OHIO BOARD OF TAX APPEALS

WSL, LLC,	)	CASE NO. 2006-A-2361
	)	
Appellant,	)	(REAL PROPERTY TAX)
	)	
vs.	)	DECISION AND ORDER
	)	
Franklin County Board of Revision,	)	
Franklin County Auditor, and Board	)	
of Education of the Worthington City	)	
Schools District,	)	
	)	
Appellees.	)	

APPEARANCES:

For the Appellant	- Jones & Ryan Grey W. Jones 529 South Third Street Columbus, Ohio 43215
For the County Appellees	- Ron O'Brien Franklin County Prosecuting Attorney William J. Stehle Assistant Prosecuting Attorney 373 South High Street, 20th Floor Columbus, Ohio 43215
For the Appellee Bd. of Edn.	Rich, Crites & Dittmer, LLC Mark H. Gillis 300 East Broad Street, Suite 300 Columbus, Ohio 43215

Entered January 13, 2009

Ms. Margulies, Mr. Eberhart, and Mr. Dunlap concur.

This cause and matter came on to be considered by the Board of Tax Appeals upon a notice of appeal filed herein by the above-named appellant from a

decision of the Franklin County Board of Revision. In said decision, the board of revision determined the taxable value of the subject property for tax year 2005.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to this board by the county board of revision, the record of the testimony and evidence presented at a hearing before this board, and the briefs filed by counsel to the appellant and appellee board of education.

The subject real property, a commercial garage building utilized as an oil change business, is located in the city of Worthington-Worthington City School District taxing district, Franklin County, Ohio. The value of the parcel, #100-002147, as determined by the auditor and by the board of revision, is as follows:

AUDITOR

	TRUE VALUE	TAXABLE VALUE
Land	$ 149,600	$ 52,360
Bldg	90,400	31,640
Total	$ 240,000	$ 84,000

BOARD OF REVISION

	TRUE VALUE	TAXABLE VALUE
Land	$ 149,600	$ 52,360
Bldg	620,400	217,140
Total	$ 770,000	$ 269,500

The appellant property owner contends that the board of revision has overvalued the parcel in question by relying upon the sale of the subject on December 28, 2005 from Heartland Automotive Services II to appellant WSL, LLC (hereinafter "WSL") as an indicator of its value. The property owner, in essence, contends that the sale of the subject was not arm's length, and, as such, the value of the subject should

be “closer to $500,000,” (Brief at 1), that which was determined by appellant’s appraiser ($520,000).

Before turning to the merits of the instant matter, we will review how this case came to this board on appeal. Specifically, the Board of Education of the Worthington City Schools filed an original complaint against the valuation of the subject property with the Franklin County Board of Revision seeking to increase the subject’s value to reflect its sale price obtained in December 2005. A counter-complaint was filed by the property owner, seeking a valuation of $525,000. It appears that the board of revision increased the valuation of the subject property to reflect the $810,000 sale price for the real estate alone, minus $40,000 attributable to personal property, or $770,000.[1] The property owner, dissatisfied with the BOR’s decision, appealed such determination to this board.

At the outset, we note the decisions in *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336, 337, and *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, 495, wherein the Supreme Court held that an appealing party has the burden of coming forward with evidence in support of the value which it has claimed. Once competent and probative evidence of true value has been presented, the opposing parties then have a corresponding burden of providing evidence which rebuts appellant’s evidence of

[1] Based upon notations on the BOR hearing worksheet (Ex. 5) and statements made by the BOR regarding its decision on the audio recording of the hearing (Ex. 11), it appears that a $40,000 deduction for personal property was inadvertently made to the reported $810,000 price of the real estate only, instead of the total $850,000 sale price.

value. Id.; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318, 319.

As we consider the valuation question before us, we acknowledge that R.C. 5713.03 provides, in pertinent part, that:

> "In determining the true value of any tract, lot, or parcel of real estate under this section, if such tract, lot, or parcel has been the subject of an arm's length sale between a willing seller and a willing buyer within a reasonable length of time, either before or after the tax lien date, the auditor shall consider the sale price *** to be the true value for taxation purposes."

The Ohio Supreme Court has consistently held that the best evidence of true value of real property is an actual, recent, arm's-length sale. Specifically, in *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979, the Supreme Court held "that when the property has been the subject of a recent arm's-length sale between a willing seller and a willing buyer, the sale price of the property shall be 'the true value for taxation purposes.' R.C. 5713.03." *Berea*, at 5. See, also, *Zazworsky v. Licking Cty. Bd. of Revision* (1991), 61 Ohio St.3d 604; *Hilliard City School Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio St.3d 57; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. 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." *Walters v. Knox County Bd. of Revision* (1988), 47 Ohio St.3d 23.

