

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

WEST CHESTER POINTE
PROPERTIES, LLC,

Appellant,

- vs -

BOARD OF REVISION, BUTLER
COUNTY AUDITOR, BOARD OF
EDUCATION LAKOTA LOCAL
SCHOOL DISTRICT,

Appellees.

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CASE NO. CA2009-04-100

OPINION
11/2/2009

CIVIL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CV2007-01-0258

Robert W. Cettle, The Drees Center, Suite 210, 7265 Kenwood Road, Cincinnati, OH 45236, for appellant

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Ennis, Roberts & Fischer Co. LPA, C. Bronston McCord III, Gary T. Stedronsky, 1714 West Galbraith Road, Cincinnati, OH 45239, for appellee, Board of Education, Lakota Local School District

YOUNG, J.

{¶1} Appellant, West Chester Pointe Properties, LLC (WCPP), appeals the

judgment of the Butler County Court of Common Pleas affirming the decision of appellee, the Board of Revision of Butler County, Ohio (BOR), to increase WCPP's real property valuation for taxation purposes. We affirm the trial court's decision.

{¶12} On August 23, 2004, WCPP purchased lot 5 in the University Pointe Subdivision from West Chester University Pointe, L.P. for \$3,841,296.64, under conditions described in the real property conveyance form as an "arms-length" transaction. The property in question contains an office building and retail space, at 7795 University Court in West Chester, which leases space to a salon and day spa, a call center, a pediatric practice, and an oral surgeon's office. For the 2005 tax year, the Butler County Auditor valued the property at \$2,784,350 for taxation purposes. On March 31, 2006, appellee, Lakota Local School District Board of Education (Lakota), filed a complaint with the BOR, challenging the valuation of the real property and claiming the true value was \$3,841,296.64 based on the sale price WCPP paid for the property. WCPP, in turn, filed a counter complaint arguing that the auditor's valuation should stand.

{¶13} On November 6, 2006, the BOR held a hearing in which the board took testimony and evidence regarding the property valuation. The BOR issued a decision, on December 21, 2006, setting the value of the property at \$3,841,300 based on the arm's- length sale of the property in 2004. Pursuant to R.C. 5717.05, WCPP appealed the BOR's decision to the common pleas court, which affirmed the board's determination that \$3,841,300 represented the true value of the property. WCPP filed a timely appeal to this court raising a single assignment of error.

{¶14} "THE BOARD OF REVISION AND THE COMMON PLEAS COURT ERRED TO THE PREJUDICE OF APPELLANT IN FINDING THAT THE SALE

PRICE AND TRUE VALUE OF APPELLANT'S REAL PROPERTY WAS \$3,841,296.64 FOR THE TAX YEAR 2005."

{¶5} Although WCPP raised four sub-issues within its sole assignment of error, the focus of WCPP's argument is that the price it paid for the property is not the true value of the property for tax purposes. Instead, the company contends that the true value of the property is \$2.7 million, which it evidences through an independent appraisal; claiming that the price it paid for the property included not only the real property but also the personal property, or business fixtures, located within the premises.¹

{¶6} R.C. 5713.03 provides in pertinent part that, "[i]n determining the true value of any tract, lot, or parcel of real estate under this section, if such tract, lot, or parcel has been the subject of an arm's length sale between a willing seller and a willing buyer within a reasonable length of time, either before or after the tax lien date, the auditor shall consider the sale price of such tract, lot, or parcel to be the true value for taxation purposes." Therefore, "when the property has been the subject of a recent arm's-length sale between a willing seller and a willing buyer, the sale price of the property shall be 'the true value for taxation purposes.'" *Berea City School*

1. {¶a} After careful review of the record, we fail to find any evidence submitted by WCPP to show that the sale price of the property included the purchase of any business fixture. Indeed, the managing partner of WCPP testified that upon leaving the building a tenant must take everything from the interior leaving only a "white box." Therefore, if fixtures were actually a part of the sale price, as WCPP claims, a tenant would be obligated to leave all of the business fixtures in place, instead of taking the fixtures upon vacating the building.

