

IN THE SUPREME COURT OF OHIO

Equity Dublin Associates and SHSCC#2 :
Limited Partnership, :

Appellees, :

v. :

Joseph W. Testa, Tax Commissioner of :
Ohio, Board of Education of the Columbus :
City School District and Board of Education :
of the Dublin City School District, :

Appellants.

Case No. 2014 - 0168

Appeal from the Ohio Board of
Appeals - Case Nos. 2011-Q-1792 and
2011-Q-1795

**APPELLANTS' TAX COMMISSIONER OF OHIO AND BOARD OF EDUCATION OF
THE COLUMBUS CITY SCHOOL DISTRICT, AND BOARD OF EDUCATION OF
THE DUBLIN CITY SCHOOL DISTRICT RESPONSE TO APPELLEES' MOTION
FOR ORAL ARGUMENT BEFORE THE FULL COURT**

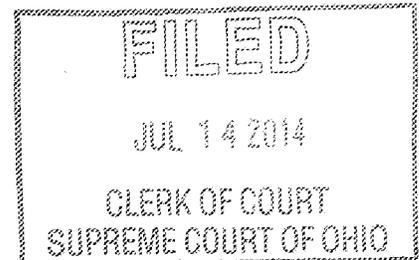
Mark Gillis (0066908)
Kimberly Allison (0061612)
COUNSEL OF RECORD
Rich & Gillis Law Group, LLC
6400 Riverside Drive, Suite D
Dublin, Ohio 43017
(614) 228-5822
Fax (614) 540-7474

Matthew Anderson (0082730)
COUNSEL OF RECORD
Luper Neidenthal & Logan
50 West Broad Street
Columbus, Ohio 43215
(614) 221-7663
Fax (866) 345-4948

Attorneys for Appellants Board of Education
of the Columbus City School District and Board
of Education of the Dublin City School District

Attorney for Appellees Equity Dublin
Associates and SHSCC#2 Limited
Partnership

Michael DeWine
Ohio Attorney General
Barton Hubbard (0023141)
COUNSEL OF RECORD
David D. Ebersole (008796)
Assistant Attorneys General
30 East Broad Street, 25th Floor
Columbus, Ohio, 43215
(614) 466-2941, Fax (866) 294-047
Attorney for Appellant Tax Commissioner



IN THE SUPREME COURT OF OHIO

Equity Dublin Associates and SHSCC#2 :
Limited Partnership, :

Appellees, :

v. :

Joseph W. Testa, Tax Commissioner of :
Ohio, Board of Education of the Columbus :
City School District and Board of Education :
of the Dublin City School District, :

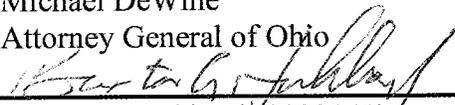
Appellants.

Case No. 2014 - 0168

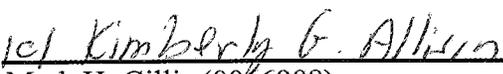
Appeal from the Ohio Board of
Appeals - Case Nos. 2011-Q-1792 and
2011-Q-1795

Now come Appellants, Board of Education of the Columbus City School District, Board of Education of the Dublin City School District, and Tax Commissioner of Ohio, by and through counsel, and respond to Appellees' motion for oral argument before the full Court pursuant to S.Ct.Prac.R. 17.

Respectfully submitted,

Michael DeWine
Attorney General of Ohio

Barton A. Hubbard (0023141)
(Counsel of Record)
David D. Ebersole (008796)
Assistant Attorneys General
30 E. Broad Street, 25th Floor
Columbus, Ohio 43215
(614) 466-2941
barton.hubbard@ohioattorneygeneral.gov
david.ebersole@ohioattorneygeneral.gov

Attorneys for Joseph W. Testa,
Tax Commissioner of Ohio


Mark H. Gillis (0066908)
Kimberly G. Allison (0061612)
Rich & Gillis Law Group, LLC
6400 Riverside Drive, Suite D.
Dublin, Ohio 43017
mgillis@richgillislawgroup.com
kallison@richgillislawgroup.com

Attorneys for Appellants
Boards of Education of the Columbus and
Dublin City School Districts

Appellants, Tax Commissioner of Ohio and Boards of Education of the Columbus and Dublin City School Districts, do not object to Appellees' motion for oral argument before the full Court. Rather, Appellants respond to Appellees' motion in order to correct certain misstatements of fact and law made by Appellees in the memorandum in support attached to their motion.

