

ORIGINAL

IN THE SUPREME COURT OF OHIO

15-1861

UTSI FINANCE, INC. (CROWN ENTERPRISES CONSTRUCTION SERVICES, INC.) (CROWN ENTERPRISES, INC.),

CASE NO. \_\_\_\_\_

Appellant,

Appeal from the Ohio Board of Tax Appeals

-vs-

Board of Tax Appeals Case No. 2014-3748 and 2014-3749

FRANKLIN COUNTY BOARD OF REVISION, THE FRANKLIN COUNTY AUDITOR, BOARD OF EDUCATION OF THE HILLIARD CITY SCHOOLS AND TAX COMMISSIONER OF OHIO

Appellees.

FILED  
NOV 17 2015  
CLERK OF COURT  
SUPREME COURT OF OHIO

NOTICE OF APPEAL OF UTSI FINANCE, INC. (CROWN ENTERPRISES CONSTRUCTION SERVICES, INC.) (CROWN ENTERPRISES, INC.)

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NOV 17 2015  
CLERK OF COURT  
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## NOTICE OF APPEAL

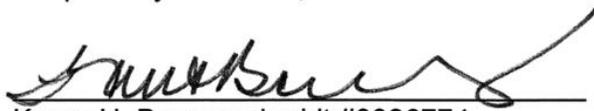
UTSI Finance, Inc. (Crown Enterprises Construction Services, Inc. and Crown Enterprises, Inc.) ("UTSI"), hereby gives notice of its appeal as of right under R.C. 5717.04 to the Supreme Court of Ohio from a Decision and Order of the Board of Tax Appeals journalized in Case Nos. 2014-3748 and 2014-3749 on October 22, 2015. A true copy of the Decision and Order of the Board being appealed is attached hereto as **Exhibit A** and incorporated herein by reference. Appellant hereby complains of the following errors in the Decision and Order of the Board of Tax Appeals:

1. The Board of Tax Appeals unreasonably and unlawfully determined that a deed executed and delivered in September 2002, but recorded in March 2009, was a 2009 sale rather than a 2002 sale in contravention of *Goddard v. Goddard*, 192 Ohio App.3d 718, 2011-Ohio-680, 950 N.E.2d 567 (4th Dist.).
2. The Board of Tax Appeals' decision and order unreasonably and unlawfully failed to apply established Ohio law that a deed does not need to be recorded to complete transfer of ownership.
3. The Board of Tax Appeals' decision and order unreasonably and unlawfully ignored competent and probative appraisal evidence when it relied on the September 2002 sale to determine value for the 2011 tax year.
4. The 2002 sale was, presumptively, not recent to constitute a "recent sale" and the School Board failed to rebut that presumption. Accordingly, the Board of Tax Appeals' decision and order is in contravention of *Akron City Sch. Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 9 N.E.3d 1004, 2014-Ohio-1588 and, therefore, is unreasonable and unlawful.
5. The Board of Tax Appeals abused its discretion when it ignored competent and probative evidence from an expert witness that the sale was between related entities and, therefore, is unreasonable and unlawful.
6. The Board of Tax Appeals abused its discretion when it disregarded Ms. Fried's testimony as an expert witness, which was probative, and relevant. Ms. Fried's expert testimony was admissible hearsay under Evid. R. 702, 803(6) and/or 803(7).

