

[Cite as *Withintime, Inc. v. Cuyahoga Cty. Fiscal Officer*, 2016-Ohio-2944.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103482

WITHINTIME, INC., ET AL.

PLAINTIFFS-APPELLANTS

vs.

CUYAHOGA COUNTY FISCAL OFFICER, ET AL.

DEFENDANTS-APPELLEES

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-14-819866

BEFORE: McCormack, P.J., S. Gallagher, J., and Blackmon, J.

RELEASED AND JOURNALIZED: May 12, 2016

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TIM McCORMACK, P.J.:

{¶1} Plaintiffs-appellants, Withintime, Inc. and DCI United Properties, L.L.C., challenge the valuation of a department store building located at the former Randall Park Mall. Appellants seek a reduction of the property’s taxable value for tax year 2009 based on a sale price. However, instead of filing a timely valuation complaint pursuant to the requirements of R.C. 5715.19, appellants filed the instant complaint in 2014 in the common pleas court seeking a writ of mandamus and declaratory and injunctive relief. For the following reasons, we affirm the trial court’s judgment granting summary judgment in favor of the appellees.¹

Background

{¶2} The subject property was a department store previously operated by the May Department Stores Company (n.k.a. Federated Retail Holdings), subsequently known as Macy’s Retail Holdings, Inc. (hereafter “Macy’s”). It is located at what was Randall Park Mall in North Randall Village and Warrensville Heights, Ohio.²

{¶3} On February 6, 2009, Macy’s sold the property to Withintime, a Delaware corporation, for \$310,000. On April 22, 2009, Withintime conveyed the property to

¹The appellees are the Cuyahoga County Fiscal Officer, the Cuyahoga County Board of Revision, the Cuyahoga County Treasurer (“the county appellees”), Warrensville Heights City School District Board of Education, and the Village of North Randall.

²The property comprised of two parcel numbers: 771-07-001 and 762-25-018. It is in the Warrensville Heights City School District.

Rutherford Dawson, the principal of both Withintime and DCI United Properties. The property was later conveyed by Dawson to DCI United Properties on January 2010.

{¶4} At the time of the sale in February 2009, there was a pending valuation complaint before the board of revision filed in 2007 to contest the property's valuation for tax year 2006. A month after the sale, on March 9, 2009, the board of revision issued a decision on the 2006 valuation complaint. It reduced the property's value from \$2,235,000 to \$1,000,000.³

{¶5} After Dawson acquired the property, he sent a communication on May 28, 2009, to "Cuyahoga County Tax Accessor [sic]," requesting the value of the property be reduced to the sale price of \$310,000. According to Dawson, sometime in the first half of 2009, he also spoke with Martin P. Murphy at the board of revision over the telephone, asking for a reduction of the property's value. Dawson alleged that Murphy told him that he could not file a valuation complaint for the property. Murphy had no recollection of the alleged conversation.

{¶6} No valuation complaint regarding the subject property was filed for tax years 2009, 2010, or 2011. For tax year 2012, the fiscal officer valued the property at

³In August 2009, V.A.S. Enterprises performed a countywide appraisal on behalf of the Cuyahoga County Fiscal Officer as part of the triennial update of the 2006 sexennial appraisal. Lou Gentile, the Commercial Appraisal Manager for V.A.S. who appraised the subject property, stated in an affidavit that, in appraising the subject property, he found the April 2009 sale not to be an arm's-length sale reflecting the property's true fair market value "because of its distressed nature arising from Macy's shuttering its retail operations at the former Randall Park Mall location." Instead of using the sale price, he applied a "value factor" to the property's 2006 sexennial appraised value of \$2,235,000 to arrive at a value of \$1,781,600 for the property.

\$738,600. In 2013, DCI filed a complaint for tax year 2012 to challenge that valuation. The board of revision subsequently issued a decision and retained the fiscal officer's valuation.

The Instant Complaint

{¶7} In January 2014, appellants Withintime and DCI United Properties filed the instant “Complaint and Petition for Writ of Mandamus” in the Cuyahoga County Court of Common Pleas. The complaint sought a reduction of the property's value to \$310,000, its 2009 sale price.

{¶8} Appellants alleged that the appraisal performed by V.A.S. was fraudulent because the principals of V.A.S. were convicted of bribing the then County Auditor Frank Russo. Based on the allegation of fraudulent assessment, appellants raised four counts in their complaint: Count 1 sought to enjoin the county from collecting the taxes on the subject property from tax years 2009 to 2012; Count 2 sought a declaratory judgment that the taxes levied on the property were illegal; Count 3 sought a writ of mandamus compelling the county appellees to revalue the property at \$310,000 for tax years 2009 to 2012; and Count 4 sought equitable estoppel, asking that the county appellees' “illegal behavior” be estopped through the use of the court's inherent powers.

{¶9} All appellees moved for summary judgment. The trial court granted their motion, finding that appellants failed to utilize the special statutory procedure established in R.C. Chapters 5715 and 5719 to properly challenge the valuation of the property.

{¶10} On appeal, appellants raised one assignment of error. It stated: “The trial court erred in granting appellees’ motion for summary judgment.”

Analysis

{¶11} Summary judgment is appropriate when: (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) after construing the evidence most favorably for the party against whom the motion is made, reasonable minds can reach only a conclusion that is adverse to the nonmoving party. Civ.R. 56(C). We review the trial court’s judgment de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996).

{¶12} For a property owner seeking to reduce the tax value of a property, R.C. 5715.19 prescribes procedures to be utilized. Under the statute, a person owning taxable real property may file a complaint against the valuation of a property. Such a complaint is filed with the county auditor (or fiscal officer), who presents all such complaints to the county board of revision. The complaint is to be filed before the 31st day of March of the ensuing tax year. R.C. 5715.19.

