

ORIGINAL

IN THE SUPREME COURT
STATE OF OHIO
APPEAL FROM THE BOARD OF TAX APPEALS

12-1476

Board of Education of the Groveport
Madison Local School District,

Appellee,

v.

Franklin County Board of Revision,
Franklin County Auditor and the Tax
Commissioner of the State of Ohio,

Appellees,

and

Public Storage/Public Storage
Business Trust (Successor to Hamilton-33
Partnership and John W. Messmore, Tr.),

Appellant.

SUPREME COURT CASE
NUMBER: _____

BOARD OF TAX APPEALS
CASE NO. 2010-A-1290

FILED

AUG 29 2012

CLERK OF COURT
SUPREME COURT OF OHIO

NOTICE OF APPEAL

William J. Stehle (0077613)
COUNSEL OF RECORD
Assistant Prosecuting Attorney
373 S. High Street, 20th Floor
Columbus, OH 43215
P: (614) 525-3500
F: (614) 525-2530

Attorney for Appellees Franklin
County Board of Revision and
Franklin County Auditor

Todd W. Sleggs (0040921)
COUNSEL OF RECORD
Sleggs, Danzinger & Gill, Co., LPA
820 W. Superior Ave., Seventh Floor
Cleveland, OH 44113
P: (216) 771-8990
F: (216) 771-8992

Attorney for Appellant Public Storage/Public
Storage Business Trust (Successor to Hamilton-33
Partnership and John W. Messmore, Tr.)

IN THE SUPREME COURT
STATE OF OHIO
APPEAL FROM THE BOARD OF TAX APPEALS

Board of Education of the Groveport
Madison Local School District,

Appellee,

v.

Franklin County Board of Revision,
Franklin County Auditor and the Tax
Commissioner of the State of Ohio,

Appellees,

and

Public Storage/Public Storage
Business Trust (Successor to Hamilton-33
Partnership and John W. Messmore, Tr.),

Appellant.

SUPREME COURT CASE
NUMBER: _____

BOARD OF TAX APPEALS
CASE NO. 2010-A-1290

NOTICE OF APPEAL TO THE
SUPREME COURT OF OHIO
PURSUANT TO SECTION
5717.04 REVISED CODE

The Appellant, Public Storage/Public Storage Business Trust (Successor to Hamilton-33 Partnership and John W. Messmore, Tr.), by and through counsel, hereby gives notice of its appeal to the Supreme Court of The State of Ohio, from a Decision and Order of the Ohio Board of Tax Appeals, rendered on the 31st day of July, 2012, a copy of which is attached hereto as "Exhibit A" and which is incorporated herein as though fully rewritten in this Notice of Appeal.

The Errors complained of are attached hereto as "Exhibit B", which is incorporated herein by reference.

Respectfully submitted,

SLEGGS, DANZINGER & GILL, CO., LPA



Todd W. Sleggs (0040921)

COUNSEL OF RECORD

820 W. Superior Avenue, Seventh Floor

Cleveland, OH 44113

P: (216) 771-8990

F: (216) 771-8992

ATTORNEYS FOR APPELLANT
PUBLIC STORAGE/PUBLIC STORAGE
BUSINESS TRUST (SUCCESSOR TO
HAMILTON-33 PARTNERSHIP AND JOHN W.
MESSMORE, TR.)

OHIO BOARD OF TAX APPEALS

Board of Education of the Groveport
Madison Local Schools,

Appellant,

vs.

Franklin County Board of Revision,
Franklin County Auditor, and John W.
Messmore, Tr.,

Appellees.

CASE NO. 2010-A-1290

(REAL PROPERTY TAX)

DECISION AND ORDER

AUG 02 2012

APPEARANCES:

For the Appellant

- Rich & Gillis Law Group, LLC
Karol C. Fox
6400 Riverside Drive, Suite D
Dublin, Ohio 43017

For the County
Appellees

- Ron O'Brien
Franklin County Prosecuting Attorney
Paul Stickel
Assistant Prosecuting Attorney
373 South High Street, 20th Floor
Columbus, Ohio 43215

For the Appellee
Property Owner

- James K. Hunter, III
Attorney at Law
673 Mohawk Street, Suite 400
Columbus, Ohio 43206

Copy to¹

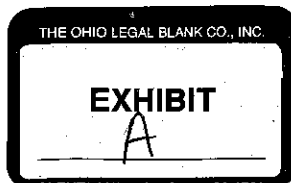
- Sleggs, Danzinger & Gill Co., LPA
Todd W. Sleggs
820 West Superior Avenue, 7th Floor
Cleveland, Ohio 44113

JUL 31 2012

Entered

Ms. Margulies, Mr. Johrendt, and Mr. Williamson concur.

¹ Title to the subject property was transferred following the filing of the original complaint and/or notice of appeal, and accordingly notice of this decision is being issued to the current property owner's counsel, in accordance with R.C. 5717.03(B). See *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 114 Ohio St.3d 1224, 2007-Ohio-4007.



This cause and matter came on to be considered by the Board of Tax Appeals upon a motion to remand with instructions to dismiss the underlying complaint filed by the appellant ("BOE"). This matter has been submitted upon the BOE's motion and memorandum in support, the appellee property owner's (current) response, and the BOE's response thereto.

The BOE contends that the original decrease complaint filed by the property owner with the BOR did not vest jurisdiction because "[a]s of the date the tax year 2008 Complaint was filed with the BOR, the legal title holder of the Subject Property was Hamilton-33 Partnership. However, Hamilton-33 Partnership is not identified as the property owner on line one or elsewhere on the face of the original tax year 2008 Complaint." Motion at 3.

