

[Cite as *Daniel G. Kamin Cleveland Ents. v. Cuyahoga Cty. Bd. of Revision*, 2015-Ohio-2272.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102013

**DANIEL G. KAMIN CLEVELAND ENTERPRISES AKA
DANIEL G. CLEVE ENTERPRISES**

PLAINTIFF-APPELLANT

VS.

**CUYAHOGA COUNTY BOARD
OF REVISION, ET AL.**

DEFENDANTS-APPELLEES

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-11-772149

BEFORE: Jones, P.J., E.T. Gallagher, J., and Stewart, J.

RELEASED AND JOURNALIZED: June 11, 2015

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LARRY A. JONES, SR., P.J.:

{¶1} Appellant, Daniel G. Kamin Cleveland Enterprises, a.k.a. Daniel G. Cleveland Enterprises (“Kamin”), appeals the trial court’s decision to uphold the 2009 valuation of a parcel of real property located at 3250 West 65th Street in Cleveland. For the reasons that follow, we affirm.

{¶2} In 2010, Kamin filed a complaint with appellee Cuyahoga County Board of Revision requesting the subject property’s value be decreased from \$2,575,600 to \$1,000,000. The request was later amended to \$600,000. Appellee Cleveland Board of Education filed a counter-complaint requesting the original value remain unchanged.

{¶3} In November 2011, the matter proceeded to a hearing at which the vice president for Kamin Realty Company, Robert Lang, testified that the subject property was leased to Kmart Corporation until November 2010. Kamin learned “sometime in late 2009” that the store was going to close. The store closed in May 2010.

{¶4} As of the tax lien date of January 1, 2009, Kmart occupied 99,428 square feet of building space on just over nine acres of land. Real estate appraiser Roger Sours testified that the latest appraisal of the subject property was March 27, 2011, retrospective to January 1, 2010. Sours opined that the property was valued at \$600,000. He based his opinion on a sales comparison and income capitalization approach to value at that time.

Matthew Kamin of Kamin Realty testified that there had been no interest to rent or buy

the property since Kmart moved out in 2010 and, if offered \$600,000 for the property, Kamin would “most likely” sell it for that amount.

{¶5} The Board of Revision decided to make no change to the property’s value, finding that the “subject property was not vacant on tax lien date as per comparables submitted, so comparables are not probative of tax year 2009 valuation. No income and expense pro forma submitted to analyze per income & expense. No reduction.”

{¶6} Kamin appealed to the Cuyahoga Court of Common Pleas. The court affirmed the decision of the Board of Revision, finding that the comparable properties did not support a property value of \$600,000 because they were vacant big box retail properties. The court further found that “[a]s of the relevant tax lien date, January 1, 2009, the property in question was leased and a fully-functioning retail store. It was not until late in 2009, well after the valuation date at issue, that the property owner learned that Kmart was going to close this store.” The court concluded that the Board of Revision’s decision was correct finding the market value of Kamin’s property to be \$2,575,600 for the tax lien date of January 1, 2009.

{¶7} Kamin filed a timely notice of appeal and raises one assignment of error for our review, in which he argues that the trial court erred in its review of the Board of Revision’s decision that the market value of his property was \$2,575,600.

{¶8} On appeal to the common pleas court, the trial court has a duty to independently weigh and evaluate all evidence properly before it and make an independent determination concerning the valuation of the property at issue. *Lockhart Dev. Co. v.*

Summit Cty. Bd. of Revision, 9th Dist. Summit No. 25728, 2011-Ohio-5000, ¶ 8. The court's review of the evidence should be thorough and comprehensive and should ensure that its final determination is more than a mere rubber stamping of the board of revision's determination. *Black v. Cuyahoga Cty. Bd. of Revision*, 16 Ohio St.3d 11, 13, 475 N.E.2d 1264 (1985).

{¶9} This court may not reverse the decision of the common pleas court absent an abuse of discretion. The Ohio Supreme Court has set forth the standard of review this court applies as follows:

In reviewing an order of an administrative agency, an appellate court's role is more limited than that of a trial court reviewing the same order. It is incumbent on the trial court to examine the evidence. Such is not the charge of the appellate court. The appellate court is to determine only if the trial court has abused its discretion. An abuse of discretion * * * implies not merely error of judgment, but perversity of will, passion, prejudice, partiality, or moral delinquency. * * * Absent an abuse of discretion on the part of the trial court, a court of appeals must affirm the trial court's judgment.

