

[Cite as *Emeritus Properties v. Medina County Board of Revisions*, 2004-Ohio-4951.]

STATE OF OHIO)
)ss:
COUNTY OF MEDINA)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

EMERITUS PROPERTIES, INC.

Appellee

v.

MEDINA COUNTY BOARD OF
REVISIONS, MICHAEL E.
KOVACK, ADMINISTRATOR

Appellant

C.A. No. 03CA0128-M

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF MEDINA, OHIO
CASE No. 03 CIV 0003

DECISION AND JOURNAL ENTRY

Dated: September 22, 2004

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

CARR, Presiding Judge.

{¶1} Appellant, Medina County Board of Revisions (“the board”), appeals from a decision of Medina County Court of Common Pleas that reversed the board’s decision on its tax appraisal of a property owned by appellee, Emeritus Properties, Inc. (“Emeritus”). This Court affirms.

I.

{¶2} The property in question is a hotel located at 5200 Montville Drive in Montville Township. In April of 2002, Emeritus filed a complaint against the valuation of the property because it disputed the Medina County Auditor's appraisal of the property's fair market value for tax year 2001. The Medina County Auditor had appraised the property at a fair market value of \$1,637,920. Emeritus contended that the property's true market value was \$615,000, the price Emeritus had recently paid to purchase the property in an arm's length transaction.

{¶3} A hearing was held before the board. Emeritus did not appear in person but it had submitted documentation to support its complaint. The board rejected the challenge of Emeritus and did not change the auditor's assessment of the fair market value of the property.

{¶4} Emeritus appealed to the Medina County Court of Common Pleas. After hearing the matter on briefs and evidence submitted by the parties, which consisted of the same documentation that Emeritus had submitted to the board, the trial court upheld the challenge of Emeritus and reduced the appraised value of the property to \$615,000. The board appeals and raises one assignment of error.

II.

ASSIGNMENT OF ERROR

“THE TRIAL COURT ABUSED [ITS] DISCRETION BY FINDING VALUE ON PERMANENT PARCEL NUMBER 30-11B-10-005 TO BE ONLY \$615,000.00 WHEN THE COMPLAINANT FAILED TO EITHER PROSECUTE THEIR

CASE OR TO PRODUCE ANY COMPETENT AND PROBATIVE EVIDENCE TO SHOW THAT THE APPRAISAL OF THE MEDINA COUNTY AUDITOR WAS INCORRECT.”

{¶5} The board initially contends that the trial court erred in reversing the decision of the board because Emeritus did not appear at the scheduled hearing to challenge the auditor’s appraisal of the property. Relying on *LCL Income Properties v. Rhodes* (1995), 71 Ohio St.3d 652, the board contends that the trial court was required to accept the board’s decision because Emeritus did not appear at the hearing and, consequently, failed to prosecute its case before the board. *LCL Income Properties* did recognize that a board of revision is justified in fixing a property appraisal value at the amount assessed by the county auditor ““where a taxpayer files a complaint against the assessed value of his real property and thereafter fails to attend a hearing *** *and no evidence in support of such complaint is offered by or on behalf of the taxpayer[.]*”” Id. at 653, quoting *Swetland Co. v. Evatt* (1941), 139 Ohio St. 6 (Emphasis added). Although it is true that Emeritus did not enter a personal appearance at the hearing, it did submit documents to support its challenge to the auditor’s appraisal. Moreover, according to the board’s own argument on appeal, it did consider the documentation submitted by Emeritus, but found it insufficient to support the challenge of Emeritus. The board cannot now argue that Emeritus failed to prosecute its challenge to the appraisal.

{¶6} Next, the board contends that the trial court erred in reducing the auditor’s assessment of the property’s fair market value. On appeal from the board of revision, the common pleas court was required to “independently determine the taxable value of the property[.]” *Black v. Bd. of Revision* (1985), 16 Ohio St.3d 11, paragraph one of the syllabus. R.C. 5717.05 “contemplates a *decision de novo*.” (Emphasis in original.) *Id.* at 14.

