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FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

FILED

03 JUL 14 AM 11:31

U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
CLEVELAND

In re:	)	Case No. 02-17257
	)	
JOSEPH J. JACOBSON,	)	Chapter 7
	)	
Debtor.	)	Judge Pat E. Morgenstern-Clarren
_____	)	
	)	
ALAN J. TREINISH, TRUSTEE,	)	Adversary Proceeding No. 02-1399
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
JOSEPH J. JACOBSON, et al.,	)	<b><u>MEMORANDUM OF OPINION</u></b>
	)	
Defendants.	)	

At the time the debtor filed this bankruptcy case, he held an interest in real property located at 7009 Krick Road, Bedford Heights, Ohio (the "Property"). The Cuyahoga County Treasurer has a first lien on the Property based on unpaid real property taxes and assessments. The Chapter 7 trustee filed an amended complaint in this adversary proceeding asking, among other things, for a determination as to the correct amount of the Treasurer's lien. (Docket 21).<sup>1</sup> The trustee now moves for summary judgment against the Treasurer on this issue. (Docket 38). The Treasurer does not oppose the motion.<sup>2</sup>

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<sup>1</sup> Although the trustee named other defendants, his claims against those defendants are not the subject of this motion.

<sup>2</sup> Any brief in opposition was due on June 30, 2003. (Docket 39).

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JURISDICTION**

Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. §§ 157(b)(2)(K), (N) and (O).

**FACTS**

The debtor Joseph Jacobson filed a Chapter 7 case on July 5, 2002. At filing, the debtor owned a 46% interest in the Property. The Treasurer holds a first lien on the Property for real property taxes and assessments. Cuyahoga County presently values the Property at \$850,700.00 for purposes of determining the applicable real property tax.<sup>3</sup>

The Property, which is commercial real estate, has been actively marketed for sale since February 2002. Terry Coyne of the realty firm of Grubb & Ellis served as the sales agent before the bankruptcy filing and has served in a similar capacity since the filing. His marketing efforts included advertising the Property in at least 16 separate issues of Crain's Cleveland Business and mailing hundreds of sale notices to prospective buyers and industrial brokers.

The trustee eventually accepted a purchase offer of \$547,500.00 made by Enviro Chemical, Inc., an unrelated entity. This was the only offer received by the trustee and his decision to accept it was made without compulsion or duress. Enviro Chemical and the trustee were represented by separate counsel in the transaction. The Court approved the sale, which is subject to some terms and conditions.

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<sup>3</sup> See the Cuyahoga County Auditor's 2002 tax bill summary "2002 Market Value." The trustee asserts that this valuation was not challenged before this case was filed. See 11 U.S.C. § 505(a)(2)(A). The Treasurer did not present evidence to the contrary.

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**DISCUSSION**

Relying on Bankruptcy Code § 505(a)(1), the trustee asks that the Property be valued at the sales price of \$547,500.00 for purposes of determining tax liability for the calendar year 2002 and the years following. The Treasurer admits that the trustee is entitled to have the Property reassessed under this statute to reflect its true value and has not opposed the trustee's summary judgment motion seeking a finding that the true value is \$547,500.00. *See* Treasurer's Answer to First Amended Complaint at ¶ 1 (admitting the allegations included in ¶ 20 of the complaint). (Docket 23).

**Summary Judgment Standard**

Summary judgment is appropriate only where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c), made applicable by FED. R. BANKR. P. 7056; *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). The movant must initially demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. at 323. The burden then is on the nonmoving party to show the existence of a material fact which must be tried. *Id.* The nonmoving party must oppose a proper summary judgment motion "by any of the kinds of evidentiary material listed in Rule 56(c), except the mere pleadings themselves . . . ." *Celotex Corp. v. Catrett*, 477 U.S. at 324. All reasonable inferences drawn from the evidence must be viewed in the light most favorable to the party opposing the motion. *Hanover Ins. Co. v. Am. Eng'g Co.*, 33 F.3d 727, 730 (6th Cir. 1994). The issue at this stage is whether there is evidence on which a trier of fact

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could reasonably find for the nonmoving party. *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1477 (6th Cir. 1989).

**11 U.S.C. § 505**

Under Bankruptcy Code § 505(a), subject to limitations not at issue here, a bankruptcy court is authorized to determine the amount of any tax:

. . . whether or not previously assessed, whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction.