Lorain City School Dist. Bd. of Edn. v. State Emp. Relations Bd., 40 Ohio St.3d 257, 260-261, 533 N.E.2d 264 (1988).

{¶10} "The fair market value of property for tax purposes is a question of fact, the determination of which is primarily within the province of the taxing authorities * * *." *Cuyahoga Cty. Bd. of Revision v. Fodor*, 15 Ohio St.2d 52, 239 N.E.2d 25 (1968), syllabus. An appellate court reviews a decision of the taxing authority to determine whether it is reasonable and lawful. R.C. 5717.04; *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 124 Ohio St.3d 481, 2010-Ohio-687, 923 N.E.2d 1144, ¶ 13. Therefore, this

court will defer to the taxing authority's determinations of factual issues where those decisions are supported in the record by reliable and probative evidence. *Strongsville Bd. of Edn. v. Wilkins*, 108 Ohio St.3d 115, 2006-Ohio-248, 841 N.E.2d 303, ¶ 7.

{¶11} The burden of demonstrating a valuation different from the current assessed value rests solely on the party seeking a change in value. *Bd. of Edn. of the Columbus City School Dist. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566, 740 N.E.2d 276 (2001). In the absence of supporting evidence, the valuation adduced by the taxing authority will be maintained.

{¶12} Kamin argues that the trial court failed to perform a full and independent evaluation of the evidence because his appraiser, Robert Sours, referenced four comparable properties and the trial court only considered three of those; the court failed to consider the February 2009 sale of Macy's department store in North Randall and, therefore, did not thoroughly and independently review the evidence. We disagree.

{¶13} In its opinion, the trial court discussed three comparables, all of which had 2010 sale dates and were vacant big box stores at the time they were sold: Target at Rolling Acres Mall in Akron, Value City in Parma, and Giant Tiger in Brooklyn. The fourth comparable, the Macy's store that sold in February 2009, was not specifically mentioned by the trial court in its opinion but this fact alone does not mean the trial court did not consider it in formulating its decision. Moreover, the Macy's comparable was also a vacant big box store at the time of sale, whereas Kamin's property housed a fully operational Kmart at the time of the relevant tax lien date.

{¶14} Kamin claims that the auditor's valuation of \$2,575,600 cannot be upheld where no evidence in support of that value was offered at the hearing. But it is Kamin as the taxpayer who had the burden to present credible, probative evidence of the right of reduction before the burden shifts to the auditor to defend its valuation. *Scranton-Averell, Inc. v. Cuyahoga Cty. Fiscal Officer*, 8th Dist. Cuyahoga Nos. 98493 and 98494, 2013-Ohio-697, ¶ 23, 25, citing *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision*, 68 Ohio St.3d 493, 494-495, 628 N.E.2d 1365 (1994), and *Murray & Co. Marina, Inc. v. Erie Cty. Bd. of Revision*, 123 Ohio App.3d 166, 172-174, 703 N.E.2d 846 (6th Dist.1997). We cannot substitute our judgment for that of the trial court on factual issues; Kamin had the duty to prove his right to a reduction in value. *Scranton-Averell* at ¶ 30, citing *R.R.Z. Assoc. v. Cuyahoga Cty. Bd. of Revision*, 38 Ohio St.3d 198, 202, 527 N.E.2d 874 (1988).

{¶15} As to the resolution of a question of fact, the trial court's determination of value will be reversed only when it appears from the record that such decision was unreasonable or arbitrary. Here, the trial court conducted an independent review of the evidence and found that Kamin was unable to meet his burden to show that he had a right to reduction in value. In light of the above, we find no abuse of discretion in the trial court's decision to uphold the Board of Revision's valuation of Kamin's property.

{¶16} The sole assignment of error is overruled.

{¶17} Judgment affirmed.

It is ordered that appellees recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

LARRY A. JONES, SR., PRESIDING JUDGE

EILEEN T. GALLAGHER, J., and
MELODY J. STEWART, J., CONCUR