

IN THE SUPREME COURT OF OHIO

Julia Realty LTD., : **16-0541**

Appellant, : On Appeal from the Board

v. : of Tax Appeals

Cuyahoga County Board :

of Revision, et al., : Board of Tax Appeals

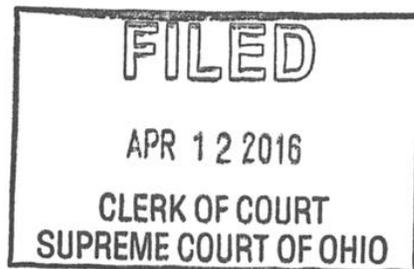
Appellees. : Case No. 2015-657, 2015-658

NOTICE OF APPEAL OF APPELLANT JULIA REALTY LTD.

Jesse R. Mann (0085730) (Counsel of Record)
 240 E. William St.
 Delaware, OH. 43015
 (740) 362-0705

COUNSEL FOR APPELLANT, JULIA REALTY LTD.

Sandra Curtis-Patrick (0027907) (Counsel of Record)
 Assistant Prosecuting Attorney
 Cuyahoga County
 1200 Ontario Street, 8th Floor
 Cleveland, OH. 44113
 (216) 443-7790



COUNSEL FOR APPELLEE, CUYAHOGA COUNTY BOARD OF REVISION

David H. Seed (0066033) (Counsel of Record)
 Brindza McIntyre & Seed, LLP
 1111 Superior Avenue, Suite 1025
 Cleveland, OH. 44114
 (216) 621-5900

COUNSEL FOR APPELLEE, CLEVELAND MUNICIPAL SCHOOL DISTRICT BOARD OF EDUCATION

Notice of Appeal of Appellant Julia Realty LTD.

Appellant Julia Realty LTD., by and through counsel, hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Board of Tax Appeals, entered in case No. 2015-657, 2015-658 on March 14, 2016.

For the following reasons the Board of Tax Appeals judgment was in error:

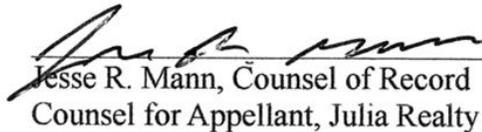
- I. The Board of Tax Appeals did not afford due process to Appellant's constitutional right to have property owned by them to be taxed in accordance with its value in light of the recent *Olentangy Local Schools Bd. Of Edn. v. Delaware Cty. Bd. Of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723 decision.
- II. The Board of Tax Appeals wrongly applied collateral estoppel to the complaints for tax years 2013 and 2014.
- III. The Board of Tax Appeals wrongly determined that the merits of the 2013 sale had already been taken into consideration for purposes of the 2013 and 2014 complaints in the context of the tax-year-2012 complaint.

Respectfully submitted,


Jesse R. Mann, Counsel of Record
Counsel for Appellant, Julia Realty LTD.

Certificate of Service

I certify that a copy of this Notice of Appeal was sent by certified mail to counsel for appellees, Sandra Curtis-Patrick, Assistant Prosecuting Attorney, Cuyahoga County, 1200 Ontario Street, 8th floor, Cleveland, OH. 44113 and David H. Seed, Attorney for Appellee, Cleveland Municipal School District Board of Education, Brindza McIntyre & Seed, LLP, 1111 Superior Avenue, Suite 1025, Cleveland, OH. 44114, on April 11, 2016.


Jesse R. Mann, Counsel of Record
Counsel for Appellant, Julia Realty LTD.

OHIO BOARD OF TAX APPEALS

JULIA REALTY LTD, (et. al.),

CASE NO(S). 2015-657, 2015-658

Appellant(s),

(REAL PROPERTY TAX)

vs.

DECISION AND ORDER

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

Appellee(s).

APPEARANCES:

For the Appellant(s)

- JULIA REALTY LTD
Represented by:
JESSE R. MANN
240 E. WILLIAM STREET
DELAWARE, OH 43015

For the Appellee(s)

- CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

CLEVELAND MUNICIPAL SCHOOL DISTRICT BOARD OF
EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Monday, March 14, 2016

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 properties, parcel numbers 014-18-003, 014-18-004, 014-18-045, 014-18-046 and 014-18-047, for tax year 2013. These matters are now considered upon the notices of appeal, the transcripts certified by the BOR pursuant to R.C. 5717, and the record of the hearing before this board.

