

2008 PROPERTY TAX CASES

Bexar Appraisal District v. Omni La Mansion Corp.

2008 WL 5377706 (Tex. App. – San Antonio December 23, 2008, no pet.)(not reported)

Issues: parties to an appeal

Omni La Mansion protested the appraisal of its hotel, and, after losing before the ARB, filed a timely suit against the appraisal district. Sometime after the deadline had passed for filing suit, an amended petition was filed with the court substituting Omni Hotels for Omni La Mansion as the plaintiff. The appraisal district filed a motion to dismiss the case because Omni Hotels did not own the property and had not protested before the ARB. Before the court could hold a hearing on the appraisal district's motion, Omni La Mansion filed another amended petition substituting itself for Omni Hotels as the plaintiff. The appraisal district objected to the third petition claiming that the trial court lost jurisdiction over the case when the second petition was filed and, without jurisdiction, the court could not allow the filing of the third petition. The trial court rejected the appraisal district's arguments. It accepted the third petition and refused to dismiss the case. The appraisal district appealed.

The court of appeals noted that when Omni La Mansion filed its original petition after having exhausted its administrative remedies before the ARB it properly invoked the trial court's jurisdiction. Section 42.21(e) of the Tax Code allows a plaintiff to file amended petitions to "correct or change the name of a party." Although the second petition (naming Omni Hotels as plaintiff) created a jurisdictional defect, §42.21(e) allowed the defect to be cured by the filing of the third petition. The trial court correctly allowed Omni La Mansion to file the third petition to cure the jurisdictional defect. The court of appeals affirmed the trial court's rulings.

Editor's Comment: Section 42.21(e) allows a party to correct a mistake in its name (e.g., the Acme Corporation files a petition mistakenly calling itself the Acne Corporation). It allows an amendment to reflect a change in a party's name (e.g., Mary Smith gets married and changes her name to Mary Jones). But, it does not allow one party to drop out of a suit and a different party to join in the suit months or years after the suit is filed. The court misapplied the statute.

Travis Central Appraisal District v. Norman

274 S.W.3d 902 (Tex. App. – Austin December 19, 2008, pet. granted)

Issues: firing of appraisal district employee; exhaustion of administrative remedies

Norman was hired by the appraisal district as a probationary employee and had worked there only a few months when she filed a workers' compensation claim. She was fired the same day. Chapter 451 of the Texas Labor Code makes it illegal to fire an employee in retaliation for the employee filing a workers' compensation claim. Norman sued the district claiming that she was fired in violation of that law. The district argued that

Norman could not file suit without having first followed the grievance procedures laid out in its Personnel Policies Handbook. The district's handbook was unclear about whether the grievance procedures even applied to probationary employees. When the trial court refused to dismiss the case, the district appealed.

The court of appeals ruled that Norman did not have to follow the district's grievance procedures in order to file her suit in court. The Labor Code gives an employee the right to file a retaliatory-discharge claim in court and does not require that the employee exhaust any administrative remedies prior to doing so. No statute deprives courts of the jurisdiction to consider retaliatory-discharge claims or gives that jurisdiction to any type of grievance committee or other administrative body. The Labor Code waived any governmental immunity that the district might have otherwise had. The trial court was correct when it refused to dismiss Norman's suit.

Maximum Medical Improvement, Inc. v. County of Dallas

272 S.W.3d 832 (Tex. App. – Dallas December 19, 2008, no pet.)

Issues: evidence in delinquent tax case

Dallas County and the Richardson Independent School District sued Maximum (d.b.a., Lone Star Anesthesia of Texas) for delinquent taxes on personal property located at a certain address. Maximum answered the suit and denied owning the property. At trial, the delinquent tax records offered as evidence by the county identified Lone Star Anesthesia, P.C. ("P.C.") as the owner of the property. The county also introduced an assumed name certificate showing that Maximum did business as Lone Star Anesthesia of Texas at the address in question. The RISD's delinquent tax records showed Maximum as the property owner. Maximum's CFO testified that the property belonged to Maximum, not to P.C.. Maximum and P.C. operated at the same address and were owned by the same person. The trial court entered judgment for the taxing units, and Maximum appealed.

The court of appeals explained that under §33.47 of the Tax Code, when a taxing unit introduces its delinquent tax records as evidence, the trial court must presume that the taxes claimed are correct and that the unit has taken all steps legally required in order for it to assess those taxes. The court added, "If, however, the identity of the entity named as the owner does not match the identity of the defendant sued for non-payment, no presumption arises as to the defendant's liability." Because the county's records showed P.C. as the owner of the property, those records were not sufficient to support a judgment against Maximum. The court of appeals reversed the trial court's judgment for the county and ruled that the county was not entitled to anything. The higher court upheld the judgment for the RISD because the RISD's records did show Maximum as the owner of the property.

