

**OHIO BOARD OF TAX APPEALS**

Massillon City School District	)	CASE NO. 2007-M-1789
Board of Education,	)	
	)	(REAL PROPERTY TAX)
Appellant,	)	
	)	DECISION AND ORDER
vs.	)	
	)	
Stark County Board of Revision, the	)	
Stark County Auditor, and	)	
Thomas & Alexandra Williams,	)	
	)	
Appellee.	)	

APPEARANCES:

For the Appellant	- Means, Bichimer, Burkholder & Baker Co., L.P.A. Robert M. Morrow 2006 Kenny Road Columbus, Ohio 43221
For the County- Appellees-	John D. Ferrero Stark County Prosecuting Attorney David M. Bridenstine Assistant Prosecuting Attorney 110 Central Plaza S., Suite 510 Canton, Ohio 44701
For the Appellee Complainants	Thomas & Alexandra Williams, pro se 5029 W. Blvd. NW Canton, Ohio 44718
For the Property Owner -	Michael P. Zirpolo, Jr. Trustee <sup>1</sup> 40 Lincoln Way E. Massillon, Ohio 44646

Entered June 23, 2009

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

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<sup>1</sup> Pursuant to R.C. 5717.05, the Board of Tax Appeals is required to send notice of its determination to the owner of the property. As the property record card submitted with the statutory transcript indicates title is held in the name of "Michael P. Zirpolo, Jr., Trustee," a copy of the decision will be mailed to him.

This appeal is before the Board of Tax Appeals as a result of a “motion to remand” filed by the appellant, Massillon City School District Board of Education (“BOE”). The BOE seeks a remand of this appeal to the Stark County Board of Revision (“BOR”), with instructions to dismiss the underlying complaint, which was the origin of this appeal. The BOE claims that the complaint should have been dismissed by the BOR because it was improperly prepared and did not vest jurisdiction with that body. The matter is considered upon the notice of appeal, the statutory transcript certified by the Stark County Auditor as secretary of the BOR, and the BOE’s motion to dismiss. There has been no response from the appellees.

The complaint which was the genesis of this matter identified the owner of the property as “Thomas & Alexandra Williams.” S.T., Complaint filed by Thomas & Alexandra Williams. As the BOE points out, the property record card identifies the owner of the property as “Michael P. Zirpolo, Jr., Trustee.” S.T., Ex. C. Because the owner of the property is not properly listed on line one of the complaint filed with the BOR, the BOE claims that the matter should have been dismissed by that body. Instead, the BOR accepted jurisdiction and reduced value.

It is well settled that in order for a complaint to be valid, it must include all information that goes to the core of procedural efficiency. *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision* (1998), 80 Ohio St.3d 591; *Trotwood-Madison City School Dist. v. Montgomery Cty. Bd. of Revision* (June 30, 1997), BTA No. 1995-S-1282, unreported; *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of*

*Revision* (Dec. 18, 1998), BTA No. 1998-J-481, unreported, reversed on other grounds, (2000), 87 Ohio St.3d 363; *Ritz Carlton Hotel Partnership v. Cuyahoga Cty. Bd. of Revision* (May 11, 2001), BTA No. 1998-L-355, unreported. Core jurisdictional information must be provided to the county board of revision through the complaint so that the auditor may fulfill the statutory notice obligations imposed on that office. *Cleveland Elec. Illum. Co.*, supra.

A complaint must name at least one owner of the property on the face of the complaint form in order to satisfy the core jurisdictional requirements. *City of Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*. (Jan. 22, 1999), BTA No. 1998-L-138, unreported; *Trotwood-Madison City School Dist.*, supra; *Cedar Heights Co. v. Cuyahoga Cty. Bd. of Revision* (July 20, 2001), BTA Nos. 2000-J-1714, 2002-J-1774. The issue in this appeal, therefore, is whether the line one of the complaint names at least one property owner.

At the BOR hearing held in this matter, Barbara Williams appeared on behalf of the complainants. She explained that she was the mother of “Tommy and Alex” and, when prompted, indicated that she was also the mother of “Mike Zirpolo, the Trustee.” S.T. Ex. D at 1. When questioned by counsel for the BOE, the following exchange took place:

“[Counsel for the BOE] MORROW: Who owns the property?”

“WILLIAMS: My daughter and my son.”

“[County Auditor’s Representative] GREEN: Who is Michael Zirpolo, Trustee?

