[Cite as *Wickliffe City Schools Bd. of Edn. v. Lake Cty. Bd. of Revision*, 2018-Ohio-2460.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

WICKLIFFE CITY SCHOOLS BOARD OF EDUCATION,	:	**O P I N I O N**
Appellee,	:	**CASE NOS. 2017-L-135**
	:	**2017-L-136**
- vs -		**2017-L-137**
	:	**2017-L-138**
LAKE COUNTY BOARD OF REVISION,	:	
Appellee,	:	
LUBRIZOL CORPORATION,	:	
Appellant.		

Appeals from the Ohio Board of Tax Appeals.
Case Nos. 2016-1023, 2016-1024, 2016-1025, & 2016-1026.

Judgment: Affirmed.

Wayne E. Petkovic, 840 Brittany Drive, Delaware, OH 43015 (For Appellee Wickliffe City Schools Board of Education).

Charles E. Coulson, Lake County Prosecutor, and *Eric A. Condon*, Assistant Prosecutor, Lake County Administration Building, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Appellee Lake County Board of Revision).

Victor V. Anselmo, *James Kieran Jennings, III*, and *Cecilia Ji-Yun Hyun*, Siegel Jennings Co., LPA, 23425 Commerce Park Drive, Suite 103, Cleveland, OH 44122 (For Appellant).

TIMOTHY P. CANNON, J.

{¶1} Appellant, Lubrizol Corporation ("Lubrizol"), appeals from the decision and order of the Ohio Board of Tax Appeals, reversing the decisions of the Lake County Board

of Revision regarding the valuation of real property owned by Lubrizol in Wickliffe, Ohio, for purposes of assessing property taxes. Four parcels of property are the subject of this matter: 29-A-004-0-00-0005-0 ("Parcel 1"); 29-A-002-W-00-005-0 ("Parcel 2"); 29-A-002-S-00-011-0 ("Parcel 3"); and 29-A-002-S-00-010-0 ("Parcel 4"). The decision and order of the Board of Tax Appeals is affirmed.

{¶2} The four parcels of property were assessed, for tax year 2015, at $82,100.00; $171,070.00; $188,650.00; and $122,780.00. On March 28, 2016, appellee, Wickliffe City Schools Board of Education, filed separate complaints with the Board of Revision seeking increases in the valuations to $200,000.00; $360,000.00; $550,000.00; and $565,000.00. In each of the complaints, the Board of Education asserted the requested change in value was justified due to the amounts of recent arm's-length sales.

{¶3} No counter-complaint was filed; however, counsel for and a representative of Lubrizol appeared at the Board of Revision hearings.

{¶4} At the hearings, the Board of Education submitted deeds and conveyance fee statements reflecting the recent transfer of each parcel. For Parcel 1, the documentation reflected a transfer from William Sopko & Sons Co., Inc. to Lubrizol for $200,000.00 on December 1, 2015. For Parcel 2, the documentation reflected a transfer from EK North Creek, LLC to Lubrizol for $360,000.00 on December 21, 2015. For Parcel 3, the documentation reflected a transfer from Terrence P. Chubb to Lubrizol for $550,000.00 on October 26, 2015. For Parcel 4, the documentation reflected a transfer from Mario Raguz to Lubrizol for $565,000.00 on December 21, 2015.

{¶5} Counsel for Lubrizol stated it was not challenging the recentness or arm's-length nature of any of these transactions. Rather, Lubrizol argued that using recent

arm's-length sales to determine value is discretionary under R.C. 5713.03 and that the transactions do not reflect the best evidence of valuation because the corporation was motivated to purchase the properties by a self-imposed "civic duty" to create "green space" for the city. Lubrizol also advanced an argument that relying on the recent sale prices would violate the uniformity clause of the Ohio Constitution: in other words, it argued, "by utilizing these atypically motivated sales, the assessment on these properties will be hundreds of percentages higher than other like type assessed properties."

{¶6} Mark Sutherland, Lubrizol's corporate vice president in charge of global communications and global affairs, testified that Parcel 1 was the only parcel listed for sale at the time of purchase; no appraisals were performed to determine purchase prices; no restrictions relating to the corporation's alleged intent to create "green space" are currently contained in any of the deeds; and no substantial improvements have been made to any of the parcels since the time of purchase. Mr. Sutherland further testified that Lubrizol was willing to "pay a premium" price for the parcels; purchase prices were negotiated on a case-by-case basis by a broker openly representing Lubrizol; and there was no compelling need to acquire the parcels within a certain time frame.

{¶7} The Board of Revision issued decisions on June 23, 2016, maintaining the initial assessed valuation of each parcel. In each decision it stated: "The complainant bears the burden of proving that the requested valuation is the true value of the subject property. That burden was not sufficiently proven at the hearing. Therefore, it is the decision of the Lake County Board of Revision that the value of the above-referenced property will not be changed."

