

**IN THE SUPREME COURT OF OHIO**

**MDM HOLDINGS, LLC.**

**CASE NO. 2015-1065**

**Appellant**

**BTA Case No. 2015-60**

**v**

**CUYAHOGA COUNTY BOARD OF  
REVISION, et al**

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**Appellees**

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**MERIT BRIEF OF  
APPELLEES CUYAHOGA COUNTY BOARD OF REVISION AND CUYAHOGA  
COUNTY FISCAL OFFICER**

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## STATEMENT OF THE FACTS

The present case before this Court is on appeal filed by the property owner MDM Holdings LLC (hereinafter referred to as “MDM or “Appellant”) from a decision by Ohio Board of Tax Appeals on June 2, 2015. The matter concerns a dismissal for lack of jurisdiction of a continuing complaint for tax year 2012 for the property identified as permanent parcel number 028-23-009 (“the property”).

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On March 5, 2012 a real estate tax complaint was filed with the Cuyahoga County Board of Revision (“BOR”) for tax year 2011 on behalf of the property owner MDM Holdings, LLC. A counter-complaint was filed on behalf of the Cleveland Municipal School District Board of Education on May 25, 2012. The BOR conducted an oral hearing on May 10, 2013 and issued a decision letter on May 13, 2013. The BOR decision reduced the property value for PPN 028-23-009 to \$605,000 for the 2011 tax year. The property owner filed an appeal of the BOR decision to the Ohio Board of Tax Appeals (BTA) on June 11, 2013. The BTA accepted the appeal and docketed it as BTA Case No. 2013-1619. The matter was set for hearing on January 9, 2014. At the request of the appellee school district the BTA case was rescheduled for hearing on February 6, 2014. On February 5, 2014 MDM notified the BTA that it would voluntarily dismiss the appeal. The BTA issued an Order of Voluntary Dismissal on February 19, 2014.

Approximately one year later, on January 15, 2015 the Appellant’s representative contacted the BOR attempting to invoke the continuing complaint jurisdiction for tax year 2012 as a continuation of MDM’s tax year 2011 complaint. The BOR responded by email stating that on the advice of legal counsel the request was denied based on a lack of BOR jurisdiction because it

was made more than 30 days after the BTA Order dismissing the appeal. On January 23, 2015 Appellant filed a notice of appeal to the BTA. MDM moved the BTA to remand the matter to the BOR with instructions to conduct a hearing for tax year 2012 pursuant to the continuing complaint jurisdiction under R.C. 5715.19(D). On June 2, 2015 the BTA issued a Decision and Order which denied the motion to remand and affirmed the decision of the BOR based on a lack of jurisdiction.

## LAW AND ARGUMENT

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I. **The BTA Order correctly determined that under R.C. 5715.19(D) the board of revision lacked continuing complaint jurisdiction in 2015 following the voluntary dismissal on February 19, 2014.**

The Ohio Revised Code Title 57 establishes the procedures for filing a complaint to challenge the real property tax valuation in Ohio. R.C. §5715.19(A) establishes, *inter alia* that such a complaint must be filed by March 31 of the ensuing tax year, and who may file such a complaint.

R.C. 5715.19(D) provides, *inter alia*:

“If a complaint filed under this section for the current year is not determined by the board within the time prescribed for such determination, the complaint and any proceedings in relation thereto shall be continued by the board as a valid complaint for any ensuing year until such complaint is finally determined by the board or upon any appeal from a decision of the board. In such case, the original complaint shall continue in effect without further filing by the original taxpayer, his assignee, or any other person or entity authorized to file a complaint under this section.”

Clearly, continuing complaints are permitted under R.C. 5715.19(D), and those seeking to invoke the BOR jurisdiction under this section must do so within certain parameters. The question here is what limitation does the continuing complaint provision establish for the BOR's

jurisdiction? Appellant contends that there is no limitation on the BOR jurisdiction, and that it continues for an indefinite period of time. Appellees maintain that the BTA correctly determined that the continuing complaint jurisdiction continues until the complaint is finally determined by the BOR or finally determined on appeal from a decision of the board.

In *AERC Saw Mill Village, Inc. v Franklin County Bd. of Revision*, 127 Ohio St3d 44, 2010-Ohio-4468, 936 N.E.2d 472, this Honorable Court, faced with the issue of resolving the conflict between the statutes that require the auditor to reappraise and update the valuation of real property, and the carryover provision of R.C. 5715.19(D), opined that its own cases “have recognized situations both generally and in regard to construing R.C. 5715.19, in which conflicting statutes and competing mandates must be read in a manner designed to harmonize the different statutory provisions.” *AERC* at ¶23. Additionally, this Court has opined that, “In Ohio...the generally accepted rule is that statutes relating to the same matter or subject, although passed a different times and making no reference to each other, are in *pari materia* and should be read together to ascertain and effectuate if possible the legislative intent.” *State ex rel. Pratt v Weygandt* (1956), 164 Ohio St. 463, 466.