{¶b} Furthermore, by only submitting an appraisal of the property, WCPP did not carry its burden of proof of showing the sale was a "mixed" or bulk sale where other property was purchased in addition to the real property. Cf. *St. Bernard Self-Storage, L.L.C. v. Hamilton Cty. Bd. of Revision*, 115 Ohio St.3d 365, 2007-Ohio-5249, ¶13-19. See, also, *Buck Storage, Inc. v. Clark Cty. Bd. of Revision*, 172 Ohio App.3d 250, 2007-Ohio-2964, ¶13 (finding the Board was not required to accept Buck's assertion that the true value of the property it bought for \$75,000 was \$62,250 because of the \$9,750 worth of personal property that was on the premises, where personal property was not accounted for in the sale and the auditor's conveyance form did not included a separate value of the personal property).

Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision, 106 Ohio St.3d 269, 2005-Ohio-4979, ¶13, quoting R.C. 5713.03.

{¶7} "At the very heart of *Berea* lies the rejection of appraisal evidence of the value of the property whenever a recent, arm's-length sale price has been offered as evidence of value." *Cummins Property Services, L.L.C. v. Franklin County Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, ¶13. As such, "[a]ppraisals based upon factors other than sales price are appropriate for use in determining value *only* when no arm's-length sale has taken place, or where it is shown that the sales price is not reflective of the true value."² (Emphasis sic; citations omitted.) *Berea* at ¶15, citing *Columbus Bd. of Edn. v. Fountain Square Assoc., Ltd.* (1984), 9 Ohio St.3d 218, 219. "Additionally, R.C. 5713.03 specifically provides that the sale price should not be considered the true value of the property if either of the following conditions occurs subsequent to the sale: (i) '[t]he tract, lot, or parcel of real estate loses value due to some casualty' or (ii) '[a]n improvement is added to the property.'" *Cummins* at ¶36. See, also, *Blatt v. Hamilton Cty. Bd. of Revision*, Slip Opinion No. 2009-Ohio-5260, ¶7 (noting the Board of Tax Appeals found the sale price was not the true value of property where an exception from R.C. 5713.03(B) applied because an improvement had been added to the property).

{¶8} Finally, "[t]he independent judgment of the trial court should not be disturbed absent a showing of abuse of discretion. Specifically, an appeals court should not question the trial court's judgment, unless such determination is

2. A party may also challenge whether the sale was recent, i.e. "within a reasonable length of time, either before or after the tax lien date." R.C. 5713.03. See, also, *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 118 Ohio St.3d 45, 2008-Ohio-1588, ¶8 (finding *Berea* allows rebuttal of the sales price as the value of the property, by challenging "whether the sale was sufficiently recent" or whether the sale was at arm's length between a willing buyer and a willing seller).

unreasonable, arbitrary, or unconscionable." *Black v. Board of Revision of Cuyahoga County* (1985), 16 Ohio St.3d 11, 14, citing *Jennings & Churella Constr. Co. v. Lindley* (1984), 10 Ohio St.3d 67, 70; and *Clark v. Rockwood & Co.* (App.1960), 88 Ohio Law Abs. 429.

{¶19} WCPP failed to provide sufficient evidence to demonstrate that the sale price of the property was not the true value of the property for taxation purposes. In particular, it did not challenge whether the sale was recent or whether the sale was at arm's length, which WCPP in fact conceded; nor did it provide evidence showing an exception from R.C. 5713.03 applied. See *Berea* at ¶15; *Cummins* at ¶13, 36. As such, neither the common pleas court, nor the BOR, was required to accept the appraisal submitted by WCPP as the true value of the property. Because the common pleas court's decision – upholding the BOR's determination that the true value of WCPP's property is \$3,841,300 based on the arm's-length sale in 2004 – was not unreasonable, arbitrary or unconscionable, WCPP's assignment of error is overruled.

{¶10} Judgment affirmed.

POWELL, P.J., and HENDRICKSON, J., concur.