It is also well established that when a sale occurs, there is a rebuttable presumption the sale price reflects the true value of the property in question. Consequently, a rebuttable presumption extends to all of the requirements which characterize true value. It is then the burden of the party who claims that a sale is other than arm's-length to counter such presumption. However, the burden of persuasion does not change, as it is still on the appealing party to establish, through the presentation of competent and probative evidence, a different value than that found by the board of revision. See *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325; *Bd. of Edn. of the Columbus City School District v. Franklin Cty. Bd. of Revision* (Nov. 28, 1997), BTA No. 1996-S-93, unreported.

Initially, we have reviewed the evidence of sale of the subject, including the deed and conveyance fee statement, the asset purchase agreement, and the settlement statement, as well as the testimony of the principals involved in the purchase. S.T., Ex. 7 at A, B, 4, 5; H.R.

At the hearing before this board, Mr. Swan, the sole member of the limited liability company owner, and his wife, Mrs. Swan, testified to the circumstances surrounding the purchase of the subject. Specifically, Mrs. Swan indicated that she and her husband had been looking for a business to purchase that her husband would be able to run, taking into consideration the health-related issues from which he suffered that restricted the types of daily activities in which he could engage. H.R. at 12. After looking for about two years, Mr. and Mrs. Swan purchased a Sprint Lube oil change facility, including the real estate, personal property, and ongoing

business. H.R. at 22, 47. Mr. Swan negotiated the purchase, without benefit of counsel, in the amount of $850,000. H.R. at 23. Within the asset purchase agreement, as signed by Mr. Swan, the purchase price is allocated between $30,100 for personal property and equipment, goodwill and intangibles of $94,000, and real estate of $725,900. S.T., Ex. 7-4 at 27. The price, as allocated, was determined by the seller. H.R. at 38. However, on the closing statement, as signed by Mr. Swan, there is an indication that $40,000 of the $850,000 purchase price was attributable to personal property, with no other deductions from the purchase price for non-real estate items. S.T. at Ex. 7-5. The conveyance fee statement also reflects a real estate purchase price of $810,000; however, Mr. Swan disputes that he signed such document. S.T., Ex. 7-B; H.R. at 48.

In consideration of the foregoing, we must first evaluate whether all of the elements of an arm's-length transaction have been met. First, with regard to whether the subject sale took place in an open market, Mr. and Mrs. Swan testified that they searched for a business investment for about two years before finding the subject property, for sale, via searches they performed on their computer from their then home, in Florida. H.R. at 12-13. In fact, there has been no suggestion by any party hereto that the subject sale did not occur on the open market. Therefore, we find that the sale under consideration took place on the open market.

Further, WSL contends that it acted out of duress when it purchased the subject, and, as such, did not act voluntarily. However, we find no evidence of such level of duress in the record. In *Lakeside Avenue Ltd. Partnership v. Cuyahoga Cty.*

Bd. of Revision (1996), 75 Ohio St.3d 540, the Supreme Court held that certain compelling business circumstances were sufficient to establish that a recent sale was not arm's length or representative of true value. The court found from the evidence the purchase price was not negotiable and the purchaser's only choice was between the purchase of the property and corporate death. See, also, *Columbus Bd. of Edn. v. Grange Mutual Casualty Co.* (Jan. 28, 1992), Franklin App. No. 90AP-317, unreported; *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Sept. 29, 1992), Franklin App. No. 92AP-281, unreported. But compare *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (Jan. 30, 1998), BTA No. 1996-A-986, unreported, where this board relied upon the presumption, finding the property owner did not establish that he entered into a sale agreement under duress, but only purchased a particular property for competitive business reasons.

Herein, appellant's counsel stated the following:

> "In Appellant's situation, the transaction between Appellant and Heartland was one with distinctly uneven bargaining power. Heartland is a large business which offered the Property to Appellant on a take it or leave it basis with a price that was not subject to negotiation. Appellant was without legal representation and could not revise any of the contractual provisions." Brief at 4.

Counsel went on to also suggest that due to Mr. Swan's ongoing medical condition, he acted under "mental duress" when signing the Asset Purchase Agreement.

In contrast to the foregoing statements, Mrs. Swan testified that the purchase price was negotiated by Mr. Swan, taking into consideration "formulas" for determining the appropriate amount to offer based upon potential earnings/profits.

H.R. at 23-26. Mrs. Swan also indicated that she and her husband could have opted out of the contract to purchase if they were not satisfied with anything as a result of an inspection, but they did not do so. H.R. at 36. No one forced the Swans to proceed without counsel in the transaction or to proceed to close on the property, and there is nothing in the record to suggest that they had to purchase the subject property because there was no other property to purchase that would satisfy their needs.