{¶13} The decision of the county board of revision may be subsequently appealed to the state board of tax appeals. R.C. 5717.01. A decision of the board of tax appeals may further be appealed to either the court of appeals for the county in which the property is located, or the Supreme Court of Ohio. R.C. 5717.04. As an alternative, an appeal from the decision of the county board of revision can also be taken directly to the common pleas court. R.C. 5717.05.

{¶14} Here, appellants did not file a tax valuation complaint for tax year 2009 — nor the ensuing two tax years — with the county fiscal officer to challenge the valuation of the property based on the 2009 sale price. The instant action for an injunction, declaratory judgment, and writ of mandamus appears to be an attempt to overlook and bypass the procedures and requirements set forth in R.C. Chapters 5715 and 5719.

{¶15} Declaratory, injunctive, and mandamus actions are inappropriate to obtain a reduction of taxable value of real property. “Because Chapters 5715 and 5717 of the Ohio Revised Code establish special statutory procedures for testing the valuation and assessment of real property for tax purposes, declaratory judgment is an inappropriate remedy which should not be granted as an alternative to these statutory procedures.” *State ex rel. Iris Sales Co. v. Voinovich*, 43 Ohio App.2d 18, 23, 332 N.E.2d 79 (8th Dist.1975). “Declaratory relief should not be granted where a special statutory proceeding has been provided for that purpose.” *Id.* See also *Schomaeker v. First Natl. Bank of Ottawa*, 66 Ohio St.2d 304, 421 N.E.2d 530 (1981); *Driscoll v. Austintown Assoc.*, 42 Ohio St.2d 263, 328 N.E.2d 395 (1975). “The circumvention of these special statutory procedures [set forth in R.C. Chapters 5715 and 5719] would nullify the legislative intent to have specialized tax questions initially determined by boards and agencies specifically designed and created for that purpose.” *Iris* at 23. “[A]ctions for declaratory judgment and injunction are inappropriate where special statutory proceedings would be bypassed.” *Transky v. Ohio Civ. Rights Comm.*, 193 Ohio App.3d 354, 2011-Ohio-1865, 951 N.E.2d 1106, ¶ 40 (11th Dist.), quoting *State ex rel. Albright v.*

Delaware Cty. Court of Common Pleas, 60 Ohio St.3d 40, 42, 572 N.E.2d 1387. Similarly, mandamus is not a proper remedy where there is a plain and adequate remedy in the ordinary course of law. *Iris* at 23, citing *Stat ex rel. Corron v. Wisner*, 25 Ohio St.2d 160, 267 N.E.2d 308 (1971).

{¶16} In fact, neither R.C. Chapters 5715 or 5717 authorizes the common pleas court to hear valuation disputes involving property valuations for tax purposes unless the matter is before the court on appeal. *Musial Offices, Ltd. v. Cty. of Cuyahoga*, 2014-Ohio-602, 8 N.E.3d 992, ¶ 11 (8th Dist.). The courts of common pleas only have appellate jurisdiction conferred by statute to hear property tax valuation cases. *Id.* citing *Holm v. Clark Cty. Aud.*, 168 Ohio App.3d 119, 2006-Ohio-3748, 858 N.E.2d 877 (2d Dist.).

{¶17} This action is an untimely attempt by appellants to contest the taxable value of their property four years after a tax valuation complaint should have been filed in order to be in compliance with the requirements of R.C. 5715.19. The trial court properly recognized it as such.⁴ Its decision granting summary judgment in favor of the appellees is affirmed.

⁴Appellants alleged a board of revision employee stated to Dawson he could not file a valuation complaint for 2009 because a prior valuation complaint was pending. Even if the allegation were true, appellants were not excused from the requirement of R.C. 5715.19 for a proper challenge of valuation. “The actions of an employee of the [board of revision], no matter how well-meaning, confusing or misleading, do not serve to excuse the untimely filing.” *Psathas v. Cuyahoga Cty. Bd. of Revision*, BTA No. 2000-M-1471, 2001 Ohio Tax LEXIS 17, *7 (Ohio B.T.A. Jan. 12, 2001). See also *McCabe v. Franklin Cty. Bd. of Revision*, BTA No. 2007-A-1692, 2009 Ohio Tax LEXIS 467 (Ohio B.T.A. Apr. 14, 2009) (an untimely filing by the appellant is not curable by suggesting that the BOR failed to give accurate information).

{¶18} The county appellees raises one cross-assignment of error. It states: “The trial court’s grant of the county appellees’ motion for summary judgment may be affirmed on additional grounds.” Pursuant to R.C. 2505.22, “assignments of error may be filed by an appellee who does not appeal, which assignments shall be passed upon by a reviewing court before the final order, judgment, or decree is reversed in whole or in part.” Accordingly, cross-assignments of error need only be considered by a reviewing court when necessary to prevent the reversal of the judgment under review. *Parton v. Weilnau*, 169 Ohio St. 145, 158, 158 N.E.2d 719 (1959). *See also Chapman v. Ohio State Dental Bd.*, 33 Ohio App.3d 324, 515 N.E.2d 992 (9th Dist. 1986) (an appellee’s cross-assignments of error are only considered for the limited purpose of preventing the reversal of the judgment under review); *Sullivan v. Westfield Ins. Co.*, 11th Dist. Lake No. 2012-L-004, 2013-Ohio-146, ¶ 38-40. Because we affirm the decision of the trial court, we decline to further consider the county appellees’ cross-assignment of error.

{¶19} Judgment affirmed.

It is ordered that appellees recover of appellants 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 common pleas court 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.

TIM McCORMACK, PRESIDING JUDGE

SEAN C. GALLAGHER, J., and
PATRICIA ANN BLACKMON, J., CONCUR