{¶8} The Board of Education appealed these decisions to the Board of Tax Appeals on July 20, 2016, and the appeals were consolidated for review. The parties jointly waived a hearing and submitted written arguments. The Board of Education maintained their initial argument that the arm's-length transactions constitute the best evidence of valuation for the purposes of assessing property taxes. Lubrizol contended those sales are unreliable indications of value because they were not generally exposed to the open market and because the parties were not typically-motivated market participants in that they did not act in their own self-interest.

{¶9} The Board of Tax Appeals issued a decision and order on September 27, 2017, in which it rejected Lubrizol's argument that the sale prices are unreliable because they were not exposed to the open market. It further found Lubrizol's contention that the parties were not typically motivated and did not act in their own self-interest was without merit due to lack of evidence. To the contrary, the Board of Tax Appeals found, "a close review of the record reveals that this was simply a situation where a property owner desired to acquire properties in the immediate vicinity of its headquarters in the furtherance of its own business interests."

{¶10} The Board of Tax Appeals determined that the transactions were recent, arm's-length, and constitute the best indication of the subject parcels' values for tax year 2015. It further held that it was not authorized to make a determination on Lubrizol's constitutional argument. The Board of Tax appeals reversed the Board of Revision and ordered the valuation of the parcels be increased to $200,000.00; $360,000.00; $550,000.00; and $565,000.00, as requested by the Board of Education.

{¶11} Lubrizol filed a timely appeal, raising the following four assignments of error, which we will consider out of sequence:

> [1.] The Board of Tax Appeals was unreasonable and unlawful when it reversed the [Board of Revision] and concluded that a transfer of property which was the product of motivations not typical of the marketplace could be evidence of the true value of real property for Ohio tax purposes.
>
> [2.] The Board of Tax Appeals was unreasonable and unlawful because it failed to determine that Lubrizol had affirmatively rebutted the presumption that the sale price reflected the Subject Property's true value.
>
> [3.] The Board of Tax Appeals was unreasonable and unlawful and abused its discretion when it repeatedly misinterpreted the facts before it, which had the effect of placing an unreasonable and unlawful evidentiary burden upon Lubrizol.
>
> [4.] The decision of the Board of Tax Appeals adopting arbitrary sales prices which did not reflect the fair market value of the Subject Property violates Article XII, Section 2 of the Ohio Constitution.

{¶12} "We must affirm the BTA's decision if it was 'reasonable and lawful.' R.C. 5717.04. In making this determination, we must consider legal issues de novo and defer to findings concerning the weight of evidence so long as they are supported by the record." *Terraza 8*, *L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶7 (internal citations omitted). *See also Kister v. Ashtabula Cty. Bd. of Rev.*, 11th Dist. Ashtabula No. 2007-A-0050, 2007-Ohio-6943, ¶12 (the BTA has wide discretion in determining the weight to be given the evidence and the credibility of witnesses that come before it).

{¶13} Pursuant to R.C. 5713.01(B), the county auditor is required to appraise real property at its "true value in money." R.C. 5713.03 provides that if the property has been the subject of a recent arm's-length sale, "the auditor *may* consider the sale price * * * to

be the true value for taxation purposes." (Emphasis added.) Thus, in determining the "true value in money" of a property, a recent arm's-length sale price is not conclusive evidence, and taxing authorities are permitted to also consider "non-sale-price evidence." *Terraza 8*, *supra*, at ¶27, ¶30. Nevertheless, it remains that "'[t]he *best evidence* of the "true value in money" of real property is an actual, recent sale of the property in an arm's-length transaction.'" *Id.* at ¶33, quoting *Conalco, Inc. v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129 (1977), paragraph one of the syllabus (emphasis added).

{¶14} There exists, therefore, a rebuttable presumption that the sale price reflects true value for taxation purposes. *Id.* The opponent of using the sale price must rebut the presumption with "evidence showing that the price did not, in fact, reflect the property's true value." *Id.* at ¶32 (citation omitted); *see also Notestine Manor, Inc. v. Logan Cty. Bd. of Revision*, 152 Ohio St.3d 439, 2018-Ohio-2, ¶26 ("The rebuttable nature of this presumption opens the door to considering appraisal evidence of the property's unencumbered value.").

{¶15} The presumption can only be rebutted by "'challenging whether the elements of recency and arm's-length character between a willing seller and a willing buyer are genuinely present for that particular sale.'" *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723, ¶25, quoting *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, ¶13. "Three factors are relevant to deciding whether a transaction occurred at arm's length: whether the sale was 'voluntary: *i.e.*, without compulsion or duress,' whether the sale '[took] place in an open market,' and whether the buyer and

seller 'act[ed] in their own self interest.'" *Id.* at ¶47, quoting *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23, 25 (1989).

{¶16} Under its third assignment of error, Lubrizol argues the Board of Tax Appeals misinterpreted these legal standards and placed an unjustified burden upon Lubrizol to establish its case.