In the present matter, it is undisputed that the original complaint for 2011 was pending before the BOR during the filing period for tax year 2012 complaints (December 2012 to March 31, 2013). This jurisdiction extended while the case was on appeal at the BTA as BTA Case No. 2013-1619. As this Court explained in *AERC*, “Once the continuing-complaint provision has been triggered, the original complaint---.....continues as a valid complaint ***through the year in which the final decision***, by the board of revision or on appeal, is rendered in the proceedings on that complaint.”(emphasis added) citing *Columbus Bd. of Education v Franklin Cty. Bd. of Revision* (1999), 87 Ohio St3d. 305, 307. 1999 Ohio 69, 720 N.E.2d 517. The language in *AERC*

is clear, that the continuing complaint jurisdiction continues through the year in which the final decision is rendered on appeal. In this case, the final decision was rendered when the BTA Order granted the Appellant's voluntary dismissal on February 19, 2014. Therefore, the continuing complaint jurisdiction continued at the BOR until December 31, 2014. When the Appellant attempted to invoke the continuing complaint provision in January 2015, it was rejected for lack of jurisdiction.

In order to further analyze the continuing complaint provision in R.C. 5715.19(D), it is helpful to review the legislative history of this section. A review of the 1971 revisions to R.C. 5715.19(D) and the pertinent legislative history aids in this analysis. AM.S.B. 428 amended subsection (D) by adding the following language<sup>1</sup>:

If a complaint filed under this section for the current year is not determined by the board within the time prescribed for such determination, the complaint and any proceedings in relation thereto shall be continued by the board as a valid complaint for any ensuing year until such complaint is finally determined by the board. In such case, the original complaint shall continue in effect without further filing by the original taxpayer, his assignee, or any other person or entity authorized to file a complaint under this section.

1971 Am.S.B. 428.<sup>2</sup>

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<sup>1</sup> 1971 Am.S.B. No. 428 included other revisions not cited here (see appendix, p.1-3).

<sup>2</sup> The current version of R.C. 5715.19(D) reads as follows:

(D) The determination of any such complaint shall relate back to the date when the lien for taxes or recoupment charges for the current year attached or the date as of which liability for such year was determined. Liability for taxes and recoupment charges for such year and each succeeding year until the complaint is finally determined and for any penalty and interest for nonpayment thereof within the time required by law shall be based upon the determination, valuation, or assessment as finally determined. Each complaint shall state the amount of overvaluation, undervaluation, discriminatory valuation, illegal valuation, or incorrect classification or determination upon which the complaint is based. The treasurer shall accept any amount tendered as taxes or recoupment charge upon property concerning which a complaint is then pending, computed upon the claimed valuation as set forth in the complaint. If a complaint filed under this section for the current year is not determined by the board within the time prescribed for such determination, the complaint and any proceedings in relation thereto shall be continued by the board as a valid complaint for any ensuing year until such complaint is finally determined by the board or upon any appeal from a decision of the board. In such case, the original complaint shall continue in effect without further filing by the original taxpayer, his assignee, or any other person or entity authorized to file a complaint under this section.

The legislative history of 1971 Am.S.B. No 428 makes clearer the purpose of the amendments:

to enable a large number of property tax valuation complaint cases in Cuyahoga County to be carried over beyond the time prescribed for a final determination of the complaint without refiling by the taxpayer. The bill also seeks to insure that the final determination of property tax valuation will affect the taxes for the year in which the complaint is filed and each succeeding year until the complaint is determined.

Ohio LSC Bill analysis, Am. S.B. No. 428 (Cleveland Law Library)<sup>3</sup>

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The legislative history explains clearly the intent of the legislature. First, the legislature intended to reduce the number of tax complaints that taxpayers would have to file (“without refiling by the taxpayer”), which would at the same time also reduce the number of tax complaints that a board of revision would be required to process and administer, if the complaint met the jurisdictional requirements of the statute. Secondly, the legislature’s statement of purpose clarified that if a complaint was carried over beyond the time it should be decided at the board of revision, the original complaint will continue to be effective for the succeeding years until such final determination. Apparently, the legislature intended to avoid a scenario in which a taxpayer could be unfairly prevented from challenging a valuation of its property because a particular year’s complaint filing deadline had passed. While R.C. 5715.19(D) relieves a taxpayer from further filings “until such complaint is finally determined by the board or upon any appeal from a decision of the board,” it was not intended to relieve a taxpayer from having to file another complaint after the date of the final determination on appeal. The inclusion of “*until*” demonstrates that the continuing complaint jurisdiction is subject to a time limitation.