The facts in *Lakeside*, supra, are clearly distinguishable. In *Lakeside*, the compulsion or duress the property owner felt was caused by the owner's dire financial straits which caused it to agree to a non-negotiable sales price in order to save its business, regardless of the fact that the price was well beyond that which the market dictated. In this matter, the purchase contract terms were voluntarily agreed to by the property owner and there has been no demonstration that the purchase price was not reflective of the market.[2] We find nothing in the record before us to indicate that the sale price paid by WSL was not reached voluntarily, with Mr. Swan acting on behalf of WSL in his own self interest in making his own business decisions. Considering the information provided, there is not sufficient, competent and probative evidence before us which could support a finding that WSL was in any way required to purchase the property under compelling circumstances which would have made the price paid unreflective of true value. *Lakeside*, supra.

[2] We note that the subject property was sold in October 2004, approximately fifteen months prior to the instant sale, for the amount of $725,900. This board has recognized such sale as the best evidence of value of the subject for tax year 2004. See *Bd. of Edn. of the Worthington City Schools v. Franklin Cty. Bd. of Revision* (Sept. 28, 2007), BTA No. 2005-K-1564, unreported.

Finally, in considering whether such sale can be considered recent enough to be indicative of the value of the subject, we note that the Supreme Court has recognized that a sale may be considered recent for purposes of R.C. 5713.03 even though the sale occurs months either before or after tax lien date. See *R.R.Z. Associates v. Cuyahoga Cty. Bd. of Revision* (1988), 35 Ohio St.3d 198; *Hilliard City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio St.3d 57; *W.S. Tyler Co. v. Lake Cty. Bd. of Revision* (1991), 57 Ohio St.3d 57. Clearly, the instant sale, which occurred within twelve months of the tax lien date under consideration, constitutes a recent sale.

Thus, based upon the foregoing, this board finds that the subject sale had all the indicia of, and consequently was, an arm's-length sale. While appellant claims that the subject's value is something less than the full sale price due to deductions that it claims should be made for the value of the ongoing business and personal property that were part of such purchase price, there is little evidence in the record to support such contentions. When asked what was paid for the real estate only, appellant's witness could only give estimations and approximations, based upon the tax values of neighboring businesses that appellant deemed to be comparable to the subject.[3] Arguably, then, no allocations of the sale price were ever negotiated and agreed upon

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[3] With regard to the information provided by appellant regarding the valuations of neighboring properties, we have previously found such reliance upon taxable values assigned to other properties unpersuasive. See *Benit v. Delaware Cty. Bd. of Revision* (Mar. 18, 1994), BTA No. 1993-B-722, unreported; *Henry W. Haydu v. Portage Cty. Bd. of Revision* (June 18, 1993), BTA No. 1992-H-576, unreported. *Caron v. Hamilton Cty. Bd. of Revision* (Aug. 27, 1993), BTA No. 1992-B-879, unreported. See, also, *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision* (1996), 76 Ohio St.3d 29, 31 ("Merely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner.").

by the parties to the sale. In fact, Mr. Swan testified before the BOR that he was only worried about the total price to be paid and he did not worry about any allocations of the price that the seller included in the sale documents. S.T., Audio Disc. Therefore, without written agreements or other documents confirming an amount other than that which is in the record, we can only make a deduction of $40,000 for the personal property included in the sale.

Accordingly, we find that the price paid by the property owner for the subject property represents the true value of the property for tax year 2005. The property owner did not meet its burden of proving that the sale was not arm's length, and, as such, the value of the subject for tax year 2005 shall be $810,000,[4] based upon the listed sale price of the real estate in the closing statement and conveyance fee statement,[5] specifically:

	TRUE VALUE	TAXABLE VALUE
Land	$ 149,600	$ 52,360
Bldg	660,400[6]	231,140
Total	$ 810,000	$ 283,500

Having determined that the sale under consideration constitutes an arm's-length transaction, we need not consider the appraisal evidence offered by the property owner. See *Berea*, supra. Thus, it is the decision and order of the Board of Tax

[4] Although the asset purchase agreement lists a value of the real estate as $725,900, that number is not reflected in any of the other sale documents before this board. In addition, the appellant disputes the accuracy of the figures utilized in the asset purchase agreement, indicating it is not known how the allocation was determined. H.R. at 38; Brief at 4. Accordingly, we will rely upon the information contained in the closing statement and conveyance fee statement.

[5] We acknowledge that Mr. Swan testified that he did not sign the conveyance fee statement, but it has not been disputed that he signed the closing statement, which reflects the same value paid for the real estate as that listed on the conveyance fee statement.

[6] Consistent with the action taken by the BOR, we have attributed the increase in value to the improvements.

Appeals that the Franklin County Auditor shall list and assess the subject property in conformity with this decision.

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