7. The Board of Tax Appeals' decision unreasonably and unlawfully determined that Ms. Fried failed to present any market data to support her assertion that the market changed significantly from the time the deed was recorded in March 2009 to the January 1, 2011 tax lien date.
8. The Board of Tax Appeals' decision and order unreasonably and unlawfully failed to consider the testimony of the Property Owner's witness.
9. The Board of Tax Appeals' decision and order unreasonably and unlawfully vacated the Board of Revision's decision since the School Board failed to present any new evidence or testimony at the Board of Tax Appeals hearing.
10. The Board of Tax Appeals' committed plain error in relying on a quit claim deed executed and delivered on September 20, 2002 when it determined that the subject property sold on February 12, 2009.
11. The Board of Tax Appeals' decision and order is unreasonable and unlawful since it relied on *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 138 Ohio St.3d 223, 5 N.E.3d 637, 2014-Ohio-523 in error.
12. The Board of Tax Appeals erred in determining that the Appellant failed to present competent and probative evidence of value, as a result the Board of Tax Appeals' decision is unreasonable and unlawful.
13. The Board of Tax Appeals' decision and order is unreasonable and unlawful since the findings of fact and conclusions of law are against the manifest weight of the evidence.
14. The Board of Tax Appeals' decision violates the Property Owner's right to due process under the Ohio and U.S. Constitution and, as a result, is unreasonable and unlawful.
15. The Board of Tax Appeals' decision and order results in an unlawful taking of property under the Ohio and U.S. Constitution and, as a result, is unreasonable and unlawful.

Appellant requests that the Court vacate the Board of Tax Appeals' decision and order the Board of Tax Appeals to determine that the subject property's true value as of January 1, 2011, 2012 and 2013 was \$1,470,000 in accordance with Kelly M. Fried, MAI's expert appraisal testimony and report.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Karen H. Bauernschmidt', written over a horizontal line.

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**PROOF OF SERVICE**

I hereby certify that a copy of this Notice of Appeal was sent this 16<sup>th</sup> day of November, 2015 by certified mail, return receipt requested to:

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**OHIO BOARD OF TAX APPEALS**

BOARD OF EDUCATION OF THE HILLIARD  
CITY SCHOOLS, (et. al.),

CASE NO(S). 2014-3748, 2014-3749

Appellant(s),

(REAL PROPERTY TAX)

vs.

DECISION AND ORDER

FRANKLIN COUNTY BOARD OF REVISION,  
(et. al.),

Appellee(s).

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Entered Thursday, October 22, 2015

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

Appellant appeals decisions of the board of revision ("BOR"), which determined the value of the subject real property, parcel numbers 560-212872-00 and 560-212873-00, for tax years 2011-2013. 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 the parties' written argument.

The subject's total true value was initially assessed at \$1,850,000. Both the appellee property owner, UTSI Finance, Inc. ("UTSI"), and appellant filed original complaints, with UTSI seeking a reduction to \$1,100,000, and appellant seeking an increase to \$2,313,500. Appellant submitted a deed and conveyance fee statement evidencing a March 2009 transfer of the subject property. Appellant

contends that UTSI is estopped from challenging the arm's-length nature of the sale because it did not appeal a prior decision of the BOR relying on the sale to establish the subject's value for an earlier year. UTSI argued that the sale was not a recent arm's-length transaction and relied upon the appraisal of Kelly Fried. Ms. Fried opined that the total true value of 560-212873-00 was \$1,470,000 as of January 1, 2011. Ms. Fried also testified regarding her investigation into the March 2009 sale of the subject property, to which appellant objected on the basis of hearsay. The BOR overruled the objection, and allowed Ms. Fried to testify as to the information relayed to her regarding the sale. Notably, other than Ms. Fried's testimony, UTSI did not present any additional evidence to controvert the arm's-length nature of the sale. UTSI also argued that even if it was arm's-length, the sale was not recent to the tax lien date and is not a reliable indication of value. As support for this argument, UTSI refers to the deed recorded in March 2009, asserting that it was signed by the parties and notarized in September 2002. Accordingly, UTSI argues, the transfer took place more than eight years before the tax lien date, well-exceeding the time frame that would benefit from a presumption of recency. UTSI further contends that even the March 2009 date was remote from the tax lien date based on the conclusions reached by Ms. Fried in her appraisal. The BOR issued a decision reducing the initially assessed valuation to \$1,602,700, based on Ms. Fried's appraisal for the parcel she appraised and retaining the auditor's value for the other, indicating that it found the sale to be remote from the tax lien date. From this decision, appellant filed the the present appeals.

