ORIGINAL

IN THE SUPREME COURT OF OHIO

NOTICE OF APPEAL FROM THE BOARD OF TAX APPEALS

Central Tole, LLC a Delaware Limited Liability Company, Appellant, v. Lucas County Board of Revision, Lucas County Auditor, Sylvania City Schools Board of Education, and the Ohio Tax Commissioner, Appellees.	:	Case No. 15-1377 Appeal from the Ohio Board of Tax Appeals BTA Case No. 2014-2912

FILED
AUG 21 2015
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SUPREME COURT OF OHIO

NOTICE OF APPEAL OF CENTRAL TOLE, LLC

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BOARD OF TAX APPEALS

IN THE SUPREME COURT OF OHIO

NOTICE OF APPEAL FROM THE BOARD OF TAX APPEALS

Central Tole, LLC a Delaware Limited Liability Company,	:	Case No. _____
Appellant,	:	
v.	:	Appeal from the Ohio Board of Tax Appeals
Lucas County Board of Revision, Lucas County Auditor, Sylvania City Schools Board of Education, and the Ohio Tax Commissioner,	:	BTA Case No. 2014-2912
Appellees.	:	

NOTICE OF APPEAL OF CENTRAL TOLE, LLC

Appellant, Central Tole, LLC, a Delaware Limited Liability Company, ("Taxpayer") hereby gives notice of its appeal as of right, pursuant to R.C. 5717.04, to the Supreme Court of Ohio, from a Decision and Order of the Board of Tax Appeals ("BTA"), journalized on July 27, 2015, in Case No. 2014-2912. A true copy of the BTA's Decision and Order being appealed is attached hereto as "Exhibit A" and is incorporated herein by reference. The Appellant Taxpayer complains of the following errors in the BTA's Decision and Order:

1. The BTA's decision is unreasonable and unlawful because it failed to apply the proper law in effect on lien date January 1, 2013.

2. The BTA's decision is unreasonable and unlawful because it valued the subject property based upon a leased fee sale in contravention of Ohio law.

3. The BTA's decision is unreasonable and unlawful because it failed to find the true value of the fee simple estate pursuant to R.C. 5713.03 as such statutory provision was applicable to the tax lien date at issue in this case. While acknowledging that the change in law was applicable to the period at issue, the BTA, nevertheless, completely ignored this change in law in its decision.

4. The BTA's decision is unreasonable and unlawful because the BTA failed to properly adjust the leased fee sale to its fee simple value for real estate taxation purposes consistent with Ohio law when such uncontroverted evidence was provided by the Appellant's expert witness before the BTA.

5. The BTA's decision is unreasonable and unlawful because it failed to consider the uncontroverted appraisal evidence of the fee simple value of the subject property presented by Appellant that constituted sufficient, reliable and probative evidence of value consistent with Ohio law.

6. The BTA's decision and order is unreasonable and unlawful because it is arbitrary, an abuse of discretion, and lacks foundation in law and fact.

Respectfully submitted,

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PROOF OF SERVICE UPON OHIO BOARD OF TAX APPEALS

This is to certify that the Notice of Appeal of Central Tole, LLC a Delaware Limited Liability Company was filed with the Ohio Board of Tax Appeals, State Office Tower, 30 East Broad Street, 24th Floor, Columbus, Ohio as evidenced by its date stamp as set forth hereon.

Nicholas M.J. Ray (0068664) - COUNSEL OF RECORD

COUNSEL FOR APPELLANT
Central Tole, LLC a Delaware Limited Liability Company

CERTIFICATE OF SERVICE

This is to certify that on this 21st day of August 2015, a copy of this Notice of Appeal and a copy of the Demand to Certify Transcript were sent via certified mail to:

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PENGAD 800-631-6989
EXHIBIT
A

OHIO BOARD OF TAX APPEALS

CENTRAL TOLE, LLC A DELAWARE LIMITED LIABILITY COMPANY, (et. al.),	CASE NO(S). 2014-2912
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
LUCAS COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

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Entered Monday, July 27, 2015

Mr. Williamson, Ms. Clements, and Mr. Harbarger concur.

Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 78-41564, for tax year 2013. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record of the hearing before this board, and written argument of the parties. Appellant also filed a motion to strike the merit brief filed by the appellee board of education ("BOE"), which we hereby deny, noting that appellant filed a reply and all written argument will be considered. The BOE subsequently filed a motion to supplement the record with additional authority, which appellant asserts is distinguishable and, therefore, not instructive regarding the issue of valuation in the instant appeal. As previously

stated, all relevant written argument will be considered in our analysis, including reference to supplemental case authority.

The subject's total true value was initially assessed at $480,000, though it appears that a value of $1,291,400 determined by the BOR for a prior year was carried forward into 2013. A decrease complaint was filed with the BOR seeking a reduction in value to $320,400. The BOE filed a countercomplaint in support of maintaining the auditor's amended value of $1,291,400. At the BOR hearing, the BOE argued that the amended value was based on a recent arm's-length sale and should be retained. Appellant conceded that the property transferred in August 2012 and did not dispute the arm's-length nature of the sale, but argued that it is not a reliable indication of value because the property was subject to a lease. Appellant argued that the BOR should not rely on the leased fee sale, pointing to a change in the language of R.C. 5713.03. Appellant then provided a list of unadjusted sales, asserting that the value initially assessed by the auditor should be reinstated. The BOR issued a decision maintaining the $1,291,400 value, which led to the present appeal. On appeal, appellant again argued that the sale was not a reliable indication of value, and offered the testimony and written report of appraiser Kelly M. Fried. Ms. Fried opined that the total true value of the subject property was $490,000 as of January 1, 2013. The BOE again argued that the true value of the subject property is best reflected by the August 2012 sale.