{¶17} In its decision and order, the Board of Tax Appeals initially concluded that "a presumption of validity arose in favor of each transfer" because the Board of Education submitted sales documentation evidencing a "facially qualifying sale" for each of the four parcels. It then shifted the burden to Lubrizol to "show why the price reported for each sale did not constitute the criterion of value" for the properties. It considered Lubrizol's arguments that the sales were not generally exposed to the open market and that it did not act in its own self-interest. The Board of Tax Appeals rejected the open market argument on legal grounds and found the self-interest argument without merit due to the lack of any "tangible evidence corroborating Mr. Sutherland's testimony." The Board of Tax Appeals concluded:

> Simply because Lubrizol now claims it purchased the properties pursuant to a self-imposed 'civic duty' and plans to utilize the subject property as green space, does not render the four subject purchase prices unreliable indications of value or serve to overcome the presumptions of validity. * * * [W]e find the existing record demonstrates that such transactions were recent, arm's-length, and constitute the best indication of the subject parcels' values as of tax lien date at issue.

{¶18} We cannot conclude from this decision and order that the Board of Tax Appeals in any way misinterpreted the relevant legal standards or placed an unjustified burden upon Lubrizol to establish its case. It merely concluded, as is appropriate under

statutory and case law, that Lubrizol failed to rebut the presumption that the recent sale prices did not, in fact, reflect the properties' true value for purposes of taxation.

{¶19} Lubrizol's third assignment of error is without merit.

{¶20} Under its first assignment of error, Lubrizol argues the recent sale prices could not be used as evidence of true value because the parties to the sales were not typically motivated market participants; i.e., Lubrizol contends it was not acting in its own self-interest because it purchased the parcels for "green space." Although Lubrizol stated at the Board of Revision hearing that it was not challenging the arm's-length nature of the sales, this argument goes directly to such a challenge, and it has been the basis of Lubrizol's position at every level of review.

{¶21} This argument, however, is not well taken. The fact that a party wishes to challenge the arm's-length nature of a transaction with rebuttal evidence does not mean the sale prices cannot be used by the proponent as evidence of the presumptive true value of the property. Lubrizol's argument to the contrary places the proverbial cart before the horse.

{¶22} Lubrizol's first assignment of error is without merit.

{¶23} Under its second assignment of error, Lubrizol argues the Board of Tax Appeals was "unreasonable and unlawful" when it concluded Lubrizol failed to rebut the presumption that the sale prices reflect the true value of the properties.

{¶24} Specifically, Lubrizol asserts it affirmatively demonstrated that it was not a "typically motivated market participant" because it did not act in its own self-interest. If it was typically motivated, Lubrizol maintains, it would have "negotiate[d] the best (in this case, lowest) prices when acquiring the Subject Property. Because [Lubrizol] purchased

the properties at prices well above market in order to convince the existing businesses to sell their properties and move their operating businesses, and did so without considering its own financial interests, [Lubrizol] was not acting as a typically motivated market participant."

{¶25} At the Board of Revision hearing, however, Lubrizol did not introduce any evidence to establish that the sale prices were "well above market" or that it did not negotiate the lowest prices. The only evidence offered in support of its "atypical" argument was Mr. Sutherland's testimony that Lubrizol acquired the properties for use as "green space," rather than for commercial purposes, due to a self-imposed sense of "civic duty" to the community. Even if such a limitation on the permitted uses may have adversely affected the value, there was no evidence offered that Lubrizol placed any type of deed or other restrictions of record on the properties that limited the permitted uses in any way. No independent appraisal evidence of any kind was offered; no testimony was presented as to the fair market value of the properties other than the sale prices; and no testimony was presented by anyone who had been involved in the negotiation process. It was therefore neither unreasonable nor unlawful for the Board of Tax Appeals to conclude that Lubrizol failed to rebut the presumption that the prices they voluntarily and recently paid for the properties are not the true value of those properties for taxation purposes.

{¶26} Lubrizol submitted *Bronx Park South III Lancaster, L.L.C. v. Fairfield Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-1589, as supplemental authority in support of this assignment of error. In *Bronx Park*, the Ohio Supreme Court vacated the Board of Tax Appeals' decision because it had disregarded the owners' independent appraisal

evidence. *Id.* at ¶13. We do not find this holding instructive to the case sub judice, however, as Lubrizol failed to submit any independent appraisal evidence to the Board of Revision.

{¶27} Lubrizol's second assignment of error is without merit.

{¶28} Under its final assignment of error, Lubrizol argues the decision of the Board of Tax Appeals does not reflect the fair market value of the properties and, therefore, violates the uniformity requirements found in Article XII, Section 2, of the Ohio Constitution, which mandates that "[l]and and improvements thereon shall be taxed by uniform rule according to value." Again, Lubrizol did not present any rebuttal evidence to establish the sale prices do not reflect the properties' fair market value. We cannot conclude, therefore, that a constitutional violation took place in this matter.

{¶29} Lubrizol's fourth assignment of error is without merit.

{¶30} The decision and order of the Ohio Board of Tax Appeals is affirmed.

CYNTHIA WESTCOTT RICE, J., concurs,

COLLEEN MARY O'TOOLE, J., concurs in judgment only.