“WILLIAMS: We had to get that adjusted because both my children have turned 18.

“MORROW: But it is owned by a Trustee?

“WILLIAMS: Yes

“MORROW: And the Trustee I assume was the one that purchased the property from your mother’s estate. Is that what you were saying?

“WILLIAMS: Correct.

“MORROW: So Thomas and Alexandra have never owned the property.

“WILLIAMS: It’s in their names.

“MORROW: It is in the Trustee’s name.” S.T., H.R., 3-4.

The property record card and the testimony at hearing evidence that title to the property is vested in a trustee of a trust. Apparently, the beneficial owners of the trust are the Williams children, Thomas and Alexandra. However, the trustee is not named on line 1 of the complaint and the beneficial owners are. The critical issue in the instant appeal, therefore, is whether the beneficial owners of a trust can legally qualify as “owners” for purposes of filing a real property complaint.

In making this determination, we must look to the Ohio Supreme Court’s holding in *Columbus City School Dist. Bd. of Edn. v. Wilkins*, 106 Ohio St.3d 200, 2005-Ohio-4556, for guidance. Therein, the court considered the significance of

properly naming an owner of property where the property was held in trust; the legal titleholder of the property was “Columbus State Community College District, Trustee” and “Columbus State Community College District” was reflected as the applicant on an application for exemption from real estate taxes. *Id.* at ¶12. R.C. 5715.27 governs the filing of an application for exemption from real estate taxes and provides that “the *owner* of any property may file an application with the tax commissioner, on forms prescribed by the commissioner, requesting that such property be exempted from taxation \*\*\*.” (Emphasis added).

In *Columbus City School Dist. Bd. of Edn.*, *supra*, the Ohio Supreme Court distinguished the manner in which real property is titled when the property is held in trust. Citing its earlier decision in *Goralsky v. Taylor* (1991), 59 Ohio St.3d 197, 198, the court stated, “In a trust, the trustee (*and not the beneficiary*) holds legal title to the trust corpus.” *Columbus City School Dist. Bd. of Edn.*, *supra*, at ¶11. (Emphasis added.) See, also, *Victoria Plaza Ltd. Liab. Co. v. Cuyahoga Cty. Bd. of Revision* 86 Ohio St.3d 181, 1999-Ohio-148 (to be the owner of real property, the person must hold legal title to the property, not simply an equitable interest in the property).

The issue presented in the instant appeal, whether the listing of beneficial owners of real property on a real property valuation complaint properly invokes the jurisdiction of a board of revision has been considered by this board. See *Brennan v. Franklin Cty. Bd. of Revision* (Oct. 19, 2007), BTA No. 2006-Z-1163,

unreported; *Brown v. Montgomery Cty. Bd. of Revision* (Nov. 2, 2007), BTA No. 2006-V-1753, unreported; *Simia v. Cuyahoga Cty. Bd. of Revision* (Mar. 7, 2008), BTA No. 2007-A-564, unreported. In each of these appeals, we found that the complaints failed to invoke the jurisdiction of the board of revision since the legal titleholder to the property, the trustee, had not been properly identified on line one of the complaint.

In the present matter, the board finds that the owners named on line one of the complaint, Thomas and Alexandra Williams, were beneficial owners of the property titled in the name “Michael Zirpolo, Trustee.” As “Michael Zirpolo, Trustee” was nowhere to be found on the face of the complaint, we must conclude that jurisdiction failed to vest in the BOR, as a critical element was lacking in the complaint filed with that body.

The board recognizes the harshness of this result. However, as we have stated in the past:

“Although this seems like a harsh result, the Board of Tax Appeals, an administrative body, must follow the law as written and does not have the equity power to change even what may be perceived to be an unjust result. *Leiphart Lincoln-Mercury, Inc. v. Bowers* (1958), 107 Ohio App. 259; *Columbus Southern Lumber Co. v. Peck* (1953), 159 Ohio St. 564; *Steward v. Evatt* (1944), 143 Ohio St. 547.” *Martell v. Stark Cty. Bd. of Revision* (Sept. 23, 2008), BTA No. 2008-N-39, unreported, at fn. 3.

Given the fact that the complaint did not identify the owner of the property, the Board of Tax Appeals must find that the BOR erred when it retained

jurisdiction and reduced the value of the subject property. The matter is remanded to the BOR with instructions to dismiss the complaint and reinstate the auditor's values.

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