

OHIO BOARD OF TAX APPEALS

Oakwood Garden Apartments Houston L.P.)
R & B Commercial Real Estate Services)
Merry Land & Investment Co.,) (REAL PROPERTY TAX)
)
Appellant,)
)
vs.) (Denying Reconsideration)
)
Cuyahoga County Board of Revision,)
the Cuyahoga County Auditor and the)
Westlake Board of Education,)
)
Appellees.)

APPEARANCES:

For the Appellant-

Karen H. Bauernschmidt
Arter and Hadden
1100 Huntington Building
925 Euclid Avenue
Cleveland, Ohio 44115-1475

For the County-
Appellees

William D. Mason
Cuyahoga County Prosecuting Attorney
By: Debra Linn Talley
Assistant Prosecuting Attorney
1200 Ontario Avenue, 8th Floor
Cleveland, Ohio 44113

For the Westlake-
Board of Education

Bill J. Gagliano
Ulmer & Berne
Bond Court Building
1300 E. 9th Street, Suite 900
Cleveland, Ohio 44114

Entered June 04, 1999

Mr. Johnson, Ms. Jackson and Mr. Manoranjan concur.

This matter is once again before the Board of Tax Appeals. On May 21, 1999, the Board dismissed the above captioned appeal, relying upon the holding

of *Sharon Village Ltd. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St. 3d 479. As the BOR had increased value upon a defective complaint, this Board ordered the Cuyahoga County Board of Revision (“BOR”) to reinstate the Auditor’s values.

On May 27, 1999, this Board docketed a “Motion for Reconsideration,” filed by the Westlake Board of Education. Through that motion, the BOE argues that this Board erred in remanding the matter to the BOR with instructions to reinstate the Auditor’s values. Instead, the BOE argues, this Board should have dismissed only the appeal filed before us, in effect leaving unchanged the increase in value obtained by the BOE through its defectively filed complaint.

The BOE has consistently asserted that the property owner’s original counter-complaint filed with the BOR was defective under *Soc. Nat’l. Bank v. Wood Cty. Bd. of Revision* (1998), 81 Ohio St.3d 401. In *Soc. Nat’l. Bank*, the Supreme Court held that a complaint, to vest jurisdiction, must be filed by an owner of property within the county. The BOE argues that the actual title-holder of the property as of the date the complaint was filed, *i.e.*, Oakwood Garden Apartments Houston L.P., was not listed as the “owner” on that complaint. Instead, two prior title-holders were identified. It is the BOE’s contention that the only decision appealed was that based upon the decision made by the BOR with respect to the defective counter-complaint.¹ As, under the BOE’s logic, only the counter-complaint was appealed, and that counter-complaint was defective, this Board has no jurisdiction to consider the counter-complaint identified, and, therefore, must dismiss the appeal before us, with no further order to the BOR.

¹ Apparently, the BOE’s claim is based upon the identification by the appellant property owner of its own complaint number on the face of the notice of appeal. The BOE’s original complaint was file-stamped with the number “001831.” The property owner’s counter-complaint was file-stamped with the number “002219.” However, at the hearing before the BOR, that body made a joint decision on both the complaint and the counter-complaint.

We do not agree. As a preliminary matter, a property owner is permitted to challenge a value finding at any point in the process. R.C. 5715.20; R.C. 5717.01; *Columbus Apartments Assoc. v. Bd. of Revisio* (1981), 67 Ohio St.2d 85. Therefore, even if we were to find that the property owner's counter-complaint was defective, the property owner would have been permitted to appeal the BOR's value finding. More importantly, however, is the fact that the original complaint filed by the BOE, the catalyst for the property owner's appeal, was defective. Once the original complaint was found to be defective, any action taken either by the BOR, or by this Board, was error. *Sharon Village, supra* Therefore, the proper Order from this Board was the one previously issued, requiring the BOR to reverse any action based upon a defective complaint.

As we find no merit to the BOE's motion, it is overruled.