

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT

Property Tax

NEAL A. HOUT,)	
)	
Plaintiff,)	No. 991203C
)	
v.)	
)	
YAMHILL COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

This court has previously issued an Order in this case requiring further proceedings to consider the joinder of persons needed for just adjudication under OTC-RD Rule 29. This was done so that, in an appeal involving a transfer of property, the court could consider the interests of, and take testimony from, Northwest Title Company, the escrow holder, and Ms. Jeffords and Mr. Smith, Mr. Hout's successor in interest.

Further proceedings were in fact held. Testimony was taken from Northwest Title through its employee, Mr. Carter, and Mr. Smith. This testimony was essential to the case. Plaintiff's appeal is denied. Neither Northwest Title, nor Ms. Jeffords and Mr. Smith, need be named as parties.

STATEMENT OF FACTS

The history of this case and the determinative events leading to the issuance of the Order are set out in that document. The court will not repeat them, other than to identify that the key issue in this appeal is whether or not Mr. Hout, as the owner of land disqualified from special assessment as unzoned farmland, requested that the additional taxes described in ORS 308.384 be imposed. Such a request, done under ORS

308.384(4), converts an otherwise potential additional liability to a tax to be added to the next general property tax roll and collected in the same manner as other property taxes. Stated alternatively, if Mr. Hout asked the assessor to impose the tax, the assessor properly received some \$10,320.74 from the proceeds of sale. If Mr. Hout did not make such a request, the assessor has no claim upon the funds.

Mr. Hout has at all times insisted that he has never asked the assessor to impose the tax. Mr. Carter, of Northwest Title Company, explained that the instructions to the title company were that, if prior to the closing the seller's actions disqualified the property, the seller shall be responsible for all deferred taxes. Mr. Carter testified that these instructions had been approved by Neil A. Hout.

COURT'S ANALYSIS

Mr. Hout never himself asked the assessor to impose the additional amounts described in ORS 308.384. However, Mr. Hout authorized Northwest Title Company to exercise its powers on behalf of him in the transfer of the property from himself to Ms. Jeffords and Mr. Smith. Mr. Hout approved the instructions by which his title company acted. The actions of the title company pursuant to those instructions must be attributed to Mr. Hout, just as if he had done them himself.

The instructions to Northwest Title Company called upon the seller to be responsible for all deferred taxes. Northwest Title Company, acting on the instructions, requested that the assessor impose the tax. A potential liability was then converted to a sum due upon the next tax roll. This amount was paid out of the sale proceeds. The \$10,320.74 was properly collected by the assessor, and may be retained by Yamhill County.

CONCLUSION

IT IS THE DECISION OF THIS COURT that plaintiff's appeal must be denied.

Dated this _____ day of June, 2000.

SCOT A. SIDERAS
PRESIDING 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 SCOT A. SIDERAS ON JUNE 9, 2000. THE COURT FILED THIS DOCUMENT ON JUNE 9, 2000.