{¶7} The only evidence before the court was submitted by Emeritus. Emeritus submitted several documents to the common pleas court, demonstrating transfers of the property and the outstanding mortgage on the property during recent years, which were the same documents Emeritus had presented with its challenge before the board. The board did not dispute that an arm’s length purchase is an appropriate measure of fair market value. See R.C. 5713.03; *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325, 327. The board did not present any evidence to contradict Emeritus’s evidence that it purchased the property through an arm’s length transaction, nor did it offer any evidence to rebut the presumption that the arm’s length purchase price was an appropriate measure of the property’s fair market value. See *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325, 327. The board’s argument on appeal is that the trial court miscalculated the purchase price based on the documents presented by Emeritus.

{¶8} On appeal to this Court, the judgment of the common pleas court “shall not be disturbed absent a showing of abuse of discretion.” *Black*, 16 Ohio St.3d at 11, paragraph one of the syllabus. An abuse of discretion amounts to more than an error of judgment, but rather is a “perversity of will, passion, prejudice, partiality, or moral delinquency.” *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621. An appellate court may not substitute its judgment for that of the trial court. *Id.*

{¶9} Based on the documents submitted by Emeritus, the trial court made the following factual findings. In 1992, the property in question was owned by Gerald Jankowski and was encumbered by a mortgage in the amount of \$1,406,720. Jankowski later transferred the property to Huntington Hospitality Group, Inc., a company in which he was a stockholder, which assumed the mortgage obligation. The mortgage obligation matured on August 1, 1999, but, as of September 30, 2000, an indebtedness of \$1,226,163.43 remained unpaid. On October 6, 2000, a new agreement was executed between the current holder of the mortgage note and Huntington, Jankowski, and another company owned by Jankowski, Properties Unlimited, Inc. The agreement essentially provided that the holder of the mortgage would sell the note to Properties Unlimited for \$615,000. At that point, Huntington still owned the property and it was encumbered by a mortgage of \$615,000, held by Properties Unlimited, Inc.

{¶10} Through a document dated January 2, 2001, Emeritus entered into an agreement to purchase the property from Huntington and the total sales price was the assumption of the \$615,000 mortgage. Consequently, the trial court concluded that Emeritus had purchased the property through an arm's length transaction for \$615,000, and it concluded that the purchase price represented the property's fair market value.

{¶11} The board asserts that the documents demonstrated that the purchase price paid by Emeritus was actually \$1,841,163.43, which it apparently calculated by combining the value of the mortgage outstanding on the property in 1999 and the \$615,000 value of the mortgage in January, 2001. The board insists that Emeritus paid \$615,000 in cash in addition to assuming the obligation to pay a mortgage of \$1,226,163.43, but the documents submitted by Emeritus fail to support such a conclusion. It would appear that the trial court correctly concluded that the board had miscalculated the purchase price of the property and that the board had erred by failing to reduce the fair market valuation of this property.

{¶12} The trial court's factual findings, based on the evidence before it, were reasonable. This Court cannot say that the court abused its discretion by reducing the auditor's assessment of the property's fair market value. The assignment of error is overruled.

III.

{¶13} The assignment of error is overruled. The judgment of the Medina County Court of Common Pleas is affirmed.

Judgment affirmed.

The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Medina, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

Exceptions.

DONNA J. CARR
FOR THE COURT

WHITMORE, J.
BATCHELDER, J.
CONCUR

APPEARANCES:

DEAN HOLMAN, Prosecuting Attorney, and KATHRINA E. DEVANNEY,
Attorneys at Law, 72 Public Square, Medina, OH 44256, for the Appellants.

RICHARD J. MARCO, JR., Attorney at Law, 52 Public Square, Medina, OH
44256, for the Appellee.