Editor's Comment: Let's assume that the court of appeals was right and that the county's records did not prove that Maximum owned the property. What about the testimony of Maximum's CFO? He admitted that Maximum, not P.C., owned the

property. His testimony should have been sufficient to prove what the county's records failed to prove.

Caddell v. Sabine Independent School District

2008 WL 5191388 (Tex. App. – Texarkana December 12, 2008, no pet.)(not reported)

Issues: excess proceeds following tax sale

Taxing units filed a delinquent tax suit against the guardian of an incapacitated woman. The trial court entered judgment for the taxing units and ordered the real property sold. The tax sale resulted in excess proceeds. The court awarded those proceeds to a company that claimed that the incompetent woman had died and that her heir had assigned the right to the excess proceeds to the company. Two and a half years later, Caddell filed an equitable bill of review, a type of suit filed to challenge the final judgment in an earlier case. Caddell claimed that she was the rightful heir of the incompetent woman and that she should have received the excess proceeds. The trial court dismissed the bill-of-review suit because Caddell had not been a party to the original delinquent tax case. Caddell appealed.

The court of appeals explained that a bill-of-review suit can be filed only by someone who was a party to the original case. Because Caddell was not a party to the original delinquent tax case, she had no standing to file the bill-of-review suit. The court upheld the trial court's dismissal of the suit.

Gifford v. Don Davis Auto, Inc.

274 S.W.3d 890 (Tex. App. – Fort Worth December 11, 2008, no pet.)

Issues: vehicle inventory tax

Gifford bought a used pickup from a dealer and financed his purchase. He later sued the dealer for fraud. One of his claims involved the dealer's inventory tax on the vehicle, which was listed as a charge on the sale contract. Gifford alleged that the dealer committed fraud by leading him to believe that he was the one responsible for paying the tax when the tax was actually imposed on the dealer. The trial court found no evidence of fraud and granted a summary judgment for the dealer. Gifford appealed.

The court of appeals upheld the judgment for the dealer. The court explained that §348.005 of the Finance Code authorizes a dealer to include "any taxes" as itemized charges in a retail installment sales contract. The phrase "any taxes" includes the dealer's inventory tax. The dealer's contract listed the tax as "Dealer's Inventory Tax Paid to Seller." This did not constitute a misrepresentation because it did not indicate that Gifford was responsible for paying the tax to any taxing unit; it was merely an amount that he was paying to the dealer. The dealer did not misrepresent or defraud Gifford.

Editor's Comment: This opinion does not say that vehicle inventory taxes are the responsibility of a car buyer. Those taxes are the responsibility of the dealer. The

opinion says only that a dealer does not commit fraud by including the taxes as a charge on its sales contract. If the dealer basically asks the buyer, "Would you please reimburse me for my taxes?" and the buyer agrees, then no fraud occurs. But, a buyer does not have to agree.

In re Household Finance Corp. III

2008 WL 5220542 (Tex. App. – Houston [14th Dist.] December 11, 2008, no pet.)(not reported)

Issues: excess proceeds following tax sale

A municipal utility district sued Penick and a lienholder, HFC, for delinquent taxes on Penick's real property. The trial court entered judgment for the district and ordered the property sold. The tax sale resulted in excess proceeds. Penick filed a motion with the trial court claiming the excess proceeds. Notice of Penick's motion and the tax master's hearing on that motion were served on HFC, but HFC did not appear at the hearing. On January 3, 2005, following the tax master's recommendation, the trial court signed an order releasing the money to Penick. On that same day, HFC filed its own motion claiming the money. Notice of HFC's motion and the tax master's hearing on that motion was mailed to Penick but not to her lawyer. The tax master conducted the hearing on HFC's motion on January 18, 2005. Penick's lawyer did not appear because he was not aware of the hearing. The tax master proposed an order requiring Penick to return the money to the court so that it could be released to HFC. That order was signed by the trial court on February 15, 2005. When Penick learned of the order, she refused to return the money. HFC asked the trial court to enforce its February 15 order by holding Penick in contempt of court, but the trial court refused. HFC then went to the court of appeals seeking an order directing the trial court to enforce the order.

The court of appeals first considered whether the trial court had the authority to sign the February 15 order. Ordinarily, a trial court has plenary jurisdiction over a case for only thirty days after it signs a final judgment. After that, the court has no power to rescind or change its judgment. But, the January 3 order releasing the money to Penick was not a final judgment because it did not dispose of HFC's motion for the release of the money. Consequently, the trial court still had the power to change its mind on February 15.