First, Appellees assert that the statute "in play" is R.C. 5709.07.04. However, the only appropriate statutory provision under which the Court should consider Appellees' exemption claims is R.C. 3354.15, which provides the exclusive exemption for property acquired, owned or used by a community college district. This Court expressly has unanimously so held. *See, Athens County Auditor v. Wilkins* (2005), 106 Ohio St.3d 293; 2005-Ohio-4986; *Rickenbacker Port Auth. v. Limbach* (1992), 64 Ohio St.3d 628, 597 N.E.2d 494.

The BTA correctly determined that EDA and SHSCC, for profit property owners, and are not entitled to claim the exemption provided for community colleges in R.C. 3354.15. Since R.C. 3354.15 is the *specific* statute granting exemption for property acquired, owned or used by a community college district, EDA and SHSCC's exemption claims must be evaluated under this statute, not under the more general provision of R.C. 5709.07(A)(4). *Athens County*, 2005-Ohio-4986 at ¶¶ 11-13.

Second, Appellees erroneously claim that "[u]nder the respective lease agreements, Columbus State was obligated to pay the real property taxes." This statement is absolutely false and in direct contravention to the findings of fact made by the Board of Tax Appeals as it relates to EDA. The BTA determined, and a review of the lease at issue herein reveals that Columbus State was NOT responsible for payment of real property taxes under the terms of its lease agreement with EDA. Specifically, the BTA determined:

However, the commissioner, in his brief, notes that, although appellants assert in their initial brief that, under both lease agreements, CSCC was contractually

obligated to pay real property taxes on the subject properties, only the lease with SCSS imposes such an obligation; the EDA lease only obligates CSCC to pay taxes pertaining to its own fixtures, furniture and other personal property. Commissioner Brief at 3-4. Our review of the leases included in the statutory transcript confirm this representation. (BTA decision p. 5, FN 5)

As this Court stated in *HealthSouth Corp. v. Testa* (2012), 132 Ohio St. 3d 55, 2012-Ohio-1871, 969 N.E.2d 232, ¶10:

We must affirm the BTA's findings of fact if they are supported by reliable and probative evidence, and we afford deference to the BTA's determination of the credibility of witnesses and its weighing of the evidence subject only to an abuse-of-discretion review on appeal. R.C. 5717.04; *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 125 Ohio St.3d 103, 2010 Ohio 1040, 926 N.E.2d 302, ¶ 15. The function of weighing evidence and determining credibility belongs to the BTA, and therefore our review of that aspect of its findings is, as already noted, highly deferential. See *Highlights for Children, Inc. v. Collins*, 50 Ohio St.2d 186, 187-188, 364 N.E.2d 13 (1977).

In this case, the record clearly establishes, and the BTA appropriately determined that Columbus State was not contractually obligated to pay real property taxes on the portion of the property it leased from EDA. Appellees are clearly misstating the facts when they assert otherwise.

Third, Appellees erroneously argue that the Court's holding in *Cleveland State Univ. v. Perk* (1971), 26 Ohio St.2d 1, 268 N.E.2d 577 is dispositive of the issues involved herein. However, what Appellees fail to acknowledge is that this Court subsequently limited its holding in *Cleveland State* to the facts involved in that case. In *Cleveland State*, Cleveland State University claimed an exemption for re-locatable, temporary buildings placed on Cleveland State University's campus. Therein, the Court determined that Cleveland State University could claim an exemption for re-locatable buildings located on real property owned by Cleveland State University under R.C. 5709.07, despite the fact that the buildings themselves were not owned by

Cleveland State University.

Subsequently, in *Anderson/Maltbie Partnership v. Levin*, 127 Ohio St.3d 178, 2010-Ohio-4904, the Court specifically limited its holding in *Cleveland State*, stating:

First, *Cleveland State* involved temporary modular structures installed on the university's land. Both the reasoning and the syllabus law of that case restrict *Cleveland State's* holding to that particular situation. *Id.* at ¶ 24.

