receiving this notice, 2200 Carnegie was placed in the position it would have been had the BOR sent the original notice in 2007. Clearly, these actions by the BOR resulted in 2200 Carnegie receiving notice and an opportunity to be heard at the BOR.

In *Buckeye Boxes, Inc. v Franklin County Bd. of Revision*, 78 Ohio App.3d 634 (10<sup>th</sup> Dist. Ohio 1992) the court determined that a school board should be allowed to intervene at the BTA where the BOR failed to send notice that a complaint was filed under R.C. 5715.19(B). In *Buckeye Boxes* the taxpayer amended its complaint to increase the requested reduction in value to an amount greater than \$17,500 after it was filed. When the case was appealed to the BTA the school board filed a motion to intervene as a party to the appeal. The *Buckeye Boxes* court notes that there is a distinction between the right to file a counter complaint under R.C. 5715.19(B) and

the right to file an original complaint under R.C. 5715.19(A). It found that the board of revision's failure to give notice of the complaint that was amended at the oral hearing could be corrected by allowing the school board to intervene in the appeal before the BTA. There was no question about the validity of the amended complaint. Nor was the school board deemed to suffer the consequences of the board of revision's failure to give notice under R.C. 5715.19(B). The Board of Tax Appeals has followed this precedent in similar cases where a party was not notified under R.C. 5715.19(B). See *50 E. 11<sup>th</sup> Avenue, LLC v Franklin County Bd. of Revision, et al*, 2005 WL 3024462 (Ohio B.T.A.), unreported, and *Thomas Bassett v Franklin County Bd. of Revision, et al*, 2008 WL 2316535 (Ohio B.T.A.), unreported. Thus, the court of appeals under *Buckeye Boxes, supra* and the BTA have determined that a board of revision's failure to give the required notice under R.C. 5715.19(B) is not a jurisdictional defect that mandates dismissal of the complaint. But rather, it may be corrected by remanding the case to the board of revision for a hearing.

In *Knickerbocker v Delaware County Board of Revision, et al*, (2008) 119 Ohio St. 3d 233 2008-Ohio-3192 where the board of revision failed to give proper notice under R.C. 5715.19(B) to the taxpayer at the correct address the Court did not dismiss the complaint. The Ohio Supreme Court clearly states that it's the responsibility of the board of revision to give notice at the correct address for the taxpayer, even if the board of education failed to use the proper address on the complaint form. The *Knickerbocker* court found that "...the failure to use the appropriate address did not deprive the BOR of jurisdiction over the valuation complaint because the duty to notify Knickerbocker at the correct address still lay with the BOR and the Auditor. *Knickerbocker* at ¶14. As a result, the case was remanded to the BTA with instructions to remand to the board of revision for a new hearing.

The reasoning of the *Knickerbocker* decision is applicable to this case. In the case at bar the board of revision's failure to give proper notice did not deprive the BOR of jurisdiction to consider the complaint. The validity of the BOE complaint was not in question. County Appellees agree with the arguments of Appellant BOE citing *Kalmbach Wagner Swine Research Farm v Bd. of Revision of Wyandot Cty.* (1998), 81 Ohio St. 3d 319, 1998-Ohio-475, that the board of revision's authority to dismiss a complaint for lack of jurisdiction is limited. Here, the remand to the board of revision ordered in *2200 Carnegie I* allowed the BOR to give proper notice. Once the BOR sent proper notice of the original complaint and notice of the hearing as required, 2200 Carnegie filed a counter complaint and appeared at the hearing. The BOR decision was later appealed to the common pleas court.

It is significant that Appellee 2200 Carnegie did not appeal the decision in *2200 Carnegie I* ordering remand to the board of revision. If 2200 Carnegie disagreed with the common pleas court decision remanding the case, it could have appealed the decision to the Eighth District Court of Appeals. Instead, 2200 Carnegie accepted the court's decision and on remand, fully participated in the BOR proceedings. County Appellees maintain that because 2200 Carnegie decided not to appeal the decision in *2200 Carnegie I* and question the BOR's jurisdiction over the complaint, it should not be permitted to question the jurisdiction at this juncture. Although jurisdiction is an issue that can be raised at any point in a proceeding, including for the first time on appeal, there is no authority which holds that the notice requirements of R.C. 5715.19(B) are jurisdictional.

