

Twin Value Stores, Inc.,	)	CASE NO. 98-M-253
Dave's Supermarket, Inc., and	)	
Commercial Net Lease Realty,	)	(Real Property Tax) Inc.,
	)	
	)	
Appellants,	)	
	)	ORDER
vs.	)	
	)	(Denying Motion to Dismiss;
Cuyahoga County Board	)	Sua Sponte Dismissal of
of Revision, Cuyahoga County	)	Twin Value Stores, Inc.)
Auditor and the Maple Heights	)	
Board of Education,	)	
	)	
Appellees.	)	

APPEARANCES:

For the Appellants	-	Annrita S. Johnson Fred Siegel Co., L.P.A. 3001 Bethel Road Suite 208 Columbus, Ohio 43220
For the County Appellees	-	Stephanie Tubbs Jones Cuyahoga County Prosecuting Attorney Debra Linn Talley Assistant Prosecuting Attorney 1200 Ontario Street Cleveland, Ohio 44113
For Appellee Board of Education	-	Deborah J. Papushak Armstrong, Mitchell, Damiani and Zaccagnini 1725 The Midland Building 101 Prospect Avenue, West Cleveland, Ohio 44115-1091

Entered: November 13, 1998

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

This cause is before the Board of Tax Appeals upon a Motion to Dismiss filed by the appellee, Maple Heights Board of Education ("BOE"). The BOE seeks a dismissal order from this Board

and, in support of the motion, argues that the complaint originally filed with the Cuyahoga County Board of Revision ("BOR") failed to vest jurisdiction with such board. Appellants have responded by "Memorandum in Opposition" filed on September 17, 1998.

Appellants' "Complaint Against the Valuation of Real Property" (the "complaint" or "DTE Form 1") was filed with the BOR on March 31, 1997. It is this complaint that the BOE claims was jurisdictionally defective.

DTE Form 1, as filed with the BOR, included the following names on line 1, which calls for the "Owner of Property": "Twin Value Stores Inc." and "Dave's Supermarket, Inc." Directly following "Dave's Supermarket, Inc." is the handwritten phrase "(as Tennent)" (sic). On line 2, which asks for the "Complainant if not owner," the words "SAME AS OWNER" are written. Those words are followed by the handwritten parenthetical phrase "(Buyer) Commercial Net Realty" (sic). (S.T. Exh. "A")

The BOE claims that the complaint under consideration is defective under both Soc. Natl. Bank v. Wood Cty. Bd. of Revision (1998), 81 Ohio St.3d 41 and Buckeye Foods v. Cuyahoga Cty. Bd. of Revision (1997), 78 Ohio St.3d 459, and asserts the following:

1. The entity listed as owner, Twin Value Stores Inc., was not the owner of the subject property on the day the complaint was filed, having sold its interest to Commercial Net Realty, Inc. on February 26, 1997.
2. The entity listed as the tenant, Dave's Supermarket, Inc., lacks authority to file a decrease complaint.

3. The only entity with authority to file a decrease complaint, Commercial Net Realty, Inc., did not authorize the filing of the complaint.

The complaint under consideration seeks a decrease in the value of the subject property. As a general proposition a board of revision may consider a claim to decrease valuation only where the claimant has complied with R.C. 5715.13 and 5715.19. Cardinal Federal S. & L. Assn. v. Bd. of Revision (1975), 44 Ohio St.2d 13. The threshold requirements of R.C. 5715.13 and 5715.19 are met when a complaint contains the information required by a board of revision to fulfill its statutory obligations. If the necessary factual information is before a board of revision, the complaint meets core procedural efficiency. The test is one of substantial compliance with R.C. 5715.13 and 5715.19. Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision(1998), 80 Ohio St.3d 591.

R.C. 5715.13 and R.C. 5715.19 establish the proper parties to initiate a proceeding, the procedural requirements as to time and content of a complaint, and a limitation upon filing more than one complaint within a triennial period. R.C. 5715.19 provides the threshold test for the filing of a complaint -- that it must be filed by one owning property in the county. Soc. Natl. Bank, supra. When a decrease is sought, R.C. 5715.13 requires that the complainant must be a "party affected thereby." The Court has held 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." Middleton v. Cuyahoga Cty. Bd. of Revision

(1996), 74 Ohio St.3d 266. In Middleton, the complainant owned property in Cuyahoga County, but sought a decrease in value of property in which he had no interest. Middleton was a real property tax consultant who hoped to generate a client before the BOR, the vice found in Krier v. Franklin Cty. Bd. of Revision (1994), 100 Ohio App.3d 344, and Sharon Village Ltd. v. Licking Cty. Bd. of Revision (1997), 78 Ohio St.3d 479.