The facts in the case currently before the Court are very different – Columbus State did not, and could not have filed exemption applications for the subject properties because Columbus State does not own the real property at issue. Rather, the subject exemption applications were filed by EDA and SHSCC, the for-profit property owners. Accordingly, unlike *Cleveland State* where the university applied for, and therefore received the benefit of the claimed exemption, the exemption herein is sought by and would exclusively benefit the private, for-profit landowners. Further, the buildings at issue herein are not located on real property owned by Columbus State. Based upon the foregoing, contrary to Appellees' assertions, *Cleveland State* is not dispositive of this case.

Even more fundamentally, the Appellees ignore Division (B) of R.C. 5709.07, which expressly bars the R.C. 5709.07(A)(4) exemption where, as here, the institutions of higher learning hold a "leasehold interest." In *Cleveland State*, the Court failed to consider the R.C. 5709.07(B) prohibition and thus is simply inapposite concerning the meaning and application of the Division (B) prohibition. In fact, this Court's post-*Cleveland State* case has applied the R.C. 5709.07(B) prohibition to bar exemption under R.C. 5709.07(A)(4). *Case W. Res. Univ. v. Wilkins*, 105 Ohio St. 3d 276, 2005-Ohio-1649, ¶¶ 47-48.

Finally, the Appellees allege that the disposition of this case "will have a huge financial impact on Columbus State's funding." By making such an assertion, Appellees are again

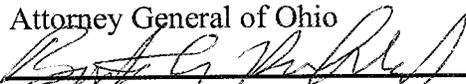
attempting to cloud the issue. Columbus State did not, and could not have filed application exemptions for the subject properties or become a party to these proceedings. The BTA recognized this when it dismissed Columbus State as a party. This case involves exemption claims made by for-profit lessors for property owned by the for-profit lessors. The fact that Columbus State voluntarily assumed the obligation to pay real property taxes on one of the subject properties during the period in question does not equate to a requirement that Columbus State pay the real property tax on the leased property.

As this Court has consistently recognized, the obligation to pay real property taxes falls solely on the owner of the property – in this case EDA and SHSCC. Granting an exemption herein would serve no purpose but to relieve EDA and SHSCC, both private, for-profit commercial property owners, of their obligation to pay the real property taxes levied against their property.

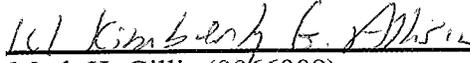
The Appellants, Tax Commissioner of Ohio and Boards of Education, will further address Appellees' arguments in their Reply brief.

Respectfully submitted,

Michael DeWine
Attorney General of Ohio


Barton A. Hubbard (0023141)
(Counsel of Record)
David D. Ebersole (008796)
Assistant Attorneys General
30 E. Broad Street, 25th Floor
Columbus, Ohio 43215
(614) 466-2941
barton.hubbard@ohioattorneygeneral.gov
david.ebersole@ohioattorneygeneral.gov

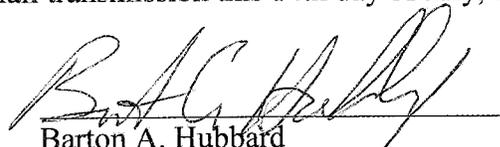
Attorneys for Joseph W. Testa,
Tax Commissioner of Ohio

 ^{by DDP}
Mark H. Gillis (0066908)
Kimberly G. Allison (0061612)
Rich & Gillis Law Group, LLC
6400 Riverside Drive, Suite D.
Dublin, Ohio 43017
mgillis@richgillislawgroup.com
kallison@richgillislawgroup.com

Attorneys for Appellants
Boards of Education of the Columbus and
Dublin City School Districts

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing merit brief was served on Matthew Anderson, Luper, Neidenthal & Logan, 50 West Broad Street, Suite 1200, Columbus, Ohio 43215 and on Kimberly G. Allison, Rich & Gillis Law Group, LLC, 6400 Riverside Drive, Suite D, Columbus, Ohio by regular mail and e-mail transmission this 14th day of July, 2014.


Barton A. Hubbard
Attorney for Appellant Tax Commissioner