The subject properties were initially assessed \$1,023,000 for parcel 014-18-003, \$268,500 for parcel 014-18-004, \$39,500 for parcel 014-18-045, \$39,000 for parcel 014-18-046, and \$38,700 for parcel 014-18-047. On March 4, 2015, the appellant property owner sent a letter to the BOR, which requested that the BOR exercise continuing complaint jurisdiction over the subject properties' values for tax years 2013 and 2014. The BOE filed a counter-complaint, which objected to any reductions to the subject properties' values.

At the hearing before the BOR, both parties were represented by counsel who appeared to submit argument and/or evidence in support of their respective positions. The appellant asserted that the BOR had continuing complaint jurisdiction based upon previously-filed complaints and counter-complaints for tax year 2012, which were not finally decided by this board until February 2, 2015. See, *Julia Realty Ltd. v. Cuyahoga Cty. Bd. of Revision* (Feb. 2, 2015), BTA No. 2013-6048 et seq., unreported. In said decision, we determined that the auction sale upon which the appellant relied was not an arm's-length transaction and, therefore, not the best indication of the subject properties' values for tax year 2012, the first year of the triennial period in Cuyahoga County. At the BOR hearing, the appellant asserted that it wanted to submit the witness testimony that this board said was lacking in the tax year 2012 appeals, based upon recent changes to case law, i.e., *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723, at ¶43 ("when the underlying transaction is an auction or forced sale, the proponent of the sale price bears a heavier burden. *** Accordingly, we likewise adjust the typical burdens of proof with regard to sale prices. Namely, the opponent of a sale price has a very light burden to establish that a transaction was on its face an auction or forced sale. Once that threshold has crossed, then the proponent of the sale price bears the burden to prove that the sale was nevertheless an arm's-length transaction between typically motivated parties and should therefore be regarded as the best evidence of the property's value."). As such, in an effort to satisfy the standard set forth in *Olentangy*, the appellant submitted the testimony of its member, Hahem Nouraldin, who detailed the facts and circumstances of the subject properties' collective transfer for \$367,500 from First States Investors DB I SP, LP in February 2013, and also submitted a copy of an email from the auction website, which provided additional details of the transaction.

The BOE argued that doctrine of claim preclusion (also known as collateral estoppel or res judicata) barred the appellant from relitigating the arm's-length character of the auction sale and continuing complaint jurisdiction did not overcome such bar. Apparent from the record, the BOR members agreed with the BOE's argument as the parties engaged in substantial discussion on this issue. The BOR subsequently issued a decision, which retained the initially assessed values, and these appeals ensued.

At this board's hearing, only the appellant appeared, through counsel, to submit additional argument into the record and to resubmit the email from the auction website because the document was not included in the statutory transcript certified by the fiscal officer.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. 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. However, several factors may render a sale an unreliable indicator of value, e.g., remote from tax lien date, the exchange occurred between related parties, the transfer is considered involuntary, i.e., duress. In instances where a sale has been determined to be an unreliable indicator of value, then "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410, 412.

In these matters, none of the parties dispute the details of the transfer of the subject properties to the appellant in February 2013. The parties differ, however, on whether collateral estoppel bars the appellant from relitigating the arm's-length nature of the transfer. The Supreme Court has previously discussed the applicability of collateral estoppel in ad valorem tax cases. In *Olmsted Falls Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 122 Ohio St.3d 134, 2009-Ohio-2461, the Supreme Court held:

"To be sure, we have acknowledged a narrow range of applicability for the doctrine of collateral estoppel in tax proceedings. See *Superior's Brand Meats, Inc. v. Lindley* (1980), 62 Ohio St.2d 133, 135-136, ***. For purposes of collateral estoppel, the ultimate issue of tax value in one tax year does not constitute the 'same issue' as the ultimate issue of tax value in a

different year. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Dec. 28, 1993), Franklin App. 92AP-1715, ***; accord *Hubbard Press v. Tracy* (1993), 67 Ohio St.3d 564, 565, ***. But the determination in an earlier year of a *discrete factual/legal issue that is common to successive tax years* may bar relitigation of that discrete issue in the later years. *Columbus Bd. of Edn.* *** (owner could not relitigate the issue of the arm's-length character of a particular sale of the property when the owner had litigated and lost that issue on a valuation complaint pertaining to a prior year)." (Emphasis added.) Id. at ¶ 17.

