

IN THE SUPREME COURT

STATE OF OHIO

APPEAL FROM THE BOARD OF TAX APPEALS

STORE MASTER FUNDING VI, LLC, )

Appellant, )

v. )

GROVEPORT MADISON LOCAL )  
SCHOOLS BOARD OF EDUCATION )

Appellee, )

FRANKLIN COUNTY BOARD )  
OF REVISION, FRANKLIN COUNTY )  
AUDITOR, AND TAX )  
COMMISSIONER OF THE STATE OF )  
OHIO, )

Appellees.

SUPREME COURT CASE  
NUMBER: \_\_\_\_\_

16-1328

BOARD OF TAX APPEALS CASE  
NUMBERS 2015-1492 & 2015-1493

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NOTICE OF APPEAL

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SUPREME COURT OF OHIO

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IN THE SUPREME COURT

STATE OF OHIO

APPEAL FROM THE BOARD OF TAX APPEALS

STORE MASTER FUNDING VI, LLC, )

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BOARD OF TAX APPEALS CASE  
NUMBERS 2015-1492 & 2015-1493

The Appellant, Store Master Funding VI, LLC, by and through counsel, hereby gives notice of its appeal to the Supreme Court of The State of Ohio, from a Decision and Order of the Ohio Board of Tax Appeals, rendered on the 9th of August, 2016 a copy of which is attached as "Exhibit A" and which is incorporated herein as though fully rewritten in this Notice of Appeal. The Errors complained of are attached hereto as "Exhibit B", which is incorporated herein by reference.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ryan J. Gibbs', written over a horizontal line.

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EXHIBIT "A"

OHIO BOARD OF TAX APPEALS DECISION AND ORDER  
CASE NOS. 2015-1492 & 2015-1493

**OHIO BOARD OF TAX APPEALS**

STORE MASTER FUNDING VI, LLC, (et. al.),

CASE NO(S). 2015-1492, 2015-1493

Appellant(s),

(REAL PROPERTY TAX)

vs.

DECISION AND ORDER

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

Appellee(s).

**APPEARANCES:**

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Entered Tuesday, August 9, 2016

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

The appellant, Store Master Funding VI, LLC ("Store Master") appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel number 530-166430-00, for tax year 2014. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and any written argument submitted by the parties.

The subject property was initially assessed a true value of \$5,911,600. Both Store Master and the affected board of education ("BOE") filed complaints with the BOR, which requested that the subject property's value be changed. The BOE filed its complaint, first, which requested that the subject property's value be increased to \$6,446,000 to reflect the price at which it transferred in October 2014. Then Store Master filed its complaint, which requested that the subject property's value be decreased to \$1,920,300.

The BOR held a consolidated hearing on the complaints, at which time both parties appeared through counsel to submit argument and evidence in support of their respective positions. The BOE submitted a conveyance fee statement and general warranty deed, which memorialized the \$6,445,959.34 transfer of the subject property from Geneva Exchange Fund XXXVI, LLC, and other entities (collectively "Geneva Exchange"), to Store Master in October 2014. Relying upon the transfer, the BOE requested that the BOR value the subject property consistent with the price at which it transferred. In its presentation, Store Master asserted that the subject sale was not the best indication of the subject property's value because the sale reflected the value of the leased fee interest, not the fee simple interest. Instead, Store Master argued, the subject property should be valued consistent with the report and testimony of appraiser Richard Racek, Jr., MAI, who opined the value of the subject property to be \$2,600,000 as of January 1, 2014. Relying upon its evidence, Store Master amended its opinion of value to \$2,600,000 and requested that the BOR reduce the subject property's value to that value. The BOE argued that Store Master had failed to rebut the presumptions accorded to the subject sale and, as a result, it was inappropriate to rely upon Racek's report and testimony. The BOR subsequently issued a decision, which increased the subject property's value to \$6,446,000, and this appeal ensued. It should be noted that the notice of appeal filed in BTA No. 2015-1493 was duplicative of the notice of appeal filed in BTA No. 2015-1492. As a result, the appeals were consolidated at Store Master's request.