11 U.S.C. § 505 (a)(1). “Property taxation is a two-part process: valuation of property and application of the appropriate tax rate. The use of § 505(a) to remove valuation adjudication to the bankruptcy court is consistent with the intended function of § 505 and does not undermine the state property taxation process.” *In re Quality Beverage Co.*, 170 B.R. 310, 312-13 (Bankr. S.D. Tex. 1994) (citing *In re Fairchild Aircraft Corp.*, 124 B.R. 488 (Bankr. W.D. Tex. 1994)). *See also, MCorp Fin, Inc. v. Harris County (In re MCorp Fin, Inc.)*, 216 B.R. 596, 598 (Bankr. S.D. Tex. 1996) (noting that “[w]ith respect to unpaid taxes [as to real property] the court has jurisdiction to determine the value of the property and the amount of the tax due.”).

A bankruptcy court’s valuation of property under this statute must be consistent with state law. *See In re Quality Beverage Co.*, 170 B.R. at 313. Ohio Revised Code § 5713.03 controls the valuation of real property for taxation purposes. The statute provides in pertinent part that:

In determining the true value of any tract, lot, or parcel of real estate under this section, if such tract, lot, or parcel has been the subject of an arm’s length sale between a willing seller and a willing buyer within a reasonable length of time, either before or after the tax lien date, the auditor shall consider the sale price of such tract, lot, or parcel to be the true value for taxation purposes . . . .

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Ohio Rev. Code § 5713.03. The Ohio Supreme Court has held that “[t]he best evidence of the ‘true value in money’ of real property is an actual, recent sale of the property in an arm’s-length transaction.” *Conalco, Inc. v. Monroe County Bd. of Revision*, 50 Ohio St.2d 129, 363 N.E.2d 722 (Ohio 1977) (Syllabus at ¶ 1). Consequently, there is a rebuttable presumption that the sale price achieved by an arm’s-length sale reflects the true value of the property sold. See *Walters v. Knox County Bd. of Revision*, 47 Ohio St.3d 23, 24, 546 N.E.2d 932, 934 (Ohio 1989). But see *Pingue v. Franklin County Bd. of Revision*, 87 Ohio St.3d 62, 64-5, 717 N.E.2d 293, 295 (Ohio 1999) (noting factors which may be shown to cast suspicion on the sale price as being representative of true value). An arm’s-length sale is characterized by these elements: it is voluntary (without compulsion or duress); it generally takes place in an open market; and the parties act in their own self-interest. *Walters*, 47 Ohio St.3d 23, 546 N.E.2d 932 at syllabus.

Based on the trustee’s evidence, the Property was sold in an arm’s-length transaction because the sale was voluntary, took place in an open market, and each party to it acted in its own interest. The sale also took place within a reasonable time from the January 1, 2002 tax lien date.<sup>4</sup> Under these circumstances, the \$547,500.00 sales price is presumed to be the true value of the Property for tax purposes and the Treasurer has not provided evidence to the contrary. Because there are no genuine issues of material fact and the trustee is entitled to judgment as a matter of law, the trustee’s motion for summary judgment is granted.

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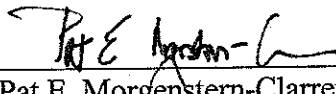
<sup>4</sup> The taxes at issue relate to year 2002 and after. In Ohio, a tax lien arises by operation of law and a lien for taxes levied on the real property tax list attaches to all real property subject to such taxes on the first day of January of each year and continues until the taxes are paid. See Ohio Rev. Code § 323.11.

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CONCLUSION

For the reasons stated, the trustee's motion for summary judgment is granted and the value of the Property is determined to be \$547,500.00 under 11 U.S.C. § 505(a). The Cuyahoga County Treasurer's lien against the Property for real property taxes is to be based on that valuation. A separate order will be entered reflecting this decision.

Date: 14 July 2003

  
\_\_\_\_\_  
Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge

Served by mail on: Robert Barr, Esq.  
Susan Rose, Esq.  
Jeffrey Levinson, Esq.  
Trish Lazich, Esq.

By: Joyce L. Gordon Secretary  
Date: 7/14/03

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)  
v. )  
)  
JOSEPH J. JACOBSON, et al., ) **JUDGMENT**  
)  
Defendants. )

For the reasons stated in the Memorandum of Opinion filed this same date,

IT IS, THEREFORE, ORDERED that Summary Judgment is entered in favor of the plaintiff on the First Amended Complaint as to his request for a determination of tax liability to the defendant Cuyahoga County Treasurer under 11 U.S.C. § 505(a). (Docket 38). The value of the real property located at 7009 Krick Road, Bedford Heights, Ohio is determined to be \$547,500.00 and the lien of the defendant Cuyahoga County Treasurer against that property for real property taxes is to be based on that valuation.

Date: 14 July 2003

Pat E. Morgenstern-Clarren  
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United States Bankruptcy Judge

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