

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Property Tax

JERRY W. WHITE,)
)
 Plaintiff,) No. 010633C
)
 v.)
)
 COOS COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

This matter is before the court on Defendant's Motion to Dismiss, contained in its Answer. A hearing was held October 23, 2001. Plaintiff was represented by Joann Hansen, a real estate broker. Plaintiff was present at the hearing and presented sworn testimony to the court. Defendant was represented by Dave Bowman, an appraiser with the Coos County Assessor's Office. The Complaint seeks a reduction in the value of certain real property for tax years 1998-99, 1999-2000, and 2000-01.

STATEMENT OF FACTS

The appeal involves the valuation of waterfront industrial property in Coos Bay that was formerly used as a shipbuilding site. The property was contaminated with arsenic and other hazardous substances. Cleanup was undertaken in June 1998 and involved the removal of the docks as well as 1,750 pounds of contaminated soil. Plaintiff acquired the property at a sheriff's foreclosure sale on or about March 28, 2001, from Liberty Northwest Mutual (hereinafter Liberty Northwest).¹ Plaintiff's successful bid was \$32,501. (Ptf's Complaint at 5.) The roll value (RMV) for the 2000-01 tax year is \$353,883. Plaintiff seeks a reduction to \$54,866.

¹The recorded sheriff's deed bears the name Liberty Northwest Insurance Corporation, which is presumably the parent of Liberty Northwest Mutual.

Plaintiff petitioned the county board of property tax appeals (Board) on December 29, 2000, seeking a substantial reduction in the value of the property. The Board dismissed the petition on March 20, 2001, because the petitioner (Plaintiff herein) was not yet the owner of the property and therefore lacked standing. (Ptf's Complaint at 3).

According to the evidence Mr. Lewis Lee owned the property in 1998. Mr. Lee was involved in a bankruptcy proceeding at that time. The lender, Liberty Northwest, foreclosed on the property on or about September 23, 1999. An Amended Judgment was later filed on October 10, 2000.

COURT'S ANALYSIS

The tax year at issue is 2000-01. Plaintiff petitioned the Board for a reduction in value before he became the owner of the property. The Board dismissed the petition because Plaintiff lacked standing. Plaintiff timely appealed the Board's determination to the court but the court's review of that determination is limited to the issue of whether the Board acted properly in dismissing Plaintiff's petition. The court finds that it did because Plaintiff was neither the owner of the property nor a person holding "an interest in the property that obligate[d] [him] to pay [the] taxes imposed on the property." ORS 309.100(1).² However, this does not end the court's inquiry.

Plaintiff has asked the court to reduce the value for three tax years. The parties agree that Plaintiff acquired the property subject to five years of back taxes, which includes the three years at issue. Plaintiff is therefore "aggrieved" by an act of the county assessor as required by ORS 305.275(1)(a) and (1)(a)(C).

Although Plaintiff seeks relief for years prior to his ownership, his assumption of

²All references to the Oregon Revised Statutes are to 1999.

liability for taxes gives him the right to contest value, assuming Plaintiff can overcome the failure to follow the statutory right of appeal. In analyzing that question, the court turns to the relevant provisions of ORS 305.288. Under that statute, the court can order a reduction in the value of this commercial property if Plaintiff can establish “good and sufficient cause * * * for the failure * * * to pursue the statutory right of appeal” in 1998, 1999 or 2000. ORS 305.288(3). The term “good and sufficient cause” is defined by statute as:

“(A) * * * 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; and

“(B) Does not include inadvertence, oversight, lack of knowledge, hardship or reliance on misleading information provided by any person except an authorized tax official providing the relevant misleading information.” ORS 305.288(5)(b).

Plaintiff was not the owner of the property and was therefore not in a position to petition the Board in 1998, 1999 or 2000. According to the evidence Mr. Lee owned the property in 1998 and Liberty Northwest owned the property in 1999 and 2000, at least for the statutory time fixed for petitioning the Board. See ORS 309.100(2). As is generally the case with subsequent purchasers, Plaintiff is unable to explain why the prior owners failed to pursue value reductions from the Board. Plaintiff’s representative, Ms. Hansen suggests the lender was not motivated to appeal because the purchaser would assume liability for the back taxes. This is a reasonable explanation. Another plausible explanation is that the lender would be working at cross purposes in asking the county to lower the value, knowing that it would eventually be selling the property. As for Mr. Lee, Ms. Hansen opines that he lacked any incentive to challenge the value because he was involved in bankruptcy proceedings. This too is a reasonable assumption. None of these explanations rises to

the level of good and sufficient cause, however. In essence the prior owners either lacked sufficient concern for the value and taxes (lack of motivation or incentive) or saw reasons to keep the value where it was on the tax rolls (higher potential sales price). Because Plaintiff is unable to overcome the initial hurdle of excusing the failure to properly pursue the statutory right of appeal, the case will not go forward on the merits of the underlying valuation issue. ORS 305.288(4).

CONCLUSION

The court will not move this case forward on the merits to consider the request for a reduction in value because Plaintiff has not shown that there are extraordinary circumstances beyond the control of the two previous owners that prevented them from petitioning the Board in 1998, 1999 and 2000.

IT IS THE DECISION OF THE COURT that Defendant's Motion to Dismiss is granted.

Dated this _____ day of January, 2002.

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 97301-2563. 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 JANUARY 10, 2001. THE COURT FILED THIS DOCUMENT ON JANUARY 10, 2001.