

OHIO BOARD OF TAX APPEALS

Edward C. Bargerstock, Trustee)
Julie A. Bargerstock, Trustee,)
Appellants,)
vs.)
Summit County Board of Revision and)
the Summit County Fiscal Officer,)
Appellees.)

CASE NO. 2008-M-1450
(REAL PROPERTY TAX)
DECISION AND ORDER

APPEARANCES:

For the Appellants- Michael R. Pfahl, Esq.
2578 Woodward Road
Cuyahoga Falls, Ohio 44221

For the County- Sherri Bevan Walsh
Appellees Summit County Prosecuting Attorney
Marvin D. Evans
Assistant Prosecuting Attorney
220 South Balch Street, Suite 118
Akron, Ohio 44301

Entered January 27, 2009

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

The above-captioned appeal is now considered by the Board of Tax Appeals pursuant to a “motion to dismiss” filed by the Summit County Board of Revision (“BOR”). The BOR seeks an order from this board dismissing the above-captioned matter on the grounds that the underlying complaint which originally initiated these proceedings is a second filing within a single triennium.

The relevant interim period for Summit County covered 2005, 2006, and 2007. The BOR asks this board to take note of its own docket, specifically, *Edward*

and Julie Bargerstock, Trustees v. Summit Cty. Bd. of Revision, BTA No. 2007-T-788, currently pending before this body. That case challenges value for tax year 2006, based upon a complaint filed by Edward and Julie Bargerstock, Trustees, and concerns the same property challenged in the present appeal.

The complaint filed with the BOR in the present appeal acknowledged that a prior complaint on the same parcel had been filed. In response to question 14, which asks “If you have filed a prior complaint on this parcel since the last reappraisal or update of property values in the county, the reason for the valuation change requested must be one of those below. Please check all that apply ***,” the box next to “The property was sold in an arm’s length transaction” was checked. The sale was also disclosed under question 10, which seeks information regarding any sale of the property within the last three years. A sale taking place on “11/20/2006” and a sale price of “\$200,000” were disclosed. S.T., Complaint.

R.C. 5715.19(A)(2), which permits a second filing within a triennial period, provides, in pertinent part:

“No person, board, or officer shall file a complaint against the valuation or assessment of any parcel that appears on the tax list if it filed a complaint against the valuation or assessment of that parcel for any prior tax year in the same interim period, unless the person, board, or officer alleges that the valuation or assessment should be changed due to one or more of the following circumstances that occurred after the tax lien date for the tax year for which the prior complaint was filed and *that the circumstances were not taken into consideration with respect to the prior complaint*:

“(a) The property was sold in an arm’s length transaction, as described in section 5713.03 of the Revised Code;

“(b) The property lost value due to some casualty;

“(c) Substantial improvement was added to the property;

“(d) An increase or decrease of at least fifteen per cent in the property’s occupancy has had a substantial economic impact on the property.” (Emphasis added.)

The complaint contesting value for the 2007 tax year indicated that the property was sold in an arm’s-length transaction. However, the complaint contesting value for the 2006 tax year similarly included information regarding the sale taking place on November 20, 2006.¹ The board infers from the disclosure of the sale that the transaction was considered in the earlier valuation challenge. Therefore, the identification of the same transaction does not serve to validate the later complaint. *Pramukh, Inc. v. Cuyahoga Cty. Bd. of Revision* (May 26, 2000), BTA No. 2000-N-87, unreported; *Prudential Insurance Co. of America v. Cuyahoga Cty. Bd. of Revision* (Dec. 4, 1998), BTA No. 1998-J-61, unreported.

The BOR was faced with a complaint identifying the same sale that had been considered in an earlier complaint within the same triennium. The BOR should have dismissed the complaint before it as violative of R.C. 5715.19(A)(2), with no applicative exception. Therefore, this board will construe the BOR’s motion to dismiss as a motion to remand and order the matter remanded to the BOR with instructions to dismiss the appeal for lack of jurisdiction.

¹ Counsel for the BOR did not attach a copy of the complaint filed in the 2006 valuation challenge. In the present case, this failure is not significant as the 2006 valuation challenge remains an active appeal. However, the better practice is to attach a certified copy of the earlier complaint when challenging jurisdiction under R.C. 5715.19(A)(2).

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