

OHIO BOARD OF TAX APPEALS

Clayton Mrohaly, Trustee, ¹)	
)	CASE NO. 96-P-1423
Appellant,)	
vs.)	(REAL PROPERTY TAX)
)	
Cuyahoga County Board of Revision,)	ORDER
the Cuyahoga County Auditor and the)	
Cleveland Board of Education,)	(Finding Jurisdiction Upon
)	Reconsideration)
Appellees.)	

APPEARANCES:

For the Appellant Property Owner	- Todd W. Sleggs Attorney at Law 1015 Euclid Avenue – Third Floor Cleveland, Ohio 44115
For the County Appellees	- William D. Mason Cuyahoga County Prosecuting Attorney By: Timothy Kollin Assistant Prosecuting Attorney Courts Tower, Ninth Floor 1200 Ontario Street Cleveland, Ohio 44113
For the School District	- Karrie M. Kalail David Seed Means, Bichimer, Burkholder & Baker Co. L.P.A. Summit One, Suite 540 4700 Rockside Road Independence, Ohio 44131

Entered: February 4, 2000

Mr. Johnson and Mr. Manoranjan concur; Ms. Jackson dissents.

Once again we consider our jurisdiction over this appeal. Appellant appeals an order of the Cuyahoga County Board of Revision dismissing its complaint for lack of jurisdiction citing the opinion of the Franklin County Court of Appeals in *Krier v. Franklin Cty. Bd. of Revision* (1994), 100 Ohio App.3d 344.

¹ It appears from the stipulation of facts filed in another case (*Clayton Mrohaly, Trustee v. Cuyahoga Cty. Bd. of Revision*, B.T.A. No. 96-P-1422, unreported) that Clayton Mrohaly is deceased. Since this appeal is not extinguished, a motion for substitution of a proper party will be entertained by the Board of Tax Appeals.

We subsequently dismissed this appeal on the basis that Steven B. Curtis (the person who presumably prepared and signed the original complaint) possessed only a beneficial interest in the subject property and thus lacked standing to file an original complaint on behalf of the fee owner (the trustee) of the property in question. See *Clayton Mrohaly, Trustee v. Cuyahoga Cty. Bd. of Revision* (August 20, 1999), B.T.A. No. 96-P-1423, unreported, *Victoria Plaza Ltd. Liab. Co. v. Cuyahoga Cty. Bd. of Revision* (1999), 86 Ohio St.3d 181.

R.C. 5715.19(A) provides:

“Any person owning taxable real property **in the county**
* * * may file such a complaint * * * .” (Emphasis added.)

We observed in our initial decision that the record before us contained no evidence that Mr. Curtis owned taxable real property within Cuyahoga County. Thereafter, however, counsel for the appellant filed a motion for reconsideration pointing out that Mr. Curtis did in fact own other taxable real property in Cuyahoga County. A certified copy of a warranty deed is attached to appellant’s motion. Upon consideration thereof we vacated our decision and offered the school district an opportunity to file a further memorandum. The board of education filed its responsive memorandum on October 4, 1999. Counsel did not challenge the authenticity of the warranty deed, and reiterated its argument that Mr. Curtis had only a beneficial interest in the subject property. This matter is now before us for our consideration based upon the notice of appeal, the statutory transcript, a stipulation of facts, the memoranda filed by counsel for the respective parties and the certified copy of the warranty deed dated October 15, 1984, and duly recorded in the office of the Cuyahoga County Recorder on October 31, 1984.

The Supreme Court established in *Soc. Natl. Bank v. Wood Cty. Bd. of Revision* (1998), 81 Ohio St.3d 401, that a two-prong analysis is necessary to reconcile the jurisdictional requirements of R.C. 5715.19 and R.C. 5715.13. The

Supreme Court stated at page 404 of its opinion:

“Thus it became Society’s burden to prove that it owned other taxable real property **in the county** at the time it filed its complaint. * * *

“If Society had proven that it was a ‘person owning taxable real property **in the county**,’ then a consideration of the elements of R.C. 5715.13 would have become relevant.” (Emphasis added.)

Thus, we must first determine if the threshold requirement of R.C. 5715.19 have been met. If it has, we are to examine the requirements of R.C. 5715.13. Appellant now demonstrates by virtue of a certified copy of a warranty deed that he owns other taxable real property in Cuyahoga County. Thus, the first prong with regard to R.C. 5715.19 is satisfied. We turn now to the second prong. Does Mr. Curtis have standing in accordance with the provisions of R.C. 5715.13? We focus on the provision of R.C. 5715.13 that during the relevant time period read: “The county board of revision shall not decrease any valuation unless a **party affected** thereby * * * makes and files with the board a written application therefore, verified by oath, showing the facts upon which it is claimed such decrease should be made.” (Emphasis added.) The Supreme Court stated in *Middleton v. Cuyahoga Cty. Bd. of Revision* (1996), 74 Ohio St.3d 226, 228:

“We hold that a party affected by a complaint to decrease the value of property is **one upon whom the decrease will produce a material influence or effect.**” (Emphasis added.)

As beneficial owner of the trust *res* and sole beneficiary of the trust Mr. Curtis is a “person upon whom a decrease will produce a material influence or effect.” Thus he is a “party affected” and the second prong of *Soc. Natl. Bank* is also satisfied. The school district argues the Supreme Court’s decision in *Victoria Plaza Ltd. Liab. Co., supra*, holds that an owner of an equitable interest in the “subject

property” may never file a complaint. But this ignores the plain language of the statute. R.C. 5715.19(A) states: “Any person owning taxable real property **in the county** * * * may file such a complaint * * * .” (Emphasis added.) The fact that Mr. Curtis may own only a beneficial interest in the subject property does not preclude his qualifying under R.C. 5715.19(A) as the fee owner of other real property **in the county**. We conclude that Mr. Curtis had standing to file an original complaint with the Cuyahoga County Board of Revision and as a result now has standing to pursue this appeal. Accordingly, we hold that we have jurisdiction over this appeal. This matter will be referred to the assignment commissioner to set for a merit hearing. The parties shall be prepared to go forward on the next assigned date. ohiosearchkeybta