Although appellee 2200 Carnegie cites *MB West Chester, LLC v Butler County Bd. of Revision* (2010), 126 Ohio St.3d 430 in support of its proposition that compliance with R.C. 5715.19(B) is a jurisdictional requirement, there is no such language in that opinion. In *MB West*

the school board filed an increase complaint with the board of revision. The board of revision decision increased the value of the property and the taxpayer MB West filed an appeal to the BTA. In the notice of appeal MB West did not name the school board as an appellee. The board of revision failed to notify the school board that an appeal was taken to the BTA. The case was stipulated by MB West and the board of revision. The school board subsequently learned about the stipulation and filed a motion to vacate the stipulation with the BTA. The procedural history of MB West is easily distinguishable from the case at bar, where the failure to give proper notice occurred at the board of revision level. However, it is significant that the *MB West* decision resulted in reversal of the BTA's decision and remanded it to the BTA for further proceedings. Similarly in the case at bar, the 2200 Carnegie I decision remanded the case for proper notice and hearing. The Court of Appeals erred when it determined that the 2200 Carnegie I remand order did not correct the board of revision error.

### CONCLUSION

County Appellees agree with the Appellant BOE that R.C. 5715.19 (B) requires the board of revision to give proper to the property owner of the filing of a complaint. However, the failure to do so in this case was a procedural rather than a jurisdictional error. When the case was remanded to the board of revision for proper notice and proceedings pursuant to the court's journal entry in *2200 Carnegie I*, the matter was corrected. Significantly, Appellee 2200 Carnegie did not appeal the decision to remand the case to the board of revision. Instead it has fully participated in all of the subsequent proceedings. The Court of Appeals decision should be reversed in the absence of any legal authority finding the notice requirements of R.C. 5715.19(B) are jurisdictional.

Respectfully submitted,

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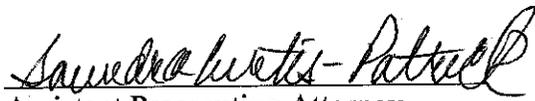
**CERTIFICATE OF SERVICE**

A copy of the foregoing Merit Brief of Appellee has been mailed via U.S. regular mail this  
the 2<sup>nd</sup> day of July, 2012 to:

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# County of Cuyahoga

## BOARD OF REVISION

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Cleveland, Ohio 44113

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Email: [2004resbor@cuyahogacounty.us](mailto:2004resbor@cuyahogacounty.us)

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**Commissioner**  
**Jimmy Dimora**

**Auditor**  
**Frank Russo**

**Treasurer**  
**James Rokakis**

September 25, 2008

2200 Carnegie LLC  
2000 E. 9th St. #700  
Cleveland OH 44114

Re: Parcel No. 103-16-029

Dear Taxpayer:

In compliance with Section 5715.19 and 5717.01 of the Ohio Revised Code, I am writing to inform you that the Board of Education respective to the location of the above-captioned property, has filed a valuation complaint requesting an increase in the assessed value by \$17,500 or more, with the Board of Revision (BOR) for tax year 2006.

This law provides the property owner an opportunity to file a counter-complaint with the BOR, within 30 days after receiving this notice. A copy of the complaint filed by the Board of Education is enclosed. A complaint form with instructions is also enclosed if you choose to file a counter-complaint.

If you have any questions or need assistance in filing, please call the Board of Revision at (216) 443-7195.

Respectfully,

Robert M. Chambers, Administrator  
Cuyahoga County Board of Revision

RMC:bor

Enclosures

CERTIFIED MAIL

Cc: Larry W. Zukerman, Esq.

S. Michael Lear, Esq.