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<sup>3</sup> See Appendix p.4

The BTA's interpretation of R.C. 5715.19(D) supports the limitation of the BOR's continuing complaint jurisdiction *until* the end of the year in which the complaint is decided by the BOR or a final decision on appeal and follows this Court's decision in *AERC Saw Mill*, supra. In that case, "...the 2002 complaint was continued as a jurisdictionally viable means of reviewing property value in later years until tax year 2006—the year when the 2002 value was finally determined." *AERC Saw Mill* at ¶14. Thus, in *AERC Saw Mill*, supra, this Court acknowledges that the BOR's continuing complaint jurisdiction does not continue for an indefinite period of time.

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Accordingly, in the present matter, the BOR's continuing complaint jurisdiction continued while the case was on appeal at the BTA, where it was finally decided by the Order of February 19, 2014 and said jurisdiction extended *until* December 31, 2014. Under the continuing complaint provision the BOR lacked jurisdiction in 2015 and the request for a BOR hearing was properly denied.

**II. The decisions of the BTA and BOR involve neither rule-making nor the creation of a jurisdictional barrier.**

The BTA decision correctly found that the BOR's continuing complaint jurisdiction does not continue for an indefinite period of time after a final decision in the case on appeal. The Appellant contends that the decision of the BOR and the BTA, both unreasonably exceed the rulemaking authority of these tribunals and unreasonably creates a jurisdictional barrier to filing. It does neither. This is not a matter of the BOR or BTA creating a jurisdictional barrier. But rather, the BOR was exercising its obligation to first determine whether or not the request met the jurisdictional requirements. It did not.

Each of the tribunals reviewed the matter that came before them. The BOR denied the request in January 2015 for a continuing complaint hearing for lack of jurisdiction, based on its

interpretation of R.C. 5715.19(D). The county's interpretation of the statute, based on existing case law allowed a party to ask for a continuing complaint within 30 days after a final decision on appeal. Because a party has 30 days to file an appeal after a matter is decided, the BOR interpreted this to be the deadline for when a matter was "finally determined on appeal".

The BTA decision reviewed the BOR's determination and affirmed the conclusion that it lacked jurisdiction. No new rules or jurisdictional barriers were created. Instead, both tribunals utilized different reasoning to reach the same conclusion, that MDM did not invoke the BOR's continuing complaint jurisdiction in a timely manner. It is axiomatic that without jurisdiction, the BOR had no authority to hold a hearing to determine the value for tax year 2012.

Appellant cites the recent decision in *Ginter v Auglaize County Bd. of Revision*, 143 Ohio St3d 340, 2014-Ohio-2571, 37 N.E.3d 37 regarding the duty of the boards of revision to make a determination of value whenever a complaint properly invokes its jurisdiction. *Ginter*, ¶ 1. However, the factual scenario in *Ginter* is easily distinguishable from the present matter. *Ginter* involved the board of revision's decision to dismiss the complaint when the property owner failed to appear at the hearing. Since the complaint was properly filed, there was no question about jurisdiction. But rather, the issue was whether the board of revision had authority to dismiss for failure to prosecute. The Court determined that boards of revision are creatures of statutes imbued only with the powers granted by their enabling laws, and since the statutes do not specifically confer a power to dismiss for failure to prosecute, they lack such authority. *Ginter*, ¶6. Thus, the decision in *Ginter* is not persuasive for purposes of this case.

By contrast, the issue before the Court in the present matter is all about whether there is any limitation on the BOR's continuing complaint jurisdiction. Is there a deadline for a party to invoke the continuing complaint provision under R.C. 5715.19(D)? If a property owner never files

a “fresh complaint” to challenge a later tax year does that allow them to invoke the continuing complaint provision for all ensuing tax years at any point in time in the future? Following the voluntary dismissal of a tax appeal, how long does the board of revision continuing complaint jurisdiction continue?

The decision in *Elkem Metals Co. Partnership v Washington Cty. Bd. of Revision*, 81 Ohio St3d 683, 1998-Ohio-601, 693 N.E.2d 276, explained that a board of revision has no jurisdiction to determine the value of the property unless and until the board first examines the complaint and thereupon determines that it meets the jurisdictional requirements of the applicable statutes.

