

**OHIO BOARD OF TAX APPEALS**

Lakota Local School District Board of Education, )  
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 )  
 Appellant, )  
 )  
 vs. )  
 )  
 Butler County Board of Revision, Butler )  
 County Auditor, and BGB Investments, )  
 LLC, )  
 )  
 Appellees. )

CASE NOS. 2008-Z-1586  
2008-Z-1587  
2008-Z-1588

(REAL PROPERTY TAX)

ORDER

(Granting Motion to Compel  
Discovery and Denying  
Motion to Dismiss)

APPEARANCES:

For the Appellant  
Bd. of Edn. - Ennis, Roberts & Fischer, Co., L.P.A.  
Gary T. Stedronsky  
1714 West Galbraith Road  
Cincinnati, Ohio 45239

For the County  
Appellees - Robin N. Piper  
Butler County Prosecuting Attorney  
Bob C. Roberts  
Assistant Prosecuting Attorney  
P.O. Box 515  
Hamilton, Ohio 45012-0515

For the Appellee  
Property Owner - Strauss & Troy, LPA  
Jason D. Tonne  
The Federal Reserve Building  
150 East Fourth Street  
Cincinnati, Ohio 45202

Entered June 23, 2009

This cause and matter came on to be considered by the Board of Tax Appeals upon a motion to compel discovery filed by the appellant Lakota Local

School District Board of Education (“BOE”) wherein the BOE moved this board to issue an order compelling the appellee property owner, BGB Investments, LLC, to provide responses to interrogatories and to comply with the BOE’s request for the production of documents.

In its motion, the BOE indicated that it served upon the property owner interrogatories and a request for production of documents on September 30, 2008.<sup>1</sup> Appellant’s Motion to Compel at 1; Ex. A. In the BOE’s September 30, 2008 letter accompanying the interrogatories and request for production of documents, counsel for the BOE explains:

“\*\*\* I am required by the Ohio Rules of Civil Procedure to provide you with an electronic version of these discovery requests. At your earliest convenience, please notify me of an e-mail address that I may send these discovery requests to electronically.” Appellant’s Motion to Compel at Ex. A.

Counsel for the BOE goes on to explain that pursuant to the above request, the property owner contacted him and provided him with an email address to which an electronic version of the discovery requests could be forwarded. Appellant’s Reply to Appellee’s Memorandum in Opposition to Motion to Compel at 6. Counsel for the BOE proceeded to forward an electronic version of the BOE’s discovery requests to the property owner at said email address on October 1, 2008. Id; Appellant’s Motion to Compel at Ex. B. Thereafter, by way of letter dated November 6, 2008, the BOE requested that the property owner comply with its earlier discovery

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<sup>1</sup> In its motion to compel discovery, the BOE indicated that it served its discovery requests on the property owner on September 20, 2008. Upon review of the exhibits attached to the BOE’s motion, this board notes that the cover letter which accompanied the interrogatories and request for production

requests, since no responses had been received. Appellant's Motion to Compel at Ex. C.

In a letter dated November 10, 2008, counsel for the property owner notified counsel for the BOE of his representation of the property owner in the instant appeals and requested that all future communications be directed to his attention. Appellant's Motion to Compel at Ex. D. Also, in said letter, counsel for the property owner indicated that he had signed the counter-complaints filed by the property owner with the board of revision and represented the property owner in the hearing before the board of revision. *Id.* Counsel for the property owner goes on to argue that notwithstanding such indications that the property owner was represented by counsel, the BOE's counsel forwarded communications regarding the instant matters directly to the property owner rather than to its legal counsel. *Id.*

In response, the BOE's counsel acknowledged in a letter dated November 12, 2008 his general awareness of the property owner being represented by legal counsel during the hearing before the board of revision but denied having any contact information for said legal counsel. Appellant's Motion to Compel at Ex. E. The BOE's legal counsel stated that neither a copy of the counter-complaints nor a business card of the property owner's legal counsel was provided to him. *Id.* Thus, having no contact information for the property owner's legal counsel, the BOE's counsel stated that he sent a courtesy copy of the notices of appeal in the instant matters to the property owner. *Id.* Further, the BOE's counsel argues that property

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of documents is dated September 30, 2008 and the certificate of service for the same reflects a date of September 30, 2008.

owner's counsel was required to file an entry of appearance with this board pursuant to Ohio Adm. Code 5717-1-03 if he desired to receive communications regarding the instant matters and if the property owner desired to participate herein.

