

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 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

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**APPELLANTS BOARDS OF EDUCATION OF THE  
COLUMBUS AND DUBLIN CITY SCHOOL DISTRICTS MEMORANDUM CONTRA  
APPELLEES' MOTION FOR RECONSIDERATION**

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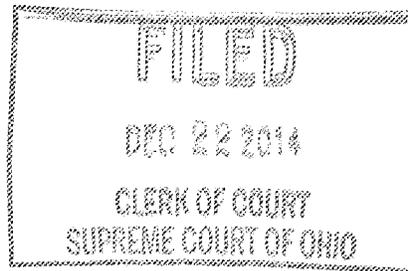
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Appellants Boards of Education of the Columbus and Dublin City School Districts (collectively, “BOE”) now come before this honorable Court and submit their Memorandum Contra to the Motion for Reconsideration filed by Appellees Equity Dublin Associates and SHSCC#2 Limited Partnership (collectively, “Equity Dublin”). Recently, in *Dublin City Sch. Bd. of Educ. v. Franklin County Bd. of Revision*, 139 Ohio St. 3d 212, 214 (Ohio 2014), this Court held “[u]nder S.Ct.Prac.R. 18.02, we use our reconsideration authority to ‘correct decisions which, upon reflection, are deemed to have been made in error.’ We will not, however, grant reconsideration when a movant seeks merely to reargue the case at hand. S.Ct.Prac.R. 18.02(B).” (Citations omitted.) Herein, Equity Dublin asks this Court “to further reflect on its decision and to reconsider it.” (Appellee’s Motion for Reconsideration, p. 7) Equity Dublin failed to present any factual or legal argument that was not previously considered by the Court. Since Equity Dublin’s Motion is nothing more than an attempt to reargue this case, the BOE respectfully requests that the Court deny the motion.

In its merit decision, the Court denied the exemption claims of two for-profit landlords for property leased to Columbus State Community College (“CSCC”), holding that the exemption granted by R.C. 5709.07(A)(4) to public colleges “applies to buildings leased by the college only when the college owns the land.” (*Id.* at 12) Equity Dublin first argues that the Court’s decision contradicts the “overall system of tax exemption legislation.” However, contrary to Equity Dublin’s assertions, a review of the statutory scheme relating to real property tax exemptions clearly reveals that the Court’s decision supports, rather than contradicts this scheme.

The fundamental principles governing real property tax exemption have always been that real estate taxes are levied to serve the public benefit and, therefore, a tax exemption must provide a benefit to the public to account for the lost tax revenue. As such, exemption statutes are to be

narrowly construed and the burden is on the party claiming exemption to establish its right thereto. In this case, CSCC is not required to pay real property tax on the subject properties because they do not own the properties. In fact, CSCC is statutorily prohibited from paying real property tax pursuant to R.C. 3354.15. Equity Dublin's argument that the General Assembly intended to provide an exemption based upon CSCC's use of the property is ludicrous given the fact that CSCC is not responsible for payment of the tax, CSCC is statutorily prohibited from paying the tax and, as a non-owner, CSCC could not have applied for an exemption from real property tax.

Equity Dublin further argues that the Court's holding is "a marked departure from the exemption status conveyed upon institutional educations (*sic*) for more than on hundred (100) years." However, Equity Dublin cites absolutely no authority for this proposition. The fact remains that this case involves exemptions claims made by two for-profit lessors, not a community college. Equity Dublin has failed to reference, and the BOE is not aware of any case wherein this Court granted a real property tax exemption to a for profit lessor based solely upon the fact that the property was leased to a community college.

Finally, Equity Dublin argues that the Court applied the incorrect definition of "property" in rendering its decision herein. In its merit decision, the Court stated:

The starting point is that "public colleges" are listed as a type of "property" to be exempted. The clear implication of this manner of speaking is that the statute's reference to public colleges and academies is intended to refer to property insofar as it is owned and occupied and used by those institutions for their basic institutional purposes.

Accordingly, the Court based its decision upon the definition of "public college" as a type or property. According to Equity Dublin, "property" should be defined as set forth in R.C. 5701.02(A), to include "all buildings, structures, improvements \*\*\* and all rights and privileges belonging or appertaining thereto." The BOE agrees with the Tax Commissioner who, in his

Memorandum Contra Appellee's Motion for Reconsideration argues that the definition of "real property" contained in R.C. 5701.02(A) is a general definition and cannot be used to broaden the scope of a narrowly defined exemption. However, even if we were to accept Equity Dublin's definition, it has no impact on the Court's well-reasoned merit decision. The Court based its decision upon the term "public colleges," which the Court defined as property owned by public colleges and academies. Accordingly, even if the definition of "property" was expanded as suggested by Equity Dublin to include all land, buildings and rights and privileges pertaining thereto, it does not necessarily follow that the definition of "public colleges," a type of property, must also be expanded. The Court's holding is consistent with its prior decision in *Cleveland State Univ. v. Perk*, 26 Ohio St.2d 1, 268 N.E.2d 577 (1971). In addition, a review of the statutory exemption scheme as set forth above, supports the Court's holding that an ownership interest in the property is required since it is the owner of the property who is responsible for payment of the real property tax.

### **CONCLUSION**

For the reasons set forth herein, the BOE respectfully requests that this Court deny Appellee's Motion for Reconsideration.

Respectfully submitted,

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**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 Michael DeWine, Attorney General, by service on Barton Hubbard, Assistant Attorney General, 30 East Broad Street, 25th Floor, Columbus, Ohio, 43215, by certified mail this 22nd day of December, 2014.

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