In lieu of attending a hearing before this board, the parties opted to submit written argument in support of their respective positions. In its submission, Store Master argued recent changes to statutory and case law required that the subject property be valued as if unencumbered by a lease and further argued that such value was more accurately reflected by Racek's appraisal report. In its submission, the BOE conversely argued that this board and the Supreme Court frequently reject the argument that the transfer of real property encumbered by a lease was not indicative of value and further argued that recent changes to statutory and case law did not necessitate a different outcome in this matter.

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* 50 Ohio St.2d 129 (1977). 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., LLC v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13. The court reaffirmed its position in *HIN, LLC 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*, 78 Ohio St.3d 325, 327 (1997).

We begin our analysis with the \$6,445,960 transfer of the subject property from Geneva Exchange to Store Master in October 2014. Neither party disputes the arm's-length character, recency or voluntariness of the sale. However, as previously noted, Store Master argued that the sale of October 2014 was reflective of the leased fee interest, not fee simple interest.

Store Master primarily argued that the price reflected on the conveyance fee statement reflected the leased fee interest of the subject property and that the current version of R.C. 5713.03 requires that we value the fee simple interest. We disagree and conclude that the price reflected on the conveyance fee statement reflected the fee simple interest. "The total range of private ownership interests in real property is called the *bundle of rights*, "which includes "the right to sell an interest[;] the right to lease an interest[;] the right to occupy the property[;] the right to mortgage an interest[; and] the right to give an interest away[.]"

(Emphasis in original.) The Appraisal of Real Estate 5 (14th Ed. 2013). Fee simple ownership of real property includes the entire bundle of rights. The record is void of any evidence that the October 2014 sale transferred anything less than fee simple ownership to Store Master or that the seller, Geneva Exchange, retained a reversionary interest in the subject property. At the BOR hearing, Racek testified that by its very definition, "fee simple" only applies to vacant property and cannot apply to real property encumbered by a lease. Although we acknowledge that Store Master has given up "the right to occupy the property," i.e., the subject property is encumbered by a lease, in exchange for rental payments, such right is only one of the bundle of rights of fee simple ownership. The court has recognized "[a] fee simple may be absolute, conditional, or subject to defeasance, but the mere existence of encumbrances does not affect its status as fee simple. Black's Law Dictionary (8th Ed.2004) 648-649." *Meijer Stores L.P. v. Franklin County Bd. of Revision*, 122 Ohio St.3d 447, 2009-Ohio-3479, ¶23, fn. 4. In so doing, in *Meijer*, the court held:

"[T]he possibility of encumbering a property like the one at issue here constitutes -- as a purely factual matter -- one method of realizing the value of legal ownership of the property. See *Cummins Property Servs., LLC v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, \*\*\* ¶27 ('encumbering property typically represents an owner's attempt to realize the full value of the property'); *AEI Net Lease Income & Growth Fund [v. Erie Cty. Bd. of Revision]*, 119 Ohio St.3d 563, 2008-Ohio-5203, \*\*\* ¶ 21 (sale-leaseback, in its totality, constituted an arm's-length transaction in which seller/lessee and buyer/lessor each pursued the objective to realize value of the realty)." (Parallel citations omitted.) *Id.* at ¶ 23.

Moreover, in *HIN, LLC v. Cuyahoga County Bd. of Revision*, 138 Ohio St.3d 223, 2014-Ohio-523, the court held:

"Additionally, HIN relies on *Alliance Towers, Ltd. v. Stark Cty. Bd. of Revision*, 37 Ohio St.3d 16 \*\*\* (1988), in support of its position that we must value the property as if unencumbered by the U.S. Bank lease. In *Alliance Towers*, we stated that '[f]or real property tax purposes, the fee simple estate is to be valued as if it were unencumbered.' *Id.* at paragraph one of the syllabus. In *Cummins*, however, we distinguished *Alliance Towers* because it involved a valuation by appraisal, not the validity of a sale price. *Cummins*, 117 Ohio St.3d 516, 2008-Ohio-1473, \*\*\*, at ¶ 15. We found *Alliance Towers* to be inapposite and affirmed that it would *never* be proper to adjust a recent arm's-length sale price because of an encumbrance." (Emphasis added.) (Parallel citations omitted.) *Id.* at ¶24.