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A review of the applicable statutes set forth above [5715.19] shows that a board of revision has been given jurisdiction to hear and rule on complaints submitted to it. As part of its jurisdiction to hear and rule on complaints, a board of revision must undertake a two-step analysis. First, the board of revision must examine the complaint to determine whether it meets the jurisdictional requirements set forth by the statutes. Second, if the complaint meets the jurisdictional requirements, then the board of revision is empowered to proceed to consider the evidence and determine the true value of the property.

*Elkem Metals*, at 686. See also, *Diley Ridge Medical Ctr. v Fairfield County Bd of Revision*, 141 Ohio St3d 149, at 154, 2014-Ohio-5030, 22 N.E.3d 1072. Accordingly, the BOR in this case properly exercised its duty to first determine whether or not it had jurisdiction.

Appellees maintain that when the Appellant attempted to invoke the continuing complaint provision in 2015, the BOR undertook the process of considering whether it met the jurisdictional requirements set forth by the statute. The board of revision properly determined that the request for a continuing complaint hearing was untimely and did not meet the jurisdictional requirements of R.C. 5715.19(D). Although the BTA decision reached a different conclusion regarding the jurisdictional time limitation, it properly determined that in January 2015 MDM failed to invoke the continuing complaint provision in a timely manner.

## CONCLUSION

This case presents the Court with an opportunity to provide an interpretation of R.C. 5715.19(D) in terms of the jurisdictional time limitations of the continuing complaint provision. Appellees maintain that the Board of Tax Appeals correctly determined that under R.C. 5715.19(D) MDM failed to invoke the continuing complaint jurisdiction in a timely manner. For the reasons stated above, the Appellees Cuyahoga County Board of Revision and Cuyahoga County Fiscal Officer urge this Court to affirm the decision of the BTA that the board of revision lacked jurisdiction over a continuing complaint after the end of the year in which there was a final decision on appeal.

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 30<sup>th</sup> day of December, 2015, a true copy of the foregoing Appellees' Merit Brief was e-mailed to Karen Bauernschmidt, David H. Seed, and Joseph Testa, c/o Christine Mesirow, Esq.:

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## APPENDIX

of the Senate.

# AN ACT

To amend section 5715.19 of the Revised Code, and to repeal section 5715.19 of the Revised Code as amended by House Bill 981 of the 109th General Assembly, approved and filed by the Governor on December 1, 1971, to become effective on March 7, 1972, to permit a complaint to be heard by the board of revision without a new filing of the complaint, and to declare an emergency.

*Be it enacted by the General Assembly of the State of Ohio:*

**SECTION 1.** That section 5715.19 of the Revised Code be amended to read as follows:

**Sec. 5715.19.** A complaint against any valuation or assessment which appears upon the tax duplicate of the then current year ~~(may)~~ SHALL be filed on or before THE TWENTIETH DAY OF DECEMBER, OR ON OR BEFORE the time limited for payment of taxes for the first half year, [or at any time during which taxes are received by a county treasurer without penalty for the first half year] EXTENDED UNDER SECTION 32B.17 OF THE REVISED CODE. Any taxpayer may file such a complaint as to the valuation or assessment of his own or another's real property, and the board of county commissioners, the prosecuting attorney, or the treasurer of any county, any board of township trustees, any board of education, or the mayor or legislative authority of any municipal corporation in any county may file such a complaint. The county auditor shall present to the county board of revision all complaints filed with him, and each board shall notify any such complainant and also the property owner, if his address is known, when the complaint is filed by one other than the property owner, by registered or certified mail, not less than ten days prior to the hearing, of the time and place the same will be heard, and shall hear and render its decision on such complaint within ninety days after the filing thereof with the said board.

The determination of any such complaint shall relate back

John D. Gilligan,  
Governor.

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David A. Johnston,  
Director.