See, also *Residenz, LLC v. Montgomery Cty. Bd. of Revision* (May 2, 2008), BTA No. 2006-A-2246, unreported (this board concluded that collateral estoppel precluded this board from redetermining the arm's-length nature of a sale because we had determined that issue in a prior year's appeal). Furthermore, in *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 36, the court stated: "In *Thompson v. Wing* (1994), 70 Ohio St.3d 176, 183, ***, we stated that collateral estoppel was applicable when the fact or issue (1) was actually and directly litigated in the prior action, (2) was passed upon and determined by a court of competent jurisdiction, and (3) when the party against whom collateral estoppel is asserted was in privity with the party to the prior action." Id. at 41.

Based upon the foregoing, we likewise find that collateral estoppel bars the appellant from relitigating the arm's-length nature of the transfer in February 2013. Both the BOR and this board, tribunals of competent jurisdiction, have previously determined that the subject properties' transfer was not an arm's-length transaction in the appellant's tax year 2012 appeals. See, *Julia Realty*, supra. The appellant, as the party against whom collateral estoppel was asserted, is, therefore, precluded from making the same argument in these tax year 2013 appeals. As a result, in these matters, the only issue properly before the BOR and this board is whether the February 2013 transfer was "recent" to the tax lien date of January 1, 2013. Neither party disputed the recency of the February 2013 transfer. See, generally, *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, 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, at 44 (recency factors include "changes that have occurred in the market").

Even if we had had the opportunity to consider the arm's-length nature of the transfer in February 2013, we would not have accorded any evidentiary weight to the email from the auction website as such email was unreliable hearsay. While this board is not strictly bound by the Ohio Rules of Evidence, documents of the nature submitted, which were offered to prove the value claimed by the appellant, are clearly unreliable hearsay. See, e.g., *Dellick v. Eaton Corp.*, Mahoning App. No. 03-MA-246, 2005-Ohio-566, ¶25 ("Hearsay is an out-of-court statement offered in court to prove the truth of the matter asserted. Evid.R. 801(C). Generally, hearsay is inadmissible. Evid.R. 802.").

We note that the appellant argued violations of the Ohio Constitution or the United States Constitution in advancing these appeals. While the Ohio Supreme Court has authorized this board to accept evidence on constitutional points, it has clearly stated that this board has no jurisdiction to decide constitutional claims. *Cleveland Gear Co. v. Limbach* (1988), 35 Ohio St.3d 229; *MCI Telecommunications Corp. v. Limbach* (1994), 68 Ohio St.3d 195. Therefore, we acknowledge appellant's constitutional claims on appeal, but make no findings in relation to said claim(s).

In reviewing this matter, we are mindful of our duty to independently determine the subject properties' values. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13, 15 (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). As such, we find that collateral estoppel precluded the appellant from relitigating the arm's-length nature of the underlying sale in these matters. In so doing, we affirm the BOR's decision.

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

PARCEL NUMBER

014-18-003

TRUE VALUE

\$1,023,000

TAXABLE VALUE

\$358,050

PARCEL NUMBER

014-18-004

TRUE VALUE

\$268,500

TAXABLE VALUE

\$93,970

PARCEL NUMBER

014-18-045

TRUE VALUE

\$39,500

TAXABLE VALUE

\$13,820

PARCEL NUMBER

014-18-046

TRUE VALUE

\$39,000

TAXABLE VALUE

\$13,650

PARCEL NUMBER

014-18-047

TRUE VALUE

\$38,700

TAXABLE VALUE

\$13,540

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