

Westlake Land Co.,)	
)	
Appellant,)	CASE NO. 98-A-482
)	
vs.)	(REAL PROPERTY TAX)
)	
Cuyahoga County Board of)	ORDER
Revision, Cuyahoga County)	Affirmed on Appeal-June 30, 1999
Auditor, and Westlake Board)	
of Education,)	(Dismissing Appellee School
)	Board as a Party)
Appellees.)	86 Ohio St.3d 34, 1999-Ohio-339

APPEARANCES:

- | | | |
|----------------------------------|---|---|
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| For the County
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| For the Appellee
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Entered November 6, 1998

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

This cause and matter came on to be considered, sua sponte, by the Board of Tax Appeals. On July 10, this Board entered an order for the appellee school board to show cause why it should not be dismissed as a party to the instant matter. Specifically, on June 30, 1998, a certified copy of the statutory transcript from the proceedings at the Cuyahoga County Board of Revision was received by this Board. Included within the transcript

was a letter from the board of revision to the Westlake Board of Education indicating the following:

" * * * (t)he Cuyahoga County Board of Revision has dismissed the above referenced complaint for lack of jurisdiction, pursuant to Ohio Supreme Court decision in Sharon Village Ltd. vs. Licking County Board of Revision, et al (1997), 78 Ohio St. 3d 479 and Orange City School District vs. Cuyahoga County Board of Revision, et al. Ohio Revised Code 5715.13.

" * * * "

We note that the complaint of the appellee school board was dismissed by the board of revision pursuant to the aforementioned case law since it was signed by the school board treasurer, who is not an attorney at law. However, no appeal was taken by the school board to this Board, or, apparently, to the court of common pleas, disputing the board of revision's decision.

It is now this Board's obligation to determine whether the appellee school board should be removed as a party, since it arguably never established jurisdiction as a proper party before the board of revision, and, in addition, never appealed the board of revision's determination of its status to any higher tribunal.

In response to this Board's show cause order, the school board responded that "as a party who filed a countercomplaint in the board of revision, appellee Westlake Board of Education is entitled to participate in this appeal to the BTA even if Sharon Village applies to a school board's increase complaint." The school board argues that pursuant to the provisions of R.C. 5715.19 (B) and other case law, it has achieved

party status before the Board of Tax Appeals by virtue of "filing" its countercomplaint with the board of revision.

R.C. 5715.19 (B) provides:

"(B) Within thirty days after the last date such complaints may be filed, the auditor shall give notice of each complaint in which the stated amount of overvaluation, undervaluation, discriminatory valuation, illegal valuation, or incorrect determination is at least seventeen thousand five hundred dollars to each property owner whose property is the subject of the complaint, if the complaint was not filed by such owner, and to each board of education whose school district may be affected by the complaint. Within thirty days after receiving such notice, a board of education or a property owner may file a complaint in support of or objecting to the amount of alleged overvaluation, undervaluation, discriminatory valuation, illegal valuation, or incorrect determination stated in a previously filed complaint or objecting to the current valuation. Upon the filing of a complaint under this division, the board of education or the property owner shall be made a party to the action." (emphasis added)

The school board cites us to Buckeye Boxes, Inc., Columbus Cello-Poly Corp. v. Franklin Cty. Bd. of Revision (1992), 78 Ohio App. 3d 634, wherein the Franklin County Court of Appeals, citing Dinner Bell Meats, Inc. v. Cuyahoga Cty. Bd. of Revision (1982), 70 Ohio St. 2d 103, stated that "(O)nce such an appeal has been filed [to the Board of Tax Appeals], any school board which has filed a complaint before the board of revision will automatically be made a party to the appeal." Further, in a recent case, the Supreme Court defined what constitutes "filing", based upon a statement in United States v. Lombardo (1916), 241 U.S. 73, that "paper is filed when it is delivered to the proper

official and by him received and filed." See Elkem Metals Co., L.P. v. Washington Cty. Bd. of Revision (1998), 81 Ohio St. 3d 683.

Based upon the foregoing, it is the school board's contention that once it filed its complaint with the board of revision, regardless of the fact that it was ultimately dismissed under the parameters of the Sharon Village case, it became a proper party to the instant case. This Board disagrees.

We find the foregoing case law to be completely distinguishable from the instant facts. In Elkem, the question before the Court was whether a board of revision properly dismissed a complaint before it, as a second filing by the same party in a triennial period, which is prohibited by R.C. 5715.19 (A). The Court held that "(T)he filing of a complaint with a board of revision invokes its jurisdiction to rule whether the complaint meets the jurisdictional requirements." Thus, it was determined that the board of revision initially had jurisdiction over such complaint until it properly dismissed it.

In Buckeye Boxes, the Court of Appeals had to determine whether it was proper to allow a school board to intervene at the Board of Tax Appeals when it had not received notice of the filing of a complaint before the board of revision, pursuant to R.C. 5715.19 (B). As such, the school board failed to file a countercomplaint with the board of revision. The original complaint in question had been amended to seek a decrease in valuation which would have required the notification of the school board. The Court concluded that the board of education should be

permitted to intervene at the Board of Tax Appeals since "the school board was not given the notice to which it was statutorily entitled and was thus deprived of its right to be made a party to the action."

In the instant matter, the school board is not seeking to establish jurisdiction with the board of revision, as in Elkem, and unlike Buckeye Boxes, was provided the proper notice and filed a complaint with the board of revision in a timely fashion. Arguably, the statutory language in R.C. 5715.19 (B) contemplates the filing of a valid complaint by a complainant before such complainant will be accorded party status. Once the determination has been made by a board of revision that a filed complaint is not valid, thereafter, such complainant is no longer considered a party to the proceedings. The Cuyahoga County Board of Revision has already made the determination that the complaint filed by the board of education herein was not valid. As such, they never properly became a party at the board of revision level, and, accordingly, cannot now become a party before this Board.

The school board's remaining arguments in its brief go to the merits of the dismissal below by the board of revision. Having not appealed that decision to this Board, it is not within this Board's jurisdiction to comment on the action taken by the board of revision.

Accordingly, based upon the foregoing, it is the decision and order of this Board that the appellee school board shall be removed as a party to the instant appeal.