

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT

Property Tax

FLYING M LLC,)
)
 Plaintiff,) No. 000954C
)
 v.)
)
 MULTNOMAH COUNTY ASSESSOR,)
)
 Defendant.) **DECISION OF DISMISSAL**

This matter is before the court on defendant's Motion to Dismiss. The tax years involved are 1998-99 and 1999-00. Defendant's motion is based on the lack of a prior appeal to the County Board of Property Tax Appeals (board) and a lack of standing for tax year 1998-99.

The motion was addressed by the court during the October 12, 2000, case management conference. Jim Murry appeared for the plaintiff. Frank Kaminski and Ms. Read appeared for defendant.

An appeal for a value reduction must be filed annually with the board. ORS 309.026 & 309.100. The board's decision can be appealed to the Tax Court. ORS 305.275 and 305.280(4). In order to file such a petition, the petitioner must have standing, which is generally equated with liability for taxes. ORS 309.100.¹ Plaintiff lacks such

¹ The relevant portion of the statute reads:

“(1) The owner or an owner of any taxable property or any person who holds an interest in the property that obligates the person to pay taxes imposed on the property, may petition the board of property tax appeals for relief as authorized under ORS 309.026. As used in this subsection, an interest that obligates the person to pay taxes includes a contract, lease or

standing for the 1998-99 tax year because it had no tax responsibility that year. See ORS 308.007(1)(c) (tax year “means a period of 12 months beginning on July 1.”).²

Turning to the 1999-00 tax year (July 1, 1999, through June 30, 2000), plaintiff did not exhaust its remedies by first appealing to the board before appealing to the tax court. Accordingly, plaintiff must satisfy the provisions of ORS 305.288 in order for the court to consider the underlying value issue. *Seifert v. Dept. of Rev.*, 14 OTR 401 (1998).

The appeal involves undeveloped land, and the statute authorizes the court to reduce the valuation of such property if the owner or its representative can establish good and sufficient cause for not petitioning the board. ORS 305.288(3).³ The term “good and sufficient cause” is defined as “an extraordinary circumstance that is beyond the control of the taxpayer, or the taxpayer's agent or representative, and that causes the taxpayer, agent or representative to fail to pursue the statutory right of appeal.” ORS 305.288(5)(b)(A). Inadvertence, oversight, and lack of knowledge are specifically excluded from the definition of good and sufficient cause. ORS 305.288(5)(b)(B).

In this case, the reason Mr. Murry did not file a petition with the board is that

other intervening instrumentality.” ORS 309.100.

² The 1998-99 tax year began July 1, 1998, and ended June 30, 1999.

³ ORS 305.288 provides in relevant part:

“(3) The tax court may order a change or correction applicable to a separate assessment of property to the assessment or tax roll for the current tax year and for either of the two tax years immediately preceding the current tax year if, for the year to which the change or correction is applicable the assessor or taxpayer has no statutory right of appeal remaining and the tax court determines that good and sufficient cause exists for the failure by the assessor or taxpayer to pursue the statutory right of appeal.”

he did not own the property until after the December 31, 1999, appeal deadline. ORS 309.100(2). Plaintiff acquired the property in March 2000. This is a reasonable explanation for not petitioning the board and would seem to fit within the definition of good and sufficient cause as set out above. However, the issue is why no petition was filed and not why the current owner failed to do so. This is because the purchaser of real property acquires a bundle of rights and is said to “stand in the shoes” of the sellers. See *PGE v. Dept. of Rev.*, 11 OTR 78, 87 (1988).⁴ Under the bundle of rights theory, plaintiff acquired a collection of property rights from the seller. Plaintiff acquired all the rights that the seller was able to convey. By choosing not to file a petition for value reduction with the board before the deadline, the previous owner lost the right to do so and passed that infirmity to plaintiff.

The previous owner was Mr. Bernards. Mr. Murry was unable to explain why Mr. Bernards did not seek a value reduction with the board, as he has apparently done in the past with other property. He presumably knew the process. In fact, he gave Mr. Murry advice of these matters, which is why Mr. Murry included the 1998-99 tax year in his appeal. Nonetheless, there are no facts before the court establishing that extraordinary circumstances beyond the control of the previous owner prevented the timely filing of a petition and a timely appeal of a board order to this court. Thus, good and sufficient cause is not satisfied.

IT IS THE DECISION OF THE COURT that the above-entitled matter, involving a value appeal for tax years 1998-99 and 1999-00 for property identified as

⁴ In *PGE* the Tax Court cited *Merrill v. Commissioner*, 40 TC 66, 74 (1963) for the proposition that “[o]wnership of property is not a single indivisible concept but a collection or bundle of rights with respect to the property.”

Multnomah County Assessor's Account No. R128246, be dismissed.

Dated this _____ day of October, 2000.

DAN ROBINSON
MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, FOURTH FLOOR, 1241 STATE ST., SALEM, OR 97310. YOUR COMPLAINT MUST BE SUBMITTED WITHIN 60 DAYS AFTER THE DATE OF THE DECISION OR THIS DECISION BECOMES FINAL AND CANNOT BE CHANGED.

THIS DOCUMENT WAS SIGNED BY MAGISTRATE DAN ROBINSON ON OCTOBER 23, 2000. THE COURT FILED THIS DOCUMENT ON OCTOBER 23, 2000.