NO. COA07-796

NORTH CAROLINA COURT OF APPEALS

Filed: 20 May 2008

IN THE MATTER OF:

APPEAL OF EARL B. OLIVER
from the decision of the
Lenoir County Board of
Equalization and Review
concerning the valuation
of certain personal property
for tax year 2005

From the North Carolina
Property Tax Commission
No. 05 PTC 301

Appeal by taxpayer from final decision entered 19 January 2007 by the North Carolina Property Tax Commission. Heard in the Court of Appeals 15 January 2008.

Earl B. Oliver, Appellant, pro se.

C.B. McLean, Jr. for Appellee Lenoir County.

McGEE, Judge.

The record in this appeal demonstrates that Earl B. Oliver (Appellant) owns nine manufactured homes (the homes) located in Lenoir County. Appellant claimed to have purchased the homes at bulk repossession sales between July 2002 and January 2003. Lenoir County assessed the homes at a total value of $392,377 for taxation purposes, effective 1 January 2005. Appellant believed the true value of the homes to be substantially lower than their assessed value, and he sought a valuation reduction from the Lenoir County Board of Equalization and Review (the Board). The Board denied

Appellant's request on 16 June 2005, and Appellant filed an appeal with the North Carolina Property Tax Commission (the Commission).

The Commission heard Appellant's case on 14 December 2006. Appellant did not testify and called only one witness, Darryl Parrish (Mr. Parrish), the tax administrator for Lenoir County. Appellant also introduced into evidence a number of documents, including: (1) a document dated 23 July 2002 entitled "Purchase Agreement: Conseco Finance Servicing Corporation Repossession Sale," which showed that Appellant had purchased one manufactured home for $22,500; (2) a document dated 20 December 2002 entitled "Purchase Agreement: Conseco Finance Servicing Corporation Repossession Sale," which showed that Appellant had purchased eleven manufactured homes for a total of $103,500; and (3) a document dated 15 January 2003 entitled "Purchase Agreement: Conseco Finance Servicing Corporation Repossession Sale," which showed that Appellant had purchased eight manufactured homes for a total of $88,700. Appellant also introduced a self-created list of nine manufactured homes, identified by parcel number. This list indicated that Appellant paid $12,467 each for eight of the manufactured homes, and paid $22,500 for the ninth manufactured home, for a total purchase price of $121,467.[1]

Appellant contended that the total purchase price of $121,467 was "the actual price at which the property changed hands between a willing and financially able buyer and a willing seller," and was

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[1]Appellant's calculations appear to be incorrect, as the nine listed purchase prices actually sum to $122,236.

therefore the correct value of the nine manufactured homes for tax assessment purposes. Appellant admitted that he purchased the homes in bulk repossession sales, but he argued that the purchases were arm's-length transactions because the seller was not under compulsion to sell. Mr. Parrish repeatedly disagreed:

> It is my opinion that that was not an arm's-length transaction, and therefore, it does not reflect market value.
>
> . . . .
>
> . . . [T]he fact that they were repossessed homes being sold by the lender[,] [m]ost of the time - part of the time in bulk transactions, indicates to me that it was not an arm's-length transaction, and you cannot take a fraction of that cost and apply it to each home and then be a true market value.

At the close of Appellant's evidence, counsel for Lenoir County moved to dismiss Appellant's case, stating:

> [Appellant] has presented essentially no evidence whatsoever as to the market value of the [homes]. He has testified that in his opinion, [the homes] are worth what he paid a repo company for them. There are two obvious problems with those sales. One is, [Appellant bought] them from a repo company; and two, they're bulk sales. And I don't have to really say any more to this [B]oard about those problems. You know them better than I do.

The Commission issued its final decision in Appellant's case on 19 January 2007, concluding, *inter alia*:

> 3. . . . Appellant did not produce competent, material and substantial evidence to show that the . . . Board assigned values to the subject manufactured homes that *substantially* exceeded the true values in money of the [homes].

Based on these conclusions, the Commission confirmed the Board's

decision and granted Lenoir County's motion to dismiss. Appellant gave notice of appeal to this Court on 13 February 2007.[2]

When reviewing a decision of the Property Tax Commission, our Court

> may affirm or reverse the decision of the Commission, declare the same null and void, or remand the case for further proceedings; or [we] may reverse or modify the decision if the substantial rights of the appellants have been prejudiced because the Commission's findings, inferences, conclusions or decisions are: . . .
>
> > (5) Unsupported by competent, material and substantial evidence in view of the entire record as submitted[.]

N.C. Gen. Stat. § 105-345.2(b)(5) (2007). Further, "[i]n making the foregoing determinations, [our] [C]ourt shall review the whole record or such portions thereof as may be cited by any party[.]" N.C. Gen. Stat. § 105-345.2(c) (2007).

