

ORIGINAL

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 DUBLIN
CITY SCHOOL DISTRICT

Appellants.

Case No. 2014-0168

Appeal from Ohio Board of Tax Appeals

Case Nos. 2011-1792 and 2011-1795

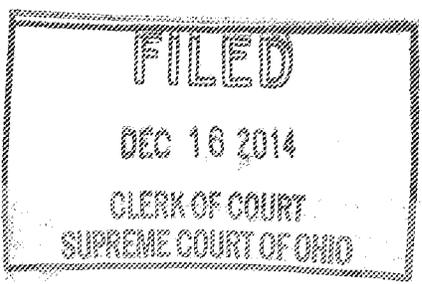
APPELLANT TAX COMMISSIONER'S MEMORANDUM CONTRA
APPELLEES' MOTION FOR RECONSIDERATION

MATTHEW ANDERSON
M. SALMON SHAH
Luper Neidenthal & Logan
50 W. Broad Street, Suite 1200
Columbus, Ohio 43215

Counsel for Appellees

MICHAEL DEWINE (0009181)
Attorney General of Ohio
BARTON HUBBARD (0023141)
(Counsel of Record)
DAVID D. EBERSOLE (008796)
Assistant Attorneys General
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3428
Telephone: (614) 466-2941
Facsimile: (866) 294-0472
barton.hubbard@ohioattorneygeneral.gov
Counsel for Appellant
Joseph W. Testa, Tax Commissioner of Ohio

MARK GILLIS
KIMBERLY ALLISON
Rich & Gillis Law Group, LLC
6400 Riverside Drive, Suite D
Dublin, Ohio 43017
Counsel for Appellants Boards of Education



MEMORANDUM

In its merit decision dated December 2, 2014, *Equity Dublin Assocs. v. Testa*, Slip Opinion No. 2014-Ohio-5243 (“*Equity Dublin*”), this Court reasonably and lawfully reversed the Board of Tax Appeals decision and order below, *Equity Dublin Assocs. and SHSCC Limited Partnership v. Testa*, BTA Case Nos. 2011-1792 and 1795 (Dec. 31, 2013), unreported (“*BTA Decision and Order*”).

In a 4-3 decision authored by Justice O’Donnell, a majority of the Court agreed with the appellant Commissioner and the appellant Boards of Education that commercial land and buildings owned by Equity Dublin Associates and SHSCC Limited Partnership (collectively “Equity Dublin”) and leased for profit to Columbus State Community College (“CSCC”) failed to qualify for real property tax exemption under the “public colleges” exemption set forth in R.C. 5709.07(A)(4).

The Court held that by providing an exemption for “public colleges and academies” as a type of “property,” the General Assembly intended to grant exemption for real property only “insofar as it is owned and occupied and used by those institutions for their basic institutional purposes.” *Equity Dublin* at ¶ 40. Because the land and buildings at issue here were owned by Equity Dublin rather than by CSCC, the realty did not qualify under the “public colleges” exemption. *Id.* at ¶¶ 40-46.

Equity Dublin’s motion for reconsideration does nothing more than constitute a “reargument” of the case, for it presents no argument, or pertinent factual or legal analysis, that this Court’s decision failed to consider. Thus, DCI’s motion for reconsideration fails to meet the requirements of this Court’s Rules of Practice. See

S.Ct.Prac.R. 18.02(B), which provides that the motion must not “constitute a reargument of the case.”

First, the appellee commercial owners/lessors have sought reconsideration of the Court’s denial of real property tax exemption under R.C. 5709.07(A)(4) on the asserted ground that the Court’s decision “represents a marked departure from the exemption status conveyed upon institutional educations [*sic*] for more than one hundred (100) years.” See Equity Dublin’s Motion at 4. Yet, the only precedent that Equity Dublin identifies in support of this assertion is *Cleveland State Univ. v. Perk*, 26 Ohio St.2d 1 (1971), which this Court discussed extensively in its decision here. *Equity Dublin* at ¶¶ 40-45.

The Court carefully explained why *Cleveland State v. Perk* was inapposite and why the Court’s grant of exemption in that case under the “public colleges” exemption should be limited to the particular factual situation presented therein. In limiting the *Cleveland State v. Perk* holding to its particular facts, this Court cited with approval to its decision in *Anderson/Maltbie Partnership v. Levin*, 127 Ohio St.3d 178, 2010-Ohio-4904, which had expressly so provided, as follows: “*** *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.” *Anderson/Maltbie* at ¶ 24.

Additionally, Equity Dublin’s motion asserts that R.C. 3354.15 of the “community college district” chapter of the Revised Code should be read in “*pari materia*” with the “public colleges” exemption in R.C. 5709.07(A)(4). See Equity Dublin’s Motion at 6-7. Through the route of the “*pari materia*” doctrine, Equity Dublin

essentially seeks to reargue the merits of its R.C. 3354.25 exemption claim, which Equity Dublin raised in its appeal to the Board of Tax Appeals, but which the Board rejected. See the *BTA Decision and Order* at 6-7.

