

[Cite as *Turney, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 2015-Ohio-4086.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102580

TURNEY, L.L.C.

PLAINTIFF-APPELLANT

vs.

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

DEFENDANTS-APPELLEES

**JUDGMENT:
REVERSED AND REMANDED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-14-834429

BEFORE: Celebrezze, A.J., Jones, J., and Boyle, J.

RELEASED AND JOURNALIZED: October 1, 2015

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FRANK D. CELEBREZZE, JR., A.J.:

{¶1} Appellant, Turney, L.L.C. (“Turney”) appeals the dismissal of its valuation complaint by the Cuyahoga County Board of Revision (“BOR”) that was affirmed by the Cuyahoga County Common Pleas Court. Turney argues it constituted an “owner” at the time it filed its complaint and the common pleas court and BOR erred in holding otherwise. After a thorough review of the record and law, this court reverses and remands.

I. Factual and Procedural History

{¶2} Turney filed a valuation complaint with the BOR on March 28, 2014, seeking a reduction in value for tax assessment purposes for the 2013 tax year on property located at 6134 Dunham Road, Maple Heights, Ohio. Turney listed itself as the owner of the property. The complaint sought a reduction in value from \$3,048,000 to \$2,587,500, the amount the complaint alleged the property sold for in a recent, arms-length transaction. The Maple Heights City School District Board of Education (“BOE”) opposed the complaint. At a BOR hearing held on September 30, 2014, a member of Turney, Gabriel Bensimhon, testified about the property, how and when Turney came to own the property, and the documents related to the sale. A “Purchase Agreement” was presented to the BOR indicating an execution date of September 11, 2013. A “Reinstatement Agreement” was also presented indicating that the September 11, 2013 Purchase Agreement was terminated, but that the parties to the sale, on March 12, 2014, revived the

Purchase Agreement with some amended terms. A “Seller’s Statement” generated by Progressive Closing & Escrow Company, L.L.C. (“Progressive”), printed on March 21, 2014, at 10:38 a.m. indicated that the seller, Turney Dunham Associates, Ltd. (“TDA”), acknowledged the receipt of funds when it signed the statement. The statement was signed by a member of TDA, but was not dated. The “Purchaser’s Statement” printed the same date and time was also signed by a member of Turney, Gabriel Bensimhon, but was not dated.

{¶3} The BOE argued that Turney failed to show that it was the owner of the subject property at the time the complaint was filed. It further alleged that the deed was not recorded until after Turney filed its valuation complaint. The deed submitted by Turney indicated that it was recorded on April 21, 2014. The BOE sought dismissal of the complaint on these grounds.

{¶4} On October 2, 2014, the BOR issued its decision dismissing the complaint. It found that Turney was not the owner at the time it filed its complaint according to the recording date of the deed and Turney failed to otherwise show that it was the owner. On October 20, 2014, Turney filed a notice of appeal with the Cuyahoga County Common Pleas Court.

{¶5} Turney filed a brief with assigned errors on November 26, 2014. The BOE filed an appellee brief on January 14, 2015. Turney responded with a reply brief. The court considered the arguments and the BOR record, and affirmed the dismissal of Turney’s complaint. On January 26, 2015, the court issued its decision:

In order to have standing to file a complaint challenging the value of real property, the party challenging the valuation must in fact be the owner recorded on the deed. This principle is reflected in a long line of cases decided by the Ohio Board of Tax Appeals. *See, e.g., Fronimo v. Cuyahoga County Board of Revision*, BTA No. 2012-K-2268 (Oct. 9, 2012). In this case, the deed transferring the property to appellant was not recorded until August [sic] 21, 2014, nearly five months after the complaint was filed. Accordingly, appellant was without standing at the time the complaint was filed to challenge the property's tax valuation.

{¶6} Turney appealed this determination to this court for review assigning one error:

Appellant's sole assignment of error is that the Cuyahoga County Court of Common Pleas erred when it upheld the decision of the Cuyahoga County Board of Revision in dismissing Appellant's tax complaint on the basis that the Appellant was not the owner of the Property when the Complaint was filed, as such, dismissed Appellant's Complaint rather than hear the case on the merits.