By way of letter dated December 16, 2008 from BOE's counsel to property owner's counsel, the BOE requested that the property owner respond to the discovery requests. Appellant's Motion to Compel at Ex. F. In response, on December 19, 2008, property owner's counsel indicated in an email to BOE's counsel that the discovery requests served directly upon the property owner (who was represented by legal counsel at the board of revision) were "improper and did not require a response" and that while he had received a hard copy of the BOE's discovery requests, he had not received an electronic version thereof in accordance with Civ.R. 33 and thus, the 28-day response time had not yet begun. Appellant's Motion to Compel at Ex. G.

In its memorandum in opposition to the BOE's motion to compel, the property owner reiterated that it was represented by legal counsel before the board of revision, that any attempt to serve the property owner directly with discovery requests was improper, and that an electronic version of the discovery requests had still not been received by property owner's counsel as required by Civ.R. 33. The BOE disputed this latter argument as the BOE's counsel claims that an electronic version of the discovery requests was emailed to counsel for the property owner on December 19, 2008. Appellant's Reply at 2, 6-9.

Ohio Adm. Code 5717-1-11, which sets forth this board's rule for allowing discovery, provides in pertinent part:

“(A) Discovery may be permitted by deposition upon oral examination or written questions; written interrogatories; production of documents or tangible things or permission to enter upon land or other property; and requests for admissions. The ‘Ohio Rules of Civil Procedure,’ effective July 1, 2006, shall be followed for discovery purposes to the extent they are not inconsistent with other board rules.  
\*\*\*<sup>2</sup>”

Civ.R. 33(A), effective July 1, 2006, provides, in pertinent part, as follows:

“(A) \*\*\* Any party, without leave of court, may serve upon any other party up to forty written interrogatories to be answered by the party served. A party serving interrogatories shall provide the party served with both a printed and an electronic copy of the interrogatories. The electronic copy shall be provided on computer disk, by electronic mail, or by other means agreed to by the parties.”

Ohio Adm. Code 5717-1-05(A) provides as follows:

“(A) Unless otherwise ordered by the board or an attorney examiner, *a copy of all motions or pleadings, briefs, papers and other documents* filed with the board subsequent to the notice of appeal *shall be served upon the counsel of record or the parties, if not represented by counsel, at the time of filing.*” (Emphasis added).

The records in the instant matters reflect that counsel for the property owner filed an entry of appearance with this board on November 20, 2008, subsequent to September 30, 2008, the date on which the BOE served its discovery requests on the

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<sup>2</sup> The rule as stated above was effective as of May 1, 2008 and was in effect during the time period in question herein. It should be noted that as of February 1, 2009, this rule was modified to refer to the Ohio Rules of Civil Procedure effective July 1, 2008.

property owner. Likewise, the filing of the entry of appearance by counsel for the property owner was subsequent to October 1, 2008, the date on which the BOE forwarded an electronic version of its discovery requests to an email address provided by the property owner.

Based on the existing record, Ohio Adm. Code 5717-1-11, Civ.R. 33(A), Ohio Adm. Code 5717-1-03 and Ohio Adm. Code 5717-1-05(A), this board finds that the discovery requests served directly on the property owner were not improper as they were served prior to the filing of the entry of appearance by the property owner's legal counsel with this board. Likewise, this board finds that an electronic version of the discovery requests was provided as the same was emailed to the property owner prior to the filing of the entry of appearance by the property owner's legal counsel with this board. To find otherwise would allow a party to circumvent the rules of discovery by the filing of an entry of appearance by its legal counsel well after the notice of appeal was filed. Accordingly, the motion to compel is hereby granted. It is therefore the order of the Board of Tax Appeals that the property owner, within fourteen days of the issuance of this order, shall respond to the BOE's discovery request by submitting the requested documents and providing the requested information.

Also included in the property owner's memorandum in opposition to the BOE's motion to compel is a motion to dismiss wherein the property owner argues that the instant appeal should be dismissed since the name, address, telephone number and fax number of the property owner's legal counsel was not set forth on the notice of appeal. The property owner argues that its legal counsel is its agent and, as such, the

name, address, telephone number and fax number of its legal counsel should have been set forth on the notice of appeal as required by Ohio Adm. Code 5717-1-04(C).

Ohio Adm. Code 5717-1-04(C), in effect as of the filing of the notices of appeal at issue herein, provides as follows:

“(C) The notice of appeal should set forth the name, address, telephone number, and fax number, if available, of all parties together with the name, address, telephone number, fax number, and attorney registration number, if applicable, of appellant’s authorized agent or attorney at law who executed such notice.”