“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. Additionally, “[t]hat burden

does not shift at the BTA even if the BOR decided not to use the sale price as the criterion of value.” *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092, ¶16.

In the present matter, it is undisputed that the subject property transferred from Lakeshore Ventures LLC to Universal Truckload Services Inc. on March 5, 2009 for \$2,313,489. 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. We note that the record also contains evidence of a subsequent transfer that would be closer in time to the tax lien date, but the sale price is listed as \$0 and we find it to be an unreliable indication of value.

As the party opposing the March 2009 sale, UTSI bears an affirmative burden to demonstrate that it was not a recent arm’s-length transaction. First, we disagree with appellant’s argument that UTSI is prohibited from arguing the sale was not arm’s-length. The record from prior BOR proceedings is not before us to review, and this board is not bound by a determination of the BOR for a prior year. Compare *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶ 35 (“This court has emphatically held that the BTA’s independent duty to weigh evidence precludes a presumption of validity of the BOR’s valuation. *Vandalia-Butler City [School Dist. Bd. of Edn. v. Montgomery Cty. Bd. of Revision]*, 130 Ohio St.3d 291, 2011-Ohio-5078, \*\*\* ¶13.”).

In order for a recent sale to qualify as the best evidence of a property’s value, “a key consideration \*\*\* is whether the seller and buyer were both willing.” *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 134 Ohio St.3d 529, 2012-Ohio-5680, ¶28. In *Walters v. Knox Cty. Bd. of Revision* (1988), 47 Ohio St.3d 23, 25, the court held that “an arm’s-length sale is characterized by these elements: it is voluntary, *i.e.*, without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest.” UTSI argues that the sale was among related parties. To support this contention, UTSI refers to Ms. Fried’s testimony, the fact that the address of both the buyer and seller were on the same street, and the length of time between the date the deed was apparently signed and the date it was recorded.

With respect to Ms. Fried’s testimony on the circumstances surrounding the subject sale, we must find that the BOR improperly overruled appellant’s objection on hearsay grounds. As an administrative entity, the Ohio Rules of Evidence do not strictly apply to our proceedings, yet they may serve to guide our hearings and determinations. See, e.g., *Orange City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1996), 74 Ohio St.3d 415; *Dublin Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 450. Pursuant to the Ohio Rules of Evidence, “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted,” is inadmissible hearsay, unless it meets one of the exceptions. Evid. R. 801; 802. Typically, when an appraiser testifies regarding the circumstances of a sale or lease of other properties as part of the investigation for her report, this testimony is offered as support for the appraiser’s analysis and ultimate conclusion of value. In this case, however, the statements were offered for the truth of the matter asserted, *i.e.*, that the sale was between related parties and may have included consideration for more than real property. Furthermore, UTSI has not set forth an exception to the hearsay rule that would otherwise permit this board to rely on such statements. Accordingly, we find that Ms. Fried’s testimony regarding the statements relayed to her regarding the March 2009 sale are unreliable hearsay and cannot be considered in our analysis. Moreover, we find that the commonality of street addresses of the two parties to the transaction and time that appears to have passed between the date the deed was signed and recorded are insufficient to show the sale was not an arm’s-length transaction.