II. Law and Analysis

{¶7} This is an appeal from a decision of the Cuyahoga County Court of Common Pleas sitting as a reviewing court examining the BOR's decision. A decision of a county board of revision can be appealed to the court of common pleas pursuant to R.C. 5717.05. The common pleas court independently weighs and evaluates all proper evidence and makes an independent determination of the valuation of the property. *Black v. Bd. of Revision*, 16 Ohio St.3d 11, 13, 475 N.E.2d 1264 (1985). The decision of that reviewing court can further be appealed to the relevant court of appeals. Generally,

this court reviews the trial court's independent judgment for an abuse of discretion. *Newport Harbor Assn. v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 98193, 2012-Ohio-5291, ¶ 9. However, this appeal involves questions of the proper invocation of the jurisdiction of the board of revision. This is a question of law that this court reviews de novo. *NDHMD, Inc. v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga Nos. 101207 and 101300, 2015-Ohio-174, ¶ 14, citing *Akron Ctr. Plaza, L.L.P. v. Summit Cty. Bd. of Revision*, 128 Ohio St.3d 145, 2010-Ohio-5035, 942 N.E.2d 1054, ¶ 10, citing *State v. Consilio*, 114 Ohio St.3d 295, 2007-Ohio-4163, 871 N.E.2d 1167, ¶ 8.

{¶8} The valuation complaint is a creature of statute and the statutes that apply thereto must be complied with to properly invoke the jurisdiction of the board of revision. *Griffith v. Cuyahoga Cty. Bd. of Revision*, 44 Ohio St.2d 225, 339 N.E.2d 817 (1975). In order to properly invoke that jurisdiction, the complainant must satisfy the requirements of R.C. 5715.13 and 5715.19. *Id.* at 227-228. The party must have standing as well to properly invoke the jurisdiction of a board of revision. *Victoria Plaza, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 86 Ohio St.3d 181, 183, 712 N.E.2d 751 (1998).

{¶9} Turney argues that it sufficiently demonstrated that it was the owner at the time it filed its complaint.

{¶10} The term "owner," as used in R.C. 5715.19, has been examined by the Ohio Supreme Court and its meaning has been judicially interpreted:

[I]n *Bloom v. Wides* (1955), 164 Ohio St. 138, 141, 57 Ohio Op. 132, 134, 128 N.E.2d 31, 33, 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.” Moreover, in *State ex rel. Multiplex, Inc. v. S. Euclid* (1973), 36 Ohio St. 2d 167, 169-170, 65 Ohio Op. 2d 383, 384-385, 304 N.E.2d 906, 907-908, the court, citing *Bloom*, ruled that a purchaser that had not yet taken title to real property was not the owner of the property.

* * *

Thus, a person owning property has legal title to it; a person having the beneficial interest in property has possession of all characteristics of ownership other than legal title. Since R.C. 5715.19 does not contain language allowing someone other than the person holding legal title to file a complaint, we conclude that the owner of an equitable interest in real property does not have standing to file a complaint.

Victoria Plaza at 183-184.

{¶11} Therefore, in order to be an “owner” of real property for tax valuation purposes, one must hold legal title thereto. This requirement is examined at the time the complaint is filed. *NDHMD v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 98004, 2012-Ohio-5508, ¶ 5, citing *Public Square Tower One v. Cuyahoga Cty. Bd. of Revision*, 34 Ohio App.3d 49, 52, 516 N.E.2d 1280 (8th Dist.1986). Further, failure to properly complete the tax valuation complaint form promulgated by the Ohio Tax Commissioner may result in a jurisdictional defect that deprives a board of revision the ability to act on the complaint. *Id.* at ¶ 7.

{¶12} There are several requirements for the transfer of ownership of real property to be valid. *See* R.C. 5301.01 et seq. Apart from the formal statutory requirements, “a deed must be delivered to be operative as a transfer of ownership of land.” *Temple v. Temple*, 3d Dist. Marion No. 9-14-26, 2015-Ohio-2311, ¶ 42, citing *Kniebbe v. Wade*, 161 Ohio St. 294, 297, 118 N.E.2d 833 (1954).

“Delivery imports transfer of possession or the right to possession of the instrument with the intent to pass title as a present transfer. It is essential to delivery that there not only be a voluntary delivery, but there must also be an acceptance thereof on the part of the grantee, with the mutual intention of the parties to pass title to the property described in the deed.” (Emphasis deleted.) [*Kniebbe*] at 297. If the grantee possesses the deed, then a presumption of delivery exists. *See id.*

Recording a deed perfects delivery. *See Candlewood Lake Assn. v. Scott*, 10th Dist. Franklin App. No. 01AP-631, 2001-Ohio-8873. However, “a deed does not have to be recorded to pass title. Whether or not recorded, a deed in Ohio passes title upon its proper execution and delivery, so far as the grantor is able to convey it.” *Wayne Bldg. & Loan of Wooster v. Yarborough*, 11 Ohio St.2d 195, 212, 228 N.E.2d 841 (1967). Furthermore, “[a]ctual manual delivery of a deed is not always required to effectuate the grantor’s intention to deliver; the filing and recording thereof being prima facie evidence of delivery, in the absence of any showing of fraud.” *Behymer v. Six*, 5th Dist. Morgan No. CA02-006, 2002-Ohio-6403, at ¶ 13, citing *Frank v. Barnes*, 40 Ohio App. 328, 337, 10 Ohio Law Abs. 460, 178 N.E. 419 (1931).

