

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

SANDY BOTTOMS PARTNERS, KURT E.)
FREITAG, and RITA H. SCHAEFER,)
)
Plaintiffs,) TC-MD 030152E
)
v.)
)
LINCOLN COUNTY ASSESSOR,)
)
Defendant.) **DECISION**

Plaintiffs appeal the 2002-03 real market value of the personal property identified in Accounts P512617 and P507414. A telephone trial in the matter was held July 30, 2003. Kurt E. Freitag (Freitag) appeared and testified on behalf of Plaintiffs. Kathy Leib (Leib), Personal Property Specialist, appeared and testified on behalf of Defendant.

I. STATEMENT OF FACTS

Plaintiffs own three vacation rental homes in Lincoln County. The personal property at issue is located in the three rental homes. Items range from dishes and linens to refrigerators and washers and dryers. For tax year 2002-03, Defendant assigned the personal property a total real market value of \$20,000. Plaintiffs claim the real market value was no more than \$10,500.¹

At trial, Plaintiffs' evidence consisted solely of the testimony of Freitag. He testified that for 23 years, his "principal business was a version of investment banking that involved not only venture capital but loans to small businesses." Although not formally certified as an appraiser, Freitag's work involved estimating the value of business personal property. In 1993, Freitag's business interests shifted to ownership of rental homes and vacation

¹ In their Complaint, Plaintiffs claim the real market value of the personal property was only \$9,100. At trial, Freitag requested the court reduce the real market value to \$10,500.

rentals.

Freitag testified that he prepared a complete asset listing of all the personal property located at the subject vacation rentals. He then looked at what those items would sell for in a private sale; in a “public” sale, *i.e.* through a retailer/merchandise; and in an on-line sale through eBay. Evaluating those sources, Freitag determined that the total real market value of the property should be \$10,500.² Plaintiffs offered no exhibits to support Freitag’s testimony.

In response, Defendant submitted a detailed asset list of all the personal property located at the three sites. The list was prepared by Leib after performing a recent site inspection. Leib also submitted photographs of many of the assets. Next to each asset entry, Leib listed her estimate of the asset’s real market value. In arriving at her value conclusion, Leib visited many used furniture stores in Lincoln City. She provided pictures and listing prices of many similar used goods found at those stores. Adding the values together, Leib arrived at an estimated real market value for the subject property of \$23,993. Defendant recommends its roll value of \$20,000 be sustained.

II. ANALYSIS

ORS 305.427³ provides that in proceedings before the Tax Court, “[t]he burden of proof shall fall upon the party seeking affirmative relief.” Because Plaintiffs are seeking relief in this case, they have the burden of proof. That means Plaintiffs must establish their claim “by a preponderance of the evidence, or the more convincing or greater weight of evidence.” *Schaefer v. Dept. of Rev.*, OTC-RD No 4530, WL 914208 (July 12, 2001)

² Freitag’s estimate of value was a “blended” value between an initial value determination of \$12,318 that included certain shipping costs and a value determination of \$9,415 that did not include any shipping costs.

³ All references to the Oregon Revised Statutes (ORS) are to 2001.
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(citing *Feves v. Dept. of Revenue*, 4 OTR 302 (1971)).

Plaintiffs' case consisted of Freitag testifying as to his professional experience and then testifying that he valued each item of personal property to arrive at an overall value conclusion of \$10,500. Plaintiffs did not provide an asset list for the court to review nor did they provide value estimates for the particular items. The court has no idea whether Plaintiffs valued a refrigerator at \$50, \$250, or \$500. Further, the court has no basis to determine the reasonableness of the overall value conclusion. In response, Defendant submitted a detailed summary of the assets and examples of used prices in the market to corroborate its value estimates.

As already stated, Plaintiffs bear the burden of proof in this case. In weighing Plaintiffs' evidence, the court finds Plaintiffs have failed to satisfy their burden of proof. Plaintiffs offered the court no evidence from which it could reach a value conclusion. In *Schaefer*,⁴ the Regular Division of the Tax Court noted that personal opinions without supporting evidence are often insufficient to satisfy a plaintiff's burden of proof. The court stated: "While [the plaintiff] expressed his personal opinion, he offered no supporting rationale for his conclusion. * * * Without more information, it is pure speculation that the court will neither indulge in nor accept." *Id.* Similarly, in this case, Plaintiffs have only provided the court with opinions without any supporting evidence. The court finds, therefore, that Plaintiffs have failed to satisfy their burden of proof.

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⁴ *Schaefer* involved the same plaintiffs as in this case but addressed the question of the real market value of the real property, not the personal property.

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CONCLUSION

It is the court's conclusion that, without any substantiating evidence or testimony, Plaintiffs failed to satisfy their burden of proof. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs' appeal is denied.

Dated this _____ day of August, 2003.

COYREEN R. WEIDNER
MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, BY MAILING TO: 1163 STATE STREET, SALEM, OR 97301-2563; OR BY HAND DELIVERY TO: FOURTH FLOOR, 1241 STATE STREET, SALEM, OR. 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 COYREEN R. WEIDNER ON AUGUST 6, 2003. THE COURT FILED THIS DOCUMENT ON AUGUST 6, 2003.