"When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564, 566. See, also, *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. In *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶6, the court elaborated: "In order to meet that burden, the appellant must come forward and demonstrate that the value it advocates is a correct value. Once competent and probative evidence of value is presented by the appellant, the appellee who opposes that valuation has the opportunity to challenge it through cross-examination or by evidence of another value. *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, ***. The appellee also has a choice to do nothing. However, the appellant is not entitled to the valuation claimed merely because no evidence is adduced opposing that claim. *W. Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340, 342, ***." Id. at ¶¶5-6. (Parallel citations omitted.)

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129. The existence of a facially qualifying sale may be confirmed through a variety of means, e.g., purchase agreement, deed, conveyance fee statement, property record card. See, e.g., *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 124 Ohio St.3d 27, 2009-Ohio-5932; *Mason City School Dist. Bd. of Edn. v. Warren Cty. Bd. of Revision*, 138 Ohio St.3d 153, 2014-Ohio-104. Once the existence of a sale is established, "a sale price is deemed to be the value of the property, and the only rebuttal lies in challenging whether the elements of recency and arm's-length character between a willing seller and a willing buyer are genuinely present for that particular sale." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13. The court reaffirmed its position in *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 138 Ohio St.3d 223, 2014-Ohio-523, ¶14, stating "[t]he *only* way a party can show that a sale price is not representative of value is to show that the sale was either not recent or not an arm's-length transaction." (Emphasis sic.) Accordingly, the affirmative burden clearly rests with the opponent of using a reported sale price to demonstrate why it does not reflect the property's value. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325, 327.

In the present matter, it is undisputed that the subject property transferred from Crown Investments

LLC to Central Tole LLC on August 27, 2012 for $1,291,400. Absent an affirmative demonstration such sale is not a qualifying sale for tax valuation purposes, we find the existing record demonstrates that the transaction was recent, arm's-length, and constitutes the best indication of the subject's value as of tax lien date. Although appellant argues that the sale is not indicative of value because it was transferred subject to a lease, the sale of a leased fee interest does not negate the utility of the sale to establish the value of the subject property. See *Cleveland OH Realty I, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 121 Ohio St. 3d 253, 2009-Ohio-757; *AEI Net Lease Income & Growth Fund v. Erie Cty. Bd. of Revision*, 119 Ohio St. 3d 563, 2008-Ohio-5203.

Appellant argues that due to recent changes to the language of R.C. 5713.03, the recent sale of the subject property should not be considered a reliable indication of value. It is well-established case law that the "best evidence" of a property's value is the amount for which it transfers between two unrelated parties "recent" to tax lien date. See, e.g., *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979. Although it referred to the former version, the court has acknowledged that R.C. 5713.03 addresses a county auditor's valuation of real property for tax purposes. *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723, ¶24. The court noted that in order "[t]o implement former R.C. 5713.03, this court established '"a rebuttable presumption *** that [a] sale has met all the requirements that characterize true value."' Id. at ¶41, quoting *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 78 Ohio St.3d 325, 327, *** (1997). This presumption can be rebutted only by 'challenging whether the elements of recency and arm's-length character between a willing seller and a willing buyer are genuinely present for that particular sale.' *Cummins* [*Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473] at ¶ 13. Since the statute was amended, however, the court has not specifically addressed the effect of this amendment, though it has commented that the change to the statue could have constituted a clarification of prior law but "may have substantively changed the law." *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶20, fn. 1. See, also, *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588, ¶12, fn. 2. Furthermore, in a concurring opinion, the honorable William B. Hoffman recently commented that even if the amended version of R.C. 5713.03 applied to the case under consideration, "the BOR 'may' still use the sales price in determining the property's valuation." *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, Delaware App. No. 14 CAH 10 0070, 2015-Ohio-2070, ¶55. Accordingly, we must find that the changes made to R.C. 5713.03 directing the auditor's valuation process do not overrule the directive consistently set forth by the Supreme Court that this board rely on a recent arm's-length sale of the property if evidence of such a sale is properly before us.

With respect to the appraisal report offered by appellant, as has been noted, the "best evidence" of a property's value is the amount for which it transfers between two unrelated parties "recent" to tax lien date. See, e.g., *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979. Once evidence of a qualifying sale has been presented, "[i]t is only when the purchase price does not reflect the true value that a review of independent appraisals based upon other factors is appropriate. ***" *Pingue v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St.3d 62, 64. (Citation omitted.) See, also, *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, ¶13 ("At the very heart of *Berea* lies the rejection of appraisal evidence of the value of the property whenever a recent, arm's-length sale price has been offered as evidence of value."). (Footnote omitted.)

It is therefore the order of this board that the subject property's true and taxable values, as of January 1, 2013, were as follows:

TRUE VALUE

$1,291,400
TAXABLE VALUE
$451,990

BOARD OF TAX APPEALS		
RESULT OF VOTE	YES	NO
Mr. Williamson		
Ms. Clements		
Mr. Harbarger		

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.

Kathleen M. Crowley, Board Secretary