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D. W. BROWN,  
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to the date when the lien for taxes for the current year attached or the date as of which liability for such year was determined, and liability for taxes FOR SUCH YEAR AND EACH SUCCEEDING YEAR UNTIL THE COMPLAINT IS FINALLY DETERMINED and for any penalty for nonpayment thereof within the time required by law shall be based upon the valuation or assessment as finally determined. Each complaint shall state the amount of overvaluation, undervaluation, discriminatory valuation, or illegal valuation complained of, and the treasurer may accept any amount tendered as taxes upon property concerning which a complaint is then pending, computed upon the claimed valuation as set forth in the complaint, and if such tender is not accepted no penalty shall be assessed because of the nonpayment thereof. The acceptance of such tender shall be without prejudice to the claim for taxes upon the balance of the valuation or assessment. A like tender may be made, with like effect, in case of the pendency of any proceeding in court based upon an allegedly excessive, discriminatory, or illegal valuation. IF A COMPLAINT FILED UNDER THIS SECTION FOR THE CURRENT YEAR IS NOT DETERMINED BY THE BOARD WITHIN THE TIME PRESCRIBED FOR SUCH DETERMINATION, THE COMPLAINT AND ANY PROCEEDINGS IN RELATION THERETO SHALL BE CONTINUED BY THE BOARD AS A VALID COMPLAINT FOR ANY ENSUING YEAR UNTIL SUCH COMPLAINT IS FINALLY DETERMINED BY THE BOARD. IN SUCH CASE, THE ORIGINAL COMPLAINT SHALL CONTINUE IN EFFECT WITHOUT FURTHER FILING BY THE ORIGINAL TAXPAYER, HIS ASSIGNEE, OR ANY OTHER PERSON OR ENTITY AUTHORIZED TO FILE A COMPLAINT UNDER THIS SECTION.

Upon request of a complainant, the board of tax appeals shall determine the common level of assessment of real property in the county for the year stated in the request, which common level of assessment shall be expressed as a percentage of true value. Such determination shall be made on the basis of the most recent available sales ratio studies of the board of tax appeals and such other factual data as the board deems pertinent. Any valuation which varies from said common level of assessment by more than ten per cent thereof is prima facie discriminatory.

SECTION 2. That existing section 5715.19 of the Revised Code, and section 5715.19 of the Revised Code as amended by House Bill 981 of the 109th General Assembly, approved and filed by the Governor on December 1, 1971, to become effective on March 7, 1972, are hereby repealed.

SECTION 3. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for this necessity is that its enactment into law at the earliest possible time will insure a more equitable and just treatment of taxpayers. Therefore this act shall go into immediate effect.

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Chas. B. Fry,  
Speaker Pro Tem of the House of Representatives.

Theodore M. Gray,  
President Pro Tem of the Senate.

Passed December 15, 1971.

Approved December 23, 1971.

John J. Gilligan,  
Governor.

The sectional number herein is in conformity with the Revised Code. Section 3 herein requires no code sectional number.

Ohio Legislative Service Commission

David A. Johnston,  
Director.

I hereby certify that the foregoing is a true copy of the enrolled bill.

TED W. BROWN,  
Secretary of State.

File No. 202.

Effective December 23, 1971.

(Amended Senate Bill No. 440)

## AN ACT

To authorize the governor to transfer title to

889

APX. 3

11/3/71, p. 1  
11/11/71, p. 3  
12/8/71, p. 4

S. First Reading  
S. Third Reading  
H. Ways and Means  
H. Third Reading

Sens. Matla - Taft - Calabrese - Kovak - Jackson - Mottl - Maloney

Permits the continuation of a complaint before the board of revision beyond the time prescribed for the determination of the complaint without a refiling of the complaint by the taxpayer, applies the final determination of the complaint to tax liability for the year the complaint is filed and each succeeding year until such determination, and declares an emergency.

#### PURPOSE

The stated purpose of the bill is to enable a large number of property tax valuation complaint cases in Cuyahoga County to be carried over beyond the time prescribed for a final determination of the complaint without a refiling by the taxpayer. The bill also seeks to insure that the final determination of property tax valuation will affect the taxes for the year in which the complaint is filed and each succeeding year until the complaint is finally determined.

#### CONTENT AND OPERATION

Under present law, a complaint against any property tax valuation or assessment for the current tax year may be filed with the board of revision at any time before a penalty attaches for nonpayment of the taxes due. The board is required to hear and render its decision on the complaint within 90 days of its filing with the board. Also under present law, a board of revision is permitted to create any number of hearing boards necessary for the expeditious hearing of valuation complaints; each hearing board has the same authority to hear and decide complaints as the board of revision.

The bill would require a board of revision to continue a complaint and any proceedings in relation thereto, not determined by the board within the time prescribed by law for the determination, until such time as the board does make a final determination of the complaint. In the event of such a continuation, the bill requires that the original complaint continue in effect before the board without a further filing by the taxpayer.

The bill also states that property tax liability for the current year in which a valuation or assessment complaint is filed and each succeeding year until the complaint is finally determined by the board of revision would be based on the valuation or assessment as finally determined by the board.

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FILE COPY  
LEGISLATIVE

1971