The BOE asserts that only two entities, Dave's Supermarket, Inc. and Twin Value Stores, Inc., are listed as complainants and neither has standing to pursue this complaint. The Board comes to a different conclusion. We find that there are three parties named in the complaint; and we will discuss in turn whether any of them have standing under R.C. 5715.19 and R.C. 5715.13

We first consider whether the tenant, Dave's Supermarket, Inc., has standing to file a complaint. The Board has held that a lessee is a person affected, and has standing to file a complaint under R.C. 5715.13. Trembal Constr., Inc. v. Cuyahoga Cty. Bd. of Revision (1986), 29 Ohio App.3d 312; Upper Arlington City Schools v. Franklin Cty. Bd. of Revision (Nov. 5, 1993), B.T.A. No. 91-G-1673, unreported; Richmond Mall, Inc. v. Cuyahoga Cty. Bd. of Revision (June 18, 1993), B.T.A. No. 90-P-115, unreported. Most recently in Jaydee Realty Co. OH GP c/o R.C. McElroy, Inc. v. Cuyahoga Cty. Bd. of Revision (Oct. 9, 1998), B.T.A. Case Nos. 98-S-239, 310 & 311, unreported, we held that when a tenant filed a decrease complaint and the owner filed a second decrease complaint

on the same property within the same triennium, the second filing must meet one of the exceptions provided in R.C. 5715.19(A)(2) to be jurisdictionally sufficient. In making that determination, this Board addressed a recent case issued by the Cuyahoga County Court of Appeals, North Olmsted Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision (July 16, 1998), Cuyahoga App. Nos. 72523 & 72524, unreported. There the appellate court concluded, under Soc. Natl., supra, that a lessee must demonstrate that it was an owner of property within the county to challenge the valuation placed upon leased property. In Jaydee Realty, we stated:

"With regard to the Court of Appeals opinion, we believe that the Supreme Court's decision need not be given such sweeping application. In Society Bank, the bank had neither ownership in the subject property, nor could it establish it was a party affected. The bank had completed a sale of the property to an unrelated party. The tax apportionment clause in the purchase contract did not constitute a retention of any property rights in the property. A lessee with the obligation to pay real estate taxes has an ownership interest, tenancy rights in the property which, in our opinion, adequately support jurisdiction before the BOR to establish value. Absent only the ability to establish any core jurisdiction requirement, should a complaint be dismissed. Nucorp, Inc. v. Bd. of Revision (1980), 64 Ohio St.2d 20; McGraw Edison Service Co. v. Bd. of Revision (Dec. 4, 1985), B.T.A. No. 82-B-1360, unreported; Showe v. Franklin Cty. Bd. of Revision (April 7, 1986), B.T.A. No. 82-E-1108, unreported; Teeters Packing Co. v. Franklin Cty. Bd. of Revision (Dec. 4, 1985), B.T.A. No. 82-B-1358, et. seq., unreported. \*\*\*"

This Board then reviewed the lease presented in that matter in order to determine whether the original complaint filed by the lessee vested jurisdiction in the board of revision. The Board concluded that the original complaint filed by the lessee would have vested jurisdiction (had the complaint been sufficient on other grounds), because the lessee was a party upon whom the increase in value would have had a material effect and because the reduction of taxes would have inured to the benefit of the lessee. The Board also noted that the lessee was expressly granted the right to file a complaint seeking a decrease in value.

The Court of Appeals decision taken to its logical conclusion seems to lead to an unintended and inequitable result. Under North Olmsted, a lessee which owns no other property in the county is precluded from filing a complaint. The decision clearly suggests that if the lessee was the owner of other real property in Cuyahoga County, under the literal language of R.C. 5715.19, it would have standing to file a complaint upon its leasehold property, since it is an owner. But under Middleton, applied as we read it, a lessee under a valid agreement which places the burden of taxes upon it and gives it the right to contest valuation or the levy of taxes, is the party affected under R.C. 5715.13. We believe the rights of persons who are clearly affected by the value placed upon the property in which they have a leasehold interest, legal ownership but of a lesser estate, would be unnecessarily restricted.