This Court properly rejected Equity Dublin's attempt in its merit brief to revive its R.C. 3354.15 exemption claim because Equity Dublin failed to file a cross-appeal on that issue. *Equity Dublin* at ¶ 25 (“[b]ecause Equity Dublin did not cross-appeal, we cannot grant relief on the basis that the BTA rejected the exemption claim premised upon R.C. 3354.15 and 3358.10.”). As this Court has consistently explained, the *pari materia* doctrine may be appropriately used only to reconcile or harmonize *inconsistent* statutory provisions. *Internatl. Business Machines Corp. v. Levin*, 124 Ohio St.3d 347, 2010-Ohio-1861, ¶¶ 16-19. Here, Equity Dublin has not identified any inconsistency between R.C. 5709.07(A)(4) and R.C. 3354.15 that would be required to be harmonized or reconciled. Further, such challenge is precluded because Equity Dublin has abandoned any claim that the subject realty qualifies for exemption under R.C. 3354.15.

Finally, Equity Dublin's motion asserts that the definition of “real property” as set forth in R.C. 5701.02(A) somehow provides a basis for questioning the Court's holding that R.C. 5709.07(A)(4) provides exemption for real property “insofar as it is owned and occupied and used by those institutions for their basic institutional purposes.” *Equity Dublin* at ¶ 40. See Equity Dublin's Motion at 5-6.

Unfortunately for Equity Dublin's argument, however, the definition of “real property” in R.C. 5701.02(A), by its express terms, is a general *definitional* section, for use throughout Title 57 of the Revised Code, *not* an exemption provision. In fact, the obvious and primary purpose of the R.C. 5701.02(A) definition is for tax “classification”

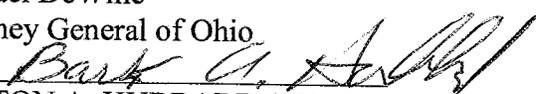
purposes. For purposes of R.C. Title 57, the definition of “real property” in R.C. 5701.02(A) is in contradistinction to the definition of “personal property” set forth in the immediately following section of the Revised Code, R.C. 5701.03. Indeed, this Court’s case law regarding the definitions of “real property” and “personal property” in R.C. 5701.02(A) and R.C. 5701.03, respectively, has centered exclusively on that classification issue.

But even more fundamentally, by its express terms, the definition of “real property” in R.C. 5701.02(A) fully supports this Court’s reasonable and lawful interpretation of the scope of the “public colleges” exemption in the present case. In asserting that the term “property” does not equate to “ownership,” Equity Dublin claims to rely on that portion of R.C. 5701.02(A) that defines “real property” to include “all buildings, structures, improvements, and fixtures of whatever kind on the land, and *all* rights and privileges belonging or appertaining thereto (emphasis added).” Far from supporting Equity Dublin’s claim, the General Assembly’s employment of the word “all” as emphasized above, establishes that real property consists of “all” of the rights and privileges belonging or appertaining to various kinds of real property, i.e., full ownership of the property.

For all the above reasons, the Court should deny Equity Dublin’s motion for reconsideration.

Respectfully submitted,

Michael DeWine
Attorney General of Ohio


BARTON A. HUBBARD (0023141)

(Counsel of Record)

DAVID D. EBERSOLE (008796)

Assistant Attorneys General

30 East Broad Street, 25th Floor

Columbus, Ohio 43215

barton.hubbard@OhioAttorneyGeneral.gov

*Counsel for Appellant Joseph W. Testa,
Tax Commissioner of Ohio*

CERTIFICATE OF SERVICE

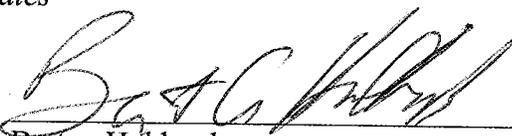
The undersigned hereby certifies that a copy of the foregoing was served by regular U.S. Mail and electronic mail, this 16th day of December, 2014, upon the following:

Mark Gillis, Esq.
Kimberly Allison, Esq.
Rich & Gillis Law Group
6400 Riverside Drive, Suite D
Dublin, Ohio 43017
kallison@richgillislawgroup.com

*Counsel for Appellants Boards of Education of
the Columbus & Dublin City School Districts*

Matthew T. Anderson, Esq.
M. Salman Shah, Esq.
Luper, Neidenthal & Logan
50 W. Broad Street, Suite 1200
Columbus, Ohio 43215
manderson@lnlattorneys.com

*Counsel for Appellees Equity Dublin Associates
and SHSCC#2 Limited Partnership*


Barton Hubbard