UTSI argued, and the BOR agreed, that the sale was not recent to the tax lien date. Ohio courts have

refrained from setting forth a “bright line” test to establish whether a sale of property is sufficiently close to a tax lien date to be presumed to accurately reflect its value. See, generally, *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 36, 44, overruled in part on other grounds *Cummins Property Servs.*, supra (“The question of how long after a sale the sale price is to be considered the best evidence of true value will vary from case to case.”). Such restraint results from the recognition that whether a sale is “recent” to or “remote” from a tax lien date is not decided exclusively upon temporal proximity, but may necessarily involve a multitude of other impacts/considerations. See, e.g., *Cummins Property Servs.*, supra, at ¶35 (recency “encompasses all factors that would, by changing with the passage of time, affect the value of the property”); *New Winchester Gardens*, supra (recency factors include “changes that have occurred in the market”). As for assertions regarding adjusting market changes, general claims are typically insufficient, and instead a party advocating for the existence of intervening events must demonstrate their actual existence. Nevertheless, as a sale becomes more distant in time from a tax lien date, “the proponent of the sale price as the value should come forward with evidence showing that market conditions or the character of the property have not changed between the sale date and the lien date.” *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588.

UTSI points to the execution and notarization dates on the deed to show that the property was transferred several years prior to the date the deed and conveyance fee statement were filed. The Supreme Court has held, however, that “in determining the date a sale of property occurs, only for purposes of establishing the true value of property pursuant to R.C. 5713.03, the auditor should use the date that the real property conveyance fee statement is filed in the auditor’s office as the sale date of the property.” *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 124 Ohio St.3d 481, 2010-Ohio-687, ¶24. Relying on this holding, the court has further held that a conveyance-fee statement relied upon by a school board formed an adequate basis for this board to find a sale recent and arm’s-length, subject to rebuttal by the property owner contesting the sale. *N. Royalton*, supra, at ¶16. Although the instant appeal involves the execution of a deed rather than a negotiation of the parties, we find that the holdings in *HIN* and *N. Royalton* apply. As the court explained in *HIN*:

“R.C. 317.22 provides that ‘[n]o deed of absolute conveyance of land \* \* \* shall be recorded by the county recorder until \* \* \* [t]he conveyance presented to the recorder bears the stamp of the county auditor \* \* \* [and s]uch conveyance has been presented to the county auditor, and by the county auditor indorsed “transferred” or “transfer not necessary.”’ Before the deed may be endorsed by the auditor, however, R.C. 319.202 requires the new owner to submit a real property conveyance fee statement to the auditor declaring the value of the real property, and pursuant to R.C. 319.20, the auditor must transfer the parcel into the new owner’s name on the tax list. The purpose of this statutory scheme is to provide the auditor the necessary information to determine the true value of property based on a property sale in accordance with R.C. 5713.03.” *Id.* at ¶23.

Accordingly, for purposes of our analysis, we consider the March 5, 2009 date on which the deed and conveyance fee statement were filed as the sale date.

As previously discussed, UTSI offered the appraisal of Ms. Fried to show that market conditions changed between March 2009 and January 1, 2011 to such an extent that the sale was not recent to the tax lien date. Ms. Fried performed a market trend analysis, in which she presented various statistics about the local market. Notably absent from this analysis, however, is any support for her summary and conclusion that “real estate Market Values in the area were stable to decreasing over the past few years as a result of the current economic conditions and increasing capitalization rates.” Ms. Fried

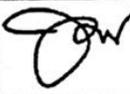
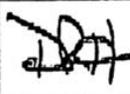
does not include any data to support this conclusion, whether it be by surveys, pared sales analysis, or another form of comparison to show that the market in which the subject is located underwent such significant decline as to render the March 2009 sale remote from the tax lien date. Accordingly, we find that UTSI has failed to show that the March 2009 sale was not a recent arm's-length transaction and reliable indication of the subject property's true value as of the tax lien date.

Thus, we do not reach the conclusions reached by Ms. Fried in her appraisal. 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.*, supra at ¶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 true and taxable values of the subject property, as of January 1, 2011, 2012, and 2013, were as follows:

PARCEL NUMBER  
560-212872-00  
TRUE VALUE  
\$165,950  
TAXABLE VALUE  
\$58,080

PARCEL NUMBER  
560-212873-00  
TRUE VALUE  
\$2,147,540  
TAXABLE VALUE  
\$751,640

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