

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

SANDRA FALK (deceased),)	
)	
Plaintiff,)	TC-MD 060458A
)	
v.)	
)	
KLAMATH COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Sandra Falk (Falk) appealed the real market value (RMV) of the subject property to this court April 18, 2006. On June 23, 2006, Falk passed away and Sandra Soho (Soho) was named the representative of Falk’s estate. Soho filed notice that she would be representing the estate in the appeal. On October 18, 2006, the court held a telephone trial in the matter. Soho appeared and testified on behalf of Falk’s estate. Donald Ringgold appeared on behalf of Defendant.

I. STATEMENT OF FACTS

The subject property is a 5.16-acre parcel of land located two miles outside the City of Klamath Falls.¹ The parcel is zoned EFU-C (exclusive farm use/cropland). Falk purchased the land in July 1997 for \$35,000. (Ex A.) At the time of purchase, a conditional use permit (CUP) had been granted for a home on the property. Falk did not place a home on the property and the CUP elapsed.

For the 2005-06 tax year, Defendant assigned the property an RMV of \$52,900. Falk appealed that value, claiming the RMV of the parcel is no more than \$20,000. Defendant stands by its roll value.

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¹ The property is identified in Defendant’s records as Account R881063.

II. ANALYSIS

ORS 305.427² provides that in proceedings before the Tax Court, “[t]he burden of proof shall fall upon the party seeking affirmative relief.” Because Soho, on behalf of Falk, is seeking relief in this case, she has the burden of proof. That means Soho must establish her claim “by a preponderance of the evidence, or the more convincing or greater weight of evidence.”

Schaefer v. Dept. of Rev., TC No 4530 (July 12, 2001) (citing *Feves v. Dept. of Revenue*, 4 OTR 302 (1971)).

In support of her claim that the RMV of the property is only \$20,000, Soho testified that, years earlier, Falk had sold the property in an unrecorded transaction for \$20,000. No evidence was submitted to support Soho’s testimony. Soho testified Falk had sold the property to a Mr. Wade (Wade). Apparently, Wade never assumed title to the property. Instead, according to Soho, Falk recently sold the property to Motion Corporation (MC) for \$19,691.99. Soho testified that the sale has not been completed and remains in escrow. In support of her claim, Soho submitted a document titled “Asset Purchase Agreement” dated June 12, 2006. Falk signed the agreement as the seller of the property, and Soho signed the document as a representative for MC, the buyer. In the document, MC agreed to assume responsibility for the mortgage on the property in the amount of \$4,691.99 and “forgive a fifteen thousand [d]ollar (\$15,000.00) personal debt owed to the buyer by the seller.” (Asset Purchase Agreement.)

Defendant takes issue with the sale, claiming it is not an arm’s-length transaction. Soho and Falk were roommates, and Soho helped create MC and served on its Board of Directors. The court asked the nature of the debt between Falk and MC. Soho testified that Falk had been in declining health for several years, and that Wade had loaned her \$15,000 to assist with her debts.

² All references to the Oregon Revised Statutes (ORS) are to 2005.

Falk signed a note promising to repay the money. Soho testified that Wade gave the note to MC and MC assumed rights to collection on the note. Soho also testified that Wade is the owner of KRKT radio station that employs Soho and employed Falk. Ringgold claims that, due to the interconnectedness of all the parties, the sale cannot be considered an arm's-length transaction. Ringgold also observes that the property was never exposed to the open market.

The court notes that the property remains in escrow and the sale has not been completed. Consequently, because the property has not exchanged hands, the court does not consider it a sale for purposes of valuation. However, even if the transaction was a completed sale, the court agrees with Ringgold that the circumstances surrounding the sale do not suggest arm's-length dealing. The agreement, therefore, provides little to no support for the claim that the property is worth only \$20,000. Because Soho provided no other evidence of value, in the form of comparable sales or otherwise, the court finds Soho failed to satisfy her burden of proof.

Notwithstanding, the court notes that Defendant submitted several sales in the area near the subject parcel that contradict Plaintiff's claim that the parcel is worth only \$20,000. Soho attempted to discredit Defendant's sales, claiming they are located in higher elevations and that the subject parcel, at a lower elevation, is subject to flooding. However, Soho provided no evidence to substantiate her claim of flooding. In addition, almost all the sales had no CUPs for homes, discrediting Soho's claims that Defendant is valuing her home as already having a CUP in place.

III. CONCLUSION

Based on the evidence submitted, the court finds Plaintiff failed to satisfy her burden of proving the RMV of the property was no more than \$20,000 for the 2005-06 tax year. Now, therefore,

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

Dated this _____ day of October 2006.

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 October 31, 2006. The Court filed and entered this document on October 31, 2006.