The statutory transcript certified to this board by the Franklin County Board of Revision includes a copy of the original decrease complaint filed on March 31, 2009, with the Franklin County Board of Revision. S.T., Ex. 1. On line 1 of such complaint, John W. Messmore Living Trust is listed as the owner of the subject property. In addition, the complaint is signed by James Hunter, attorney for the owner, who is also listed as the complainant's agent on line 3 of the complaint. The transcript also includes the county property record card which lists Hamilton-33 Partnership as the owner, S.T., Ex. 5, as well as an appraisal of the subject prepared for the owner's use which lists Hamilton-33 Partnership as the owner of the subject property. S.T., Ex. 6A at 9.

Courts have held that for a complaint to be valid, it must include all information that goes to the core of procedural efficiency. *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision* (1998), 80 Ohio St.3d 591; *Trotwood-Madison City School Dist. v. Montgomery Cty. Bd. of Revision* (June 30, 1997), BTA No. 1995-S-1282, unreported; *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (Dec. 18, 1998), BTA No. 1998-J-481, unreported, reversed on other grounds, (2000), 87 Ohio St.3d 363; *Ritz Carlton Hotel Partnership v. Cuyahoga Cty. Bd. of Revision* (May 11, 2001), BTA No. 1998-L-355, unreported. Further, a complaint must name at least one owner of the property on the complaint form in order to satisfy the core jurisdictional requirements. *City of Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (Jan. 22, 1999), BTA No. 1998-L-138, unreported; *Trotwood-Madison City School Dist.*, supra; *Cedar Heights Co. v. Cuyahoga Cty. Bd. of Revision* (July 20, 2001), BTA Nos. 2000-J-1714, et al., unreported. In *Gilman v. Hamilton Cty. Bd. of Revision*, 127 Ohio St.3d 154, 2010-Ohio-4992, the Supreme Court held that “in cases that address issues of real property taxation, we have construed ‘owner’ narrowly to encompass only the legal-title holder and not the holder of an equitable interest in the property. See *Performing Arts School of Metro. Toledo, Inc. v. Wilkins*, 104 Ohio St.3d 284, 2004-Ohio-6389; *Victoria Plaza Ltd. Liab. Co. v. Cuyahoga Cty. Bd. of Revision* (1999), 86 Ohio St.3d 181, 183, 1999-Ohio-148.” Id. at ¶16. “[I]n *Bloom v. Wides* (1955), 164 Ohio St. 138, 141, *** the court stated, ‘where the term “owner” is employed with reference to land or

buildings, it is commonly understood to mean the person who holds the legal title.”

Victoria Plaza, supra at 183.

This board must determine whether the legal titleholder of the subject property was properly identified on line 1 of the original decrease complaint at the time it was filed with the BOR. Through its response to the motion to remand, the current owner attempts to argue that the subject complaint invoked the jurisdiction of the board of revision because John W. Messmore Living Trust owned other real property in Franklin County at the time the complaint was filed and John W. Messmore Living Trust held an interest “in the entity holding legal title to the property (Hamilton-33 Partnership).” Response at 1-2. Such arguments relate to the standing of the entity filing the complaint and have no bearing on whether the property owner, as listed on line 1 of the complaint, was proper. Regardless of the foregoing, according to the record before us, at the time the complaint was filed, the property was not titled in the name of John W. Messmore Living Trust.

Thus, considering the instant facts, we conclude that since the official county records reflect that Hamilton-33 Partnership held title to the subject property at the time the complaint was filed, which the current owner does not dispute, John W. Messmore Living Trust did not have legal title to the subject property at the time of the filing of the subject complaint, and, as such, it was not properly listed as the property owner on line 1 of the complaint.

It is the decision and order of the Board of Tax Appeals that this matter be remanded to the Franklin County Board of Revision with instructions to dismiss the original complaint filed on behalf of the property owner for lack of jurisdiction.

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.


Sally F. Van Meter, Board Secretary

EXHIBIT "B"

ASSIGNMENT OF ERRORS

ASSIGNMENT OF ERROR NO. 1

The Board of Tax Appeals decision and order dismissing a complaint filed by an owner of the property is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 2

The Board of Tax Appeals decision and order dismissing a complaint filed by an owner of the entity holding legal title to the property is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 3

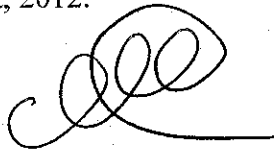
The Board of Tax Appeals decision and order finding that a complaint can only be filed by the entity holding legal title to real property is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 4

The Board of Tax Appeals decision and order to dismiss the complaint on behalf of the property owner for lack of jurisdiction is unreasonable and unlawful.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing NOTICE OF APPEAL was mailed via Certified United States Mail, postage prepaid, to William J. Stehle, Esq., Assistant Prosecuting Attorney, 373 S. High Street, 20th Floor, Columbus, OH 43215, attorney for Appellees, Franklin County Board of Revision and Franklin County Auditor; Karol C. Fox, Esq., Rich & Gillis Law Group, LLC, Attorney for Appellee Board of Education of the Groveport Madison Local School District; and Mike DeWine, Ohio Attorney General, State Office Tower, 17th Floor, 30 East Broad Street, Columbus, Ohio 43215-3428, Attorney for Appellee Tax Commissioner of the State of Ohio on this 28th day of August, 2012.



Todd W. Sleggs