

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Property Tax

CURT TRENDELL and IRENE TRENDELL,)	
)	
Plaintiffs,)	No. 010837D
)	
v.)	
)	
COOS COUNTY ASSESSOR,)	DECISION ON
)	CROSS MOTIONS FOR
Defendant.)	SUMMARY JUDGMENT

Plaintiffs seek a determination that the 1869 Coos Bay Wagon Road Act restricts the sale of its land to \$2.50 per acre which sets the real market value at no more than \$2.50 per acre. There is no dispute of fact, and the matter has been submitted to the court on Cross Motions for Summary Judgment. Oral argument was held on Tuesday, January 15, 2002.

STATEMENT OF FACTS

Plaintiffs purchased the subject property¹ which is undisputedly part of the 1869 Coos Bay Wagon Road Act (Act) in 1989 and 1993. In 1989, Plaintiffs purchased 33.27 acres for \$25,000 or approximately \$750 per acre. In 1993, Plaintiffs purchased an adjacent 8.72 acres for \$14,000 or approximately \$1,605.50 per acre. Plaintiffs allege that even though they paid more than \$2.50 per acre they did so without knowledge that the land might be subject to the Act. Plaintiffs contend that, now being aware of the Act, they cannot sell their land for more than \$2.50 per acre and Defendant must value the property for the tax roll at the restricted selling price of \$2.50 per acre.

¹Plaintiffs' Complaint identified the subject property as Coos County Assessor's Account No. 6439-02. At the first case management conference, Plaintiffs' orally amended (with no objection from Defendant) their Complaint to include Account No. 6439-01 as part of the appeal.

Defendant alleges that Plaintiffs have “no standing to enforce the covenants contained in the Act.” (Def’s Cross Motion for Summary Judgment at 8.) Defendant states that the covenants, price and quantity restrictions, were “between the United States and the state of Oregon” and the only person with the right to enforce the covenants is the federal government. (*Id.* at 9.) In addition, Defendant alleges that none of the provisions in the Act restrict price “beyond first purchasers of grant lands.” (*Id.* at 6.)

COURT'S ANALYSIS

A historical perspective of this case recalls a time when Oregon “roadways” were more like narrow paths among towering trees. The Coos Bay Wagon Road Act (Act), enacted by Congress on March 3, 1869, was one of only five military roads authorized in Oregon by the federal government. The “wagon” road was to be used for military and civilian purposes, stretching from the navigable waters of Coos Bay to Roseburg.

Section 1 of the Act provided, among other things, that:

“* * * the grant of lands hereby made shall be upon the condition that the lands shall be sold to any one person only in quantities not greater than one quarter section, and for a price not exceeding two dollars and fifty cents per acre.”

This provision was determined to be an enforceable covenant restricting the sale of grant lands by the Southern Oregon Company and other holders of grant lands. See *Southern Oregon Co. v. United States*, 241 F 16 (9th Cir)(1917). The Ninth Circuit concluded that the purpose of the covenant was to “distribute the lands to settlers, to open up the country to settlement and cultivation, as well as to prevent the acquisition by corporations of large tracts of the public domain to be held for speculation and sold at enhanced value.” (*Id.* at 21.)

Various companies, including the Southern Oregon Company, owned by the same three shareholders violated this enforceable covenant and subsequently the grant

lands not already sold were returned to the public domain. See 47 Stat 1179 (Feb 26, 1919). Plaintiffs' property was originally purchased by its first owner in 1877 and was not part of the lands returned to the public domain.

When Plaintiffs purchased the property in 1989 and 1993, Plaintiffs had no knowledge of the Act and the covenant of the Act did not appear as a restriction on the title. Plaintiff, Mr. Trendell, testified that he is concerned that at any time the Department of the Interior or other federal agency could come in and enforce the Act, preventing him from selling his property for more than \$2.50 an acre. For this reason, Plaintiffs filed an appeal challenging Defendant's determination of value.

The right of an individual to bring an appeal in the Oregon Tax Court is found in ORS 305.275(1)²:

“Any person may appeal under this subsection to the magistrate division of the Oregon Tax Court as provided in ORS 305.280 and 305.560, if all of the following criteria are met:

“(a) The person must be aggrieved by and affected by an act, omission, order or determination of:

“* * * * *

“(C) A county assessor or other county official * * * .

“* * * * *

“(b) The act, omission, order or determination must affect the property of the person making the appeal or property for which the person making the appeal holds an interest that obligates the person to pay taxes imposed on the property * * * .

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“(c) There is no other statutory right of appeal for the grievance.”

In analyzing this statute, the Tax Court has clearly stated that “[i]n requiring that

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

taxpayers be 'aggrieved' under ORS 305.275, the legislature intended that the taxpayer have an immediate claim of wrong. It did not intend that taxpayers could require the expenditure of public resources to litigate issues that might never arise." *Kaady v. Dept. of Rev.*, 15 OTR 124, 125 (2000).

Plaintiffs have not persuaded the court that they have an "immediate claim of wrong." *Id.* There was no testimony that anyone is currently challenging their right to sell their property at a per acre price of more than \$2.50. There was testimony by Mr. Trendall that there are at least another 12 property owners who own property originally under the Act and each paid more than \$2.50 per acre as did Plaintiffs. Defendant's representative, Mr. Larry Wallace, testified during the oral argument that there is "no evidence that this Act has effected the market value, no evidence of impact on sales." An uncertain event such as Plaintiffs' concern that a federal agency may restrict the sale price of his land could have a potential economic effect. But until the uncertain event actually occurs, its consequences are mere speculation. This court cannot litigate cases presenting potential consequences. Because no evidence was presented to the court showing that the covenant in the Act has any immediate impact on the value of Plaintiffs' land, the court concludes that Plaintiffs are not aggrieved.

CONCLUSION

Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs' Motion for Summary Judgment is denied.

IT IS FURTHER DECIDED that Defendant's Motion for Summary Judgment is granted.

Dated this _____ day of February, 2002.

JILL A. TANNER
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 JILL A. TANNER ON FEBRUARY 27, 2002. THE COURT FILED THIS DOCUMENT ON FEBRUARY 27, 2002.