Likewise, we find that it would be improper to adjust the sale price of October 2014 because the subject property was leased.

At the BOR hearing, Racek noted that he appraised the subject property according to his interpretation of Ohio law and stated that real property encumbered by a lease cannot transfer the fee simple interest. In *HIN*, supra, the court considered and rejected assertions similar to Racek's. There, the court stated:

"HIN attempts to refute this precedent by citing general appraisal principles. The appraisal profession defines 'fee simple' as '[a]bsolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.' Appraisal Institute, *Appraisal of Real Estate* 114 (13th Ed.2008). By contrast, when a property is encumbered by a lease, appraisers define the property as a 'leased fee.' *Id.* At the BTA hearing, HIN's witnesses testified to these terms and distinctions.

"But we have already pointed out that these definitions, though no doubt useful for how appraisers understand their assignments, simply do not define the subjects of taxation under Ohio law:

"The distinction between "fee simple" and "leased fee" is one drawn in the context of appraisal practice. The appraisal industry uses the term "fee simple" to refer to unencumbered property—or to property appraised as if it were unencumbered. This distinction is not one recognized by the law, however. A "fee simple" may be absolute, conditional, or subject to defeasance, but the mere existence of encumbrances does not affect its status as fee simple. (Citations omitted.) *Meijer Stores Ltd. Partnership v. Franklin Cty. Bd. of Revision*, 122 Ohio St.3d 447, 2009-Ohio-3479, \*\*\*, ¶23, fn. 4. Accordingly, the appraisal-profession standards espoused by HIN's experts do not alter our legal analysis." (Parallel citation omitted.) *Id.* at ¶22-23.

Similarly, we conclude that Racek erroneously interpreted Ohio law and that such interpretation is irrelevant to our analysis.

Furthermore, we also reject Store Master's argument that changes to the language of R.C. 5713.03 grants discretion to this board and to boards of revision to determine whether to adopt sales to determine the value of real property. As noted above, 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.*, *supra* at 327. 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 statute 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. 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.

Likewise, we reject Store Master's argument that R.C. 5713.03 and recent cases from the Supreme Court require that we disregard the subject sale. See, *Steak 'n Shake v. Warren Cty. Bd. of Revision*, Slip Opinion 2015-Ohio-4836; *Rite Aid of Ohio, Inc. v. Washington Cty. Bd. of Revision*, Slip Opinion 2016-Ohio-371. In those cases, the court specifically discussed the appropriateness of adjusting *comparable* sales of the leased fee interest to reflect the market in which a property unencumbered by a lease would compete, in the context of appraisals. See also *Lowe's Home Ctrs., Inc. v. Washington Cty. Bd. of Revision*, Slip Opinion No. 2016-Ohio-372. That is not the case in this matter and we see no reason to stray from the court's previous holdings. We conclude, therefore, that the value provided on the conveyance fee statement, which memorialized the October 2014 transaction, reflected the value of the fee simple interest. See *Cummins*, *supra*, at ¶18 ("the arm's-length sale price of a legal fee interest should not be adjusted on account of the mere existence of an encumbrance").

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In so doing, we find that Store Master failed to rebut the presumptions accorded to the \$6,445,960 transaction of October 2014. Absent an affirmative demonstration that such sale was not a qualifying sale for tax valuation purposes, we find that it was a recent, arm's-length sale upon which we rely to determine the subject property's value for tax year 2014. We also find the transfer of the subject

property from a number of sellers who owned the subject property as tenants-in-common does *not* rebut the presumption that the subject sale was a recent, arm's-length transaction indicative of the subject property's value.

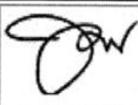
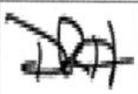
Because we have concluded that \$6,445,960 transaction of October 2014 is the best indication of the subject property's value as of January 1, 2014, we will not consider Racek's appraisal report. "It is only when the purchase price does not reflect the true value that a review of independent appraisals based upon other factors is appropriate. *Ratner v. Stark Cty. Bd. of Revision*, 23 Ohio St.3d 59 (1986), \*\*\*." *Pingue v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St.3d 62, 64. See, also, *Cummins*, supra at ¶23 ("[W]e erred \*\*\*when we authorized the use of appraisals to adjust the price set in a recent, arm's-length transaction. To do so places the cart (appraisal) before the horse (an actual arm's-length sale)." Additionally, "the mere fact that an expert has opined a different value should not be deemed sufficient to undermine the validity of the sale price as the property value." *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2016-Ohio-757, ¶20.