Our Supreme Court has previously held that "ad valorem tax assessments are presumed to be correct," and "when such assessments are attacked or challenged, the burden of proof is on the taxpayer to show that the assessment was erroneous." *In re Appeal of Amp, Inc.*, 287 N.C. 547, 562, 215 S.E.2d 752, 761-62 (1975). A taxpayer can rebut this presumption of validity by producing competent, material, and substantial evidence that (1) the county tax

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[2]Appellee Lenoir County filed a motion in this Court on 18 September 2007 to dismiss Appellant's appeal. Appellee Lenoir County also filed a motion in this Court on 22 October 2007 to strike the record on appeal and to dismiss Appellant's appeal. After careful consideration of Appellee Lenoir County's motions, we believe the motions should be denied. We therefore address the merits of Appellant's appeal.

supervisor used an arbitrary or illegal method of valuation, and (2) the assessment substantially exceeded the true value in money of the property. *Id.* at 563, 215 S.E.2d at 762.

Upon our review of the record, we find that the Commission's third conclusion was supported by competent, material, and substantial evidence. N.C.G.S. § 105-345.2(b)(5). Appellant had the burden of demonstrating that the Board's assessment of the homes substantially exceeded their true value. "True value" means "market value, that is, the price estimated in terms of money at which the property would change hands between a willing and financially able buyer and a willing seller, neither being under any compulsion to buy or to sell[.]" N.C. Gen. Stat. § 105-283 (2007). Appellant's evidence, however, demonstrates that Appellant purchased the homes at bulk foreclosure sales. A bulk foreclosure sale is not the type of arm's-length transaction that provides reliable evidence of true market value. While the seller in a bulk foreclosure sale acts under a statutory duty to conduct the sale in a commercially reasonable manner, *see* N.C. Gen. Stat. § 26-9-607(c) (2007), the seller's main objective is to obtain a sale price sufficient to satisfy the obligation secured by the property sold. Even if the sale price is commercially reasonable, it may not accurately reflect the true market value of the property. Therefore, Appellant's evidence concerning the purchase price of the homes was insufficient to carry his burden under *In re Amp*.

Even assuming *arguendo* that a bulk foreclosure sale is an arm's-length transaction that accurately predicts true market

value, Appellant's evidence was still insufficient to meet his burden under *In re Amp*. First, there is no documentation in the record to suggest that the nine homes that appear in Appellant's list are among the twenty homes Appellant purchased at the various bulk foreclosure sales. Appellant's list identifies the homes by parcel number, but the sale receipts identify the homes by serial number. There are no common identifiers among the various documents from which it could be determined that a certain home was purchased at a certain foreclosure sale.

Next, while Appellant did provide individual sale prices for the nine homes in question, it appears that with eight of the homes, he computed the value of each home by dividing the total price he paid at the bulk foreclosure sales by the number of homes he purchased, to arrive at a value of $12,467 per home. While this value does reflect the *average sale price* per home, it does not provide a reliable estimate of the *true value* of any *individual* home. In addition, there is no evidence in the record to explain Appellant's mathematical calculations, and his figure of $12,467 per home does not reflect the average price-per-home in any of the bulk foreclosure sale transactions that appear in the record.

Other than the documents and figures described above, Appellant offered no evidence regarding the true value of any of the nine manufactured homes at issue. Based on this record, we find adequate justification to support the Commission's conclusion that Appellant did not produce competent, material and substantial evidence that "the assessment *substantially* exceeded the true value

in money of the property." *In re Amp*, 287 N.C. at 563, 215 S.E.2d at 762. Because Appellant did not carry his burden, we do not address Appellant's remaining assignments of error.

Affirmed.

Judges WYNN and CALABRIA concur.

Report per Rule 30(e).

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Property Tax Commission
(05PTC301)

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JUDGMENT

This cause came on to be argued upon the transcript of the record from the N.C. Property Tax Commission. Upon consideration whereof, this Court is of the opinion that there is no error in the record and proceedings of said trial tribunal.

It is therefore considered and adjudged by the Court here that the opinion of the Court, as delivered by the Honorable Linda M. McGee, Judge, be certified to the said trial tribunal to the intent that the judgment is affirmed.

And it is considered and adjudged further, that the Taxpayer do pay the costs of the appeal in this Court incurred, to wit, the sum of One-hundred three and 50/100 dollars ($103.50), and execution issue therefor.

Certified to the N.C. Property Tax Commission, this the 9th day of June 2008.

John H. Connell
Clerk, North Carolina Court of Appeals