

ORIGINAL

IN THE SUPREME COURT OF OHIO

Teddy L. Wheeler	:	
In his Capacity of Pike County Auditor,	:	Case No. 14-1362
	:	
Appellee,	:	Appeal from the Ohio Board of Tax Appeals
	:	
v.	:	
	:	
Joseph W. Testa,	:	
Tax Commissioner of Ohio,	:	
	:	
Appellee,	:	
	:	
and	:	
	:	
Martin Marietta Energy Systems, Inc.	:	
a/k/a Lockheed Martin	:	
Energy Systems, Inc.	:	
	:	
Appellant.	:	

APPELLEE, TEDDY L. WHEELER'S MEMORANDUM CONTRA TO THE MOTION OF APPELLANT MARTIN MARIETTA ENERGY SYSTEMS, INC., a/k/a LOCKHEED MARTIN ENERGY SYSTEMS, INC. TO STAY RELATED PROCEEDINGS CURRENTLY PENDING BEFORE THE OHIO DEPARTMENT OF TAXATION

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I. Introduction

On August 7, 2014, the Ohio Board of Tax Appeals ("BTA") issued the Decision and Order in Case No. 2012-2043, *Teddy L. Wheeler in his official capacity as Auditor of Pike County v. Joseph Testa, et al.* (the "Decision"). In the Decision the BTA stated:

As such, we have determined that the commissioner appropriately cancelled the assessment in question. Accordingly, based upon our conclusions, we need not address any other contentions raised by the parties hereto. The final determination of the commissioner is hereby affirmed.

Decision p. 4.

On August 8, prior to Teddy Wheeler ("Auditor") or his counsel receiving a copy of the Decision, Martin Marietta Energy Systems, Inc. n/k/a Lockheed Martin Energy Systems, Inc. ("LMES") inexplicably filed an appeal of the Decision. The Decision was not only in its favor, but granted complete relief to LMES. The Auditor determined that LMES lacked standing to appeal the Decision and filed a motion to dismiss the appeal on September 4, 2014. The motion was stricken by the Court because the case had been set for mediation.

Subsequent to an unsuccessful mediation conference on September 23, 2014, the Auditor re-filed the motion to dismiss. The sole basis for the motion was the lack of standing of LMES to file the appeal. LMES was not aggrieved by the Decision and, therefore, this Court lacks jurisdiction over the appeal. LMES has presented no argument that it is aggrieved by the Decision and has chosen to file no memorandum contra the motion to dismiss.

Immediately following the filing of the original motion to dismiss, the Auditor filed a notice of appeal of the Decision in the Fourth District Court of Appeals, which has been assigned Case No. 2014 CA 000853. The Auditor later filed a cautionary appeal to this Court in the event that his

motion to dismiss is overruled. Although the appeal was not filed as a cross-appeal, it was docketed under the same case number as the present appeal. Regardless, jurisdiction is properly vested in the Fourth District Court of Appeals. Accordingly, this Court has no jurisdiction to grant LMES's request to stay related proceedings before the Ohio Department of Taxation.

II. Argument

LMES has filed a motion to stay related proceedings before the Ohio Department of Taxation. In its supporting memorandum LMES takes the opportunity to include numerous statements and arguments that relate solely to the merits of the present appeal or are designed to prejudice the Court. The memorandum is peppered with unsubstantiated statements and arguments that unfairly present the issues which will eventually be presented to the Fourth District Court of Appeals or this Court. Most remarkably, LMES apparently is attempting to oppose the Auditor's motion to dismiss in this memorandum and states:

Wheeler is wrong, and his motion - which it is nothing more than a thinly-veiled attempt to transfer this appeal to what he and the County perceive to be a "friendlier" court - is all the more reason why this Court should issue the requested stay.

LMES Memorandum P. 10.

This statement drips with hypocrisy coming from a party who, the day after the Decision was issued, appealed an order that granted it full relief. The Auditor is only exercising his statutory right to file in either the Fourth District Court of Appeals or this Court and ensure that the court has jurisdiction.

Without regard to the merits of LMES's motion to stay, the prerequisite to the granting of the motion to stay is jurisdiction in this Court. LMES has presented no argument that it is aggrieved by

the Decision. Instead, it argues that pursuant to R.C. 5717.04, the Court in which the appeal is first filed has exclusive jurisdiction of the appeal. It further argues that its appeal was timely filed with this Court, thus vesting jurisdiction in this Court. However, timely filing necessarily includes the requirement that the party filing the appeal has standing to file the appeal. Otherwise, any party lacking standing to appeal a BTA Decision could create jurisdiction simply by timely filing an appeal and choose its preferred court pursuant to R.C. 5717.04. The choice offered by the General Assembly to an aggrieved party would be meaningless. Each BTA decision would be the equivalent of the dropping of the green flag to start the race to the courthouse.

The cases cited in the Auditor's memorandum in support of his motion to dismiss are binding precedent from this Court. Each of the cited cases finds its origin in *Ohio Contract Carriers Association, Inc. v. Public Utilities Commission* (1942), 140 Ohio St. 160, in which this Court stated in the syllabus:

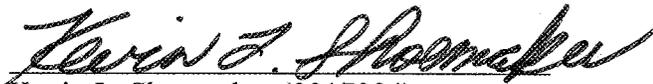
Appeal lies only on behalf of a party aggrieved by the final order appealed from. Appeals are not allowed for the purpose of settling abstract questions, but only to correct errors injuriously affecting the appellant.

LMES has presented no argument that any error injuriously affected it.

Accordingly, LMES is not an aggrieved party. It has no standing to appeal the Decision. This Court has no jurisdiction over the appeal. The LMES motion to stay must be overruled.

Respectfully submitted,

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Certificate of Service

A copy of the foregoing was served by regular U.S. Mail upon the persons listed below on this 17~~th~~ day of October, 2014.

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