Although not necessary to our determination, we note with approval the citations by appellees' counsel of Baltimore & Ohio Railroad Co. v. Walker (1888), 45 Ohio St. 577, 585, which recognizes in defining the terms "owner" and "owning", there are many interests in real property and one having a lesser estate may be an owner. The term owning as applied in Jones v. State of Ohio (1904), 70 Ohio St. 36, 40, and Iroquois Co. v. Meyer (1909), 80 Ohio St. 676, 684 also suggests a broader definition of owner and owning.

Under Jaydee Realty, we have held a complaint filed only by a lessee would be sufficient to vest jurisdiction in a board of revision. In the present appeal, we find the complaint identifies three separate entities as complainants. The fact that one name appears on line 2 of the complaint does not cause the Board to conclude that only two complainants are listed. While a handwritten name appears on line 2, the Board recognizes that the space on line 1 would not have allowed Commercial Net Lease Realty Inc.'s name to have been written out in full. To refuse to recognize that entity as a complainant because a particular line on a form is so full that no room remains to write its name in would surely violate the Supreme Court's directive in Nucorp, Inc. v. Bd. of Revision (1980), 64 Ohio St.2d 20:

"While this court has never encouraged or condoned disregard of procedural schemes logically attendant to the pursuit of a substantive legal right, it has also been unwilling to find or enforce jurisdictional barriers not clearly statutorily or constitutionally mandated, which tend to

deprive a supplicant of a fair review of his complaint on the merits."

There appears to be no dispute among the parties as to the chain of ownership interests of the named entities. There appears to be agreement that Twin Value Stores Inc. was the owner of the property until February 26, 1997, when title was transferred to Commercial Net Lease Realty, Inc. It further uncontested that Dave's Supermarket, Inc. is the tenant of the subject property under a valid and continuing lease agreement; and therefore held a leasehold interest both before and after the transfer of legal title.

Thus, Twin Value Stores, Inc. was the title holder on tax lien date and Dave's Supermarket, Inc. the tenant on March 31, 1997. It uncontested that Commercial Net Lease Realty, Inc. was the record legal owner on March 31, 1997, the date the decrease complaint was filed.

Therefore, from the face of the DTE 1 form presented to the BOR, one may discern the name of the title holder as of tax lien date, the name of the legal title holder as of filing date, and the name of the tenant, who in this appeal appears to be the party upon whom the decrease will have a material influence or effect. Having before it, three entities with a claimed interest in the property, the BOR proceeded to consider the merits of the complaint.

The BOE also makes the claim that under Soc. Natl. Bank, supra, and Buckeye Foods, supra, the BOR should have found that it

did not have before it the proper party to pursue a valuation reduction and therefore should have dismissed the complaint as jurisdictionally deficient. The Board does not agree. In Soc. Natl. Bank, the Supreme Court ruled that in order to have standing to file a complaint with a county board of revision, the complainant must be the owner of property within the county. The present complaint identifies the owner of the property as of filing date, Commercial Net Lease Realty, Inc.<sup>1</sup> Therefore, the requirement imposed by Soc. Natl. Bank has been met. At the same time, it is apparent that Twin Value Stores, Inc. on the date the complaint was filed had no legal interest in the subject property and should be dismissed as a party, sua sponte.

Buckeye Foods stands for the proposition that the complainant must have a legal or financial relationship with the subject property sufficient to meet the requirements of R.C. 5715.13. It stands for the further proposition that the complaint must be an entity that has legal capacity, not fictitious. In the instant complaint, the BOR was presented with the owner on the date of filing and the tenant required to pay real property taxes, and having the right to contest taxes. The owner of the property, Commercial Net Lease Realty, Inc., was identified as "Commercial Net Realty," a contraction of its corporate name and at worst a

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<sup>1</sup>The BOE claims that Commercial Net Lease Realty, Inc. did not authorize the filing of the complaint. There is no direct evidence to support this claim, nor can an inference be drawn from the affidavit given by Dave's Supermarket, Inc. to counsel authorizing representation before the BOR and his right to receive any refund.

misnomer. The Board concludes that the error resulted from inattention, not an intention to file a complaint on behalf of a fictitious entity. Commercial Net Lease Realty, Inc. is presumably a corporation authorized to do business in the state.

While not a model of clarity, this Board concludes that the complaint as prepared and signed by an attorney, was sufficient to vest jurisdiction with the BOR. Therefore, the Board finds the motion of the BOE is not well taken.

It is ordered that the motion to dismiss by the BOE be overruled. It is further ordered that Twin Value Stores, Inc., be dismissed as a party to this appeal, sua sponte. The matter will be set for an evidentiary hearing in the ordinary course of the Board's business.