In considering the sufficiency of the BOE’s notices of appeal, this board must consider R.C. 5717.01, the statute that governs the filing of a notice of appeal.

R.C. 5717.01 provides as follows:

“An appeal from a decision of a county board of revision may be taken to the board of tax appeals within thirty days after notice of the decision of the county board of revision is mailed as provided in division (A) of section 5715.20 of the Revised Code. Such an appeal may be taken by the county auditor, the tax commissioner, or any board, legislative authority, public official, or taxpayer authorized by section 5715.19 of the Revised Code to file complaints against valuations or assessments with the auditor. Such appeal shall be taken by the filing of a notice of appeal, in person or by certified mail, express mail, or authorized delivery service, with the board of tax appeals and with the county board of revision. If notice of appeal is filed by certified mail, express mail, or authorized delivery service as provided in section 5703.056 of the Revised Code, the date of the United States postmark placed on the sender’s receipt by the postal service or the date of receipt recorded by the authorized delivery service shall be treated as the date of filing. \*\*\*”

Neither Ohio Adm. Code 5717-1-04(C) nor R.C. 5717.01 require the name, address, telephone number and fax number of the property owner’s legal

counsel to be set forth on the notice of appeal. Even if the property owner's legal counsel is its agent, there is still no requirement that the name, address, telephone number and fax number of its agent be set forth on the notice of appeal. This board must strictly adhere to the statutory requirements set forth in R.C. 5717.01. See *Am. Restaurant & Lunch Co. v. Glander* (1946), 147 Ohio St. 147 (when a statute confers the right of appeal, adherence to the terms and conditions set forth therein is essential to the enjoyment of the right conferred).

It should be noted that an appellant is not required, under R.C. 5717.01, to serve its notice of appeal on an opposing party. *Painesville City Local Schools v. Lake Cty. Bd. of Revision* (Interim Order, Mar. 22, 1996), BTA No. 1995-G-769, unreported (denying motion to dismiss which asserted that an appellant's failure to serve a copy of its notice of appeal upon the property owner, either in person or by certified mail, constituted a jurisdictional defect); *Dublin City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Nov. 15, 1996), BTA No. 1996-N-399, unreported; *Aberdeen LLC v. Cuyahoga Cty. Bd. of Revision* (Interim Order, Mar. 17, 2006), BTA No. 2005-M-1257, unreported; *Sylvania Monroe Plaza, LLC v. Lucas Cty. Bd. of Revision* (Interim Order, Mar. 7, 2008), BTA No. 2006-T-1751, unreported. Compare, e.g., *Rhodes v. Gahanna Mun. Bd. of Appeal* (Apr. 21, 2009), BTA No. 2008-N-9, unreported (concluding that R.C. 5717.011(B) requires that an appellant/taxpayer file his notice of appeal with the board, the municipal board of appeal ("MBOA"), and the tax administrator); *Huber Hts. Circuit Courts, Ltd. v. Carne* (1996), 74 Ohio St.3d 306 (under R.C. 5717.05, failure to serve notice of appeal on party to hearing before

county board of revision warranted reversal since statute prescribed such notice to be provided). Rather, the duty to provide notice to other parties of the filing of an appeal with the Board of Tax Appeals rests with the county board of revision pursuant to R.C. 5717.01. *Bd. of Edn. of the Princeton City School Dist. v. Butler Cty. Bd. of Revision* (Jan. 29, 1993), BTA No. 1990-J-830, unreported, affirmed sub nom. *Equitable Life Assurance Soc. of the United States v. Bd. of Edn., Princeton City School Dist.* (Aug. 30, 1993), Butler App. No. CA93-03-035, unreported; *Lancaster City Schools Bd. of Edn. v. Fairfield Cty. Bd. of Revision* (Mar. 26, 1993), BTA No. 1990-P-686, unreported.

Since R.C. 5717.01 does not require the name, address, telephone number and fax number of the property owner's legal counsel to be set forth on the notice of appeal, the property owner's motion to dismiss is hereby denied.

With regard to the BOE's request for the property owner to pay its costs and attorney's fees incurred in securing the order compelling responses to the discovery requests, this board finds that insufficient justification for the imposition of such sanctions has been offered. Therefore, the portion of the BOE's motion regarding sanctions is denied. This order, however, shall not preclude consideration of the imposition of sanctions, as prescribed by Ohio Adm. Code 5717-1-14, in the future in this matter, should circumstances warrant such action.

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