It is therefore the order of this board that the subject property's true and taxable values, as of January 1, 2014, are as follows:

TRUE VALUE: \$6,445,960

TAXABLE VALUE: \$2,256,090

It is the order of the Board of Tax Appeals that the subject property be assessed in conformity with this decision and order.

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

## EXHIBIT "B"

### ASSIGNMENT OF ERRORS

#### ASSIGNMENT OF ERROR NO. 1

The Board of Tax Appeals' decision and order adopting a sale of the leased fee interest as the true value of the real property defies the plain language of §5713.03 of the Ohio Revised Code, which requires that properties be valued in the fee simple interest, *as if unencumbered*.

#### ASSIGNMENT OF ERROR NO. 2

The Board of Tax Appeals' failure to adjust the leased fee sale price when presented with un-rebutted evidence of the real estate's fee simple value is unreasonable and unlawful.

*Steak 'N Shake, Inc., N.K.A Steak 'N Shake Operations, Inc. v. Warren Cty. Bd. of Revision, et al., 2015-Ohio-4836, Rite Aid of Ohio, Inc. v. Washington County Board of Revision, et al., 2016-Ohio-371, Lowe's Home Centers, Inc. v. Washington County Bd. of Revision, et al., 2016-Ohio-372.*

#### ASSIGNMENT OF ERROR NO. 3

The Board of Tax Appeals' decision and order rejecting the Racek appraisal, the only evidence in the record of the subject's fee simple value, and instead relying on a leased fee sale to determine true value is unreasonable and unlawful.

#### ASSIGNMENT OF ERROR NO. 4

The Board of Tax Appeals' determination "that the price reflected on the conveyance fee statement reflected the fee simple interest" was against the manifest weight of the evidence.

#### ASSIGNMENT OF ERROR NO.5

The Board of Tax Appeals' determination "that the price reflected on the conveyance fee statement reflected the fee simple interest" was arbitrary and capricious.

#### ASSIGNMENT OF ERROR NO. 6

The Board of Tax Appeals' interpretation of R.C. 5713.03 as amended is unreasonable and unlawful.

#### ASSIGNMENT OF ERROR NO. 7

The Board of Tax Appeals' decision and order rejecting un-rebutted appraisal evidence proving the sale did not reflect the real estate's fee simple value is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 8

The Board of Tax Appeals' decision and order violates the Ohio Constitution's mandate of uniform assessment. Article XII, Section 2.

ASSIGNMENT OF ERROR NO. 9

The Board of Tax Appeals' decision and order violates the Equal Protection clauses under Article I, Section 2 of the Ohio State Constitution and the Fourteenth Amendment of the United States Constitution by applying the definition of fee simple, and interpreting §5713.03 of the Ohio Revised Code, in a manner that discriminates against certain taxpayers.

ASSIGNMENT OF ERROR NO. 10

The Board of Tax Appeals' decision cannot stand as a matter of law because it's reliance on, and interpretation of, *Meijer* is wholly contravened by the plain and unambiguous language of §5713.03 as revised. *Meijer Stores Ltd. Partnership v. Franklin Cty. Bd. of Revision*, 122 Ohio St.3d 447, 2009-Ohio-3479.

**CERTIFICATE OF SERVICE**

A copy of the foregoing *Notice of Appeal* was filed this 7 day of September, 2016, by personal service upon:

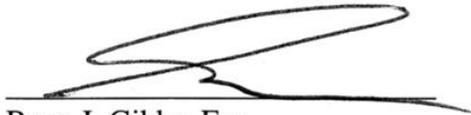
The Ohio Board of Tax Appeals  
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A copy of foregoing *Notice of Appeal* was served this 7 day of September, 2016, by certified mail upon:

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