

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT

Property Tax

FLYING M LLC,)
)
 Plaintiff,) No. 000955C
)
 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 in the arena of property tax valuation appeals is generally equated with liability for taxes. ORS 309.100.¹ Plaintiff lacks such standing for the 1998-99 tax year because it

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

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 only if the owner or its representative can establish good and sufficient cause for not petitioning the board. ORS 305.288(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 plaintiff did not acquire the property until March 2000. The deadline for petitioning the board was December 31, 1999. ORS 309.100(2). Obviously Mr. Murry was not in a position to file the appeal. This is a reasonable explanation 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. Plaintiff acquired a bundle of rights from the seller and is said to “stand in the shoes” of

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 other intervening instrumentality.” ORS 309.100.

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

the seller. See *PGE v. Dept. of Rev.*, 11 OTR 78, 87 (1988).³ 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 the plaintiff herein.

The previous owner was a college located on the East coast which acquired the property by donation from an estate. After owning the property for some time the college reviewed its holdings and decided to sell these parcels to avoid further tax liabilities. In that vain, the college gave a prospective buyer named Mr. Bernards a one year option to purchase, allowing Mr. Bernards time to conduct a feasibility study to determine if a condominium development could be sited on the land. While Mr. Murry was uncertain of the specifics, he believed that the option was granted in early or mid-1999. Mr. Bernards then exercised that option in March 2000, but, after acquiring the property, reconveyed title to plaintiff the following day. Mr. Murry was unable to explain why the college did not seek a value reduction via a timely filed board appeal. Several logical possibilities exist, such as the college's distance physically from Oregon, or the fact that the college was trying to sell the land and a value reduction would work against its interest in maximizing the sale price. However, the bottom line is that there are not facts before the court establishing that extraordinary circumstances beyond the college's control prevented the timely filing of a petition. Thus, good and sufficient cause is lacking.

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

³ 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 Nos. R128244 and R128238, 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.