Id. at ¶ 42-43.

{¶13} There is no question raised about the validity of the instrument transferring title. Therefore, Turney needed to show delivery of a deed with an intent to transfer title by the grantor and acceptance by the grantee. The deed transferring title indicates that it was signed by two members of TDA on March 21, 2014. The witness statements of the notary acknowledging the signatures were dated March 19, 2014. Therefore, this

coupled with the purchase agreement and the transfer of funds is sufficient evidence of an intent on the part of the grantor to transfer title.

{¶14} Bensimhon testified the closing took place on March 25, 2014, but the statements for the buyer and purchaser generated by the escrow company were printed on March 21, 2014, and the signatures on those documents were not dated. The Reinstatement Agreement stated that the original purchase agreement was reinstated with certain amendments. One amendment indicated that closing would occur on or before March 21, 2014. The evidence in the record indicates the closing took place on March 25, 2014, at the latest.

{¶15} Paragraph 7 of the Purchase Agreement defines the closing. It states in part, “Purchaser shall: (I) pay the Purchase Price to Seller subject to any Purchase Price Adjustment required under Paragraph 11 and 12 below

* * *. At the Closing Seller shall: (I) execute, acknowledge, and deliver to Purchaser, or Purchaser’s nominee, its General Warranty Deed subject to the Permitted Exceptions * * *.” Paragraph 10 further provides, “[t]he possession of the Property shall be delivered to Purchaser at Closing * * *.”

{¶16} While it is true that contractual rights in a purchase agreement do not bestow additional rights or impose obligations on county officials, the contracts here define the parameters of the closing that Bensimhon testified occurred on March 25, 2014. On or before that date, pursuant to closing, TDA transferred a deed to Turney’s agent. The deed was dated March 21, 2014, and closing statements appear in the record that conform

with Bensimhon's testimony. The conveyance fee statement filed with the county fiscal officer on April 7, 2014, also indicates it was signed by a Turney representative on March 21, 2014. Bensimhon also testified he received keys to the property and took possession on the date of closing. This is sufficient evidence of delivery and acceptance where no contrary evidence was adduced.

{¶17} From the above, Turney sufficiently demonstrated that it held legal title to the subject property on March 25, 2014. The BOE argues that a party filing a tax valuation complaint should hold not merely legal title, but record title. There is no support for this position in the statute, and courts that have addressed the definition of owner in the context of valuation complaints have mentioned only legal title. *See, e.g., NDHMD*, 8th Dist. Cuyahoga No. 98004, 2012-Ohio-5508, at ¶ 6; *Victoria Plaza*, 86 Ohio St.3d at 183, 712 N.E.2d 751; *Performing Arts School of Metro. Toledo, Inc. v. Wilkins*, 104 Ohio St.3d 284, 2004-Ohio-6389, 819 N.E.2d 649, ¶ 13 (concerning tax exemptions sought under R.C. 5715.27 and holding that “[w]e choose to apply a consistent definition [of owner] within R.C. Chapter 5715”).

{¶18} The BOE further argues that recording is the evidence of delivery in this case and that did not occur until April 2014. However,

no particular form or ceremony is essential to constitute delivery; it need not be manual; it may be made by words and acts, or either, if accompanied with intention that they shall have that effect; it may be made by the grantor personally, or through his agent, to the grantee, either personally or through his agent; and it may be made in escrow, or to take effect immediately.

Williams v. Schatz, 42 Ohio St. 47, 50 (1884).

{¶19} Recording is prima facie evidence of delivery and acceptance, but it is not the only credible evidence of these formalities in the present case. Turney sufficiently demonstrated that it was legal owner of the property at the time it filed its valuation complaint. Therefore, Turney properly identified the owner, itself, on the valuation complaint.

III. Conclusion

{¶20} Turney demonstrated that it was legal owner at the time it filed its valuation complaint. R.C. 5715.19 has been interpreted to mean legal owner not record owner. Therefore, the BOR and common pleas court erred in dismissing Turney's complaint as jurisdictionally defective.

{¶21} This cause is reversed and remanded to the lower court for further proceedings consistent with this opinion.

It is ordered that appellant recover of said appellee 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.

FRANK D. CELEBREZZE, JR., ADMINISTRATIVE JUDGE

LARRY A. JONES, SR., J., and

MARY J. BOYLE, J., CONCUR