The court of appeals next considered the effect of HFC sending notice of its motion and the January 18 hearing to Penick rather than to her lawyer. That notice did not satisfy §34.04 of the Tax Code or the Texas Rules of Civil Procedure. Because Penick's lawyer was not properly notified of the proceedings that lead to the trial court's February 15 order, the trial court was justified in refusing to enforce that order by holding Penick in contempt. The court of appeals would not order the trial court to enforce the order.

Royal Independent School District v. Ragsdale

273 S.W.3d 759 (Tex. App. – Houston [14th Dist.] November 25, 2008, no pet.)

Issues: excess proceeds following tax sale

A school district sued Phillips and a lienholder, MFNI, for delinquent taxes on Phillips's real property. The trial court entered a final judgment for the school district and ordered the property sold. The tax sale resulted in excess proceeds. One day before the deadline imposed by §34.04 of the Tax Code, MFNI filed a motion with the trial court claiming the excess proceeds. But, MFNI did not set its motion for a hearing or obtain a ruling from the court. The district clerk, acting on her own, released the excess proceeds to the school district. Then, seven months after filing its first motion and after the deadline imposed by §34.04, MFNI filed a second motion claiming the excess proceeds. The court issued an order (the "consent order") granting MFNI's motion and ordering the clerk to release the excess proceeds to MFNI. Because the clerk no longer had the money, MFNI filed other motions, and, months later, the court ordered the school district to pay the excess proceeds to MFNI (the "release orders"). The court also denied a motion by the school district to dismiss MFNI's motions (the "dismissal order"). MFNI appealed the release orders and the dismissal order, but not the consent order.

The court of appeals dismissed the school district's appeal on the grounds that it did not have jurisdiction to consider the appeal. The court explained that a court of appeals has jurisdiction to consider an appeal of a final judgment, but the school district was not appealing the final judgment that ordered the sale of the property. Section 34.04 allows an appeal of a post-judgment order determining a claimant's motion to obtain excess proceeds. That would have allowed the school district to appeal the consent order, but the school district did not appeal that order. The release orders and the dismissal order could not be appealed under §51.014 of the Civil Practice and Remedies Code because they came after the final judgment and could not be considered interlocutory orders. The court of appeals was left with no jurisdiction to review the release orders or the dismissal order. The court suggested, however, that if those orders were void as a result of the trial court's lack of jurisdiction to enter them, they might be subject to a collateral attack in a new case filed in the trial court.

Tenaska Frontier Partners, Ltd. v. Sullivan

273 S.W.3d 734 (Tex. App. – Houston [14th Dist.] November 13, 2008, no pet.)

Issues: timeliness of tax payment

Tenaska mailed its 2005 tax payment on January 30, 2006. It used a 39-cent stamp. Because of the weight of the parcel, however, the correct postage was 63 cents. The Postal Service returned the payment to Tenaska on February 4. Tenaska then sent its payment by UPS on February 7. The tax collector received Tenaska's payment, but treated it as delinquent and imposed approximately \$160,000 in penalties and interest. Tenaska paid the penalties and interest but sued the tax collector and the taxing units for a refund. Tenaska claimed that its payment was timely. The trial court ruled for the taxing authorities, and Tenaska appealed.

The court of appeals explained that under §1.08 of the Tax Code a payment is considered timely if: 1) it is sent by regular first-class mail, properly addressed *with postage prepaid*; and 2) it is mailed before the February 1 deadline. The court explained that it is not enough for a property owner to pay *some* postage; he must pay the correct

amount necessary to have the Postal Service actually deliver his payment. Because Tenaska failed to pay the correct postage, its payment mailed January 30 was not timely. The court of appeals affirmed the trial court and upheld the penalties and interest imposed on Tenaska.

A/K Service, LLC v. Harris County Appraisal District

2008 WL 4890140 (Tex. App. – Houston [1st Dist.] November 13, 2008, no pet.)(not reported)

Issues: evidence for allocating value of business aircraft

A/K protested the appraisal of its aircraft claiming that under §21.055 of the Tax Code, only part of the aircraft's value was taxable in Texas. A tax representative named Williams appeared before the ARB on behalf of A/K. Williams had a contingent-fee contract with A/K. When the ARB denied A/K's protest, A/K appealed. In the trial court, the appraisal district objected to Williams's testimony and to a document that he prepared (reflecting his opinions about the taxation of the aircraft in Texas) on the grounds of his contingent-fee contract with A/K. The court refused to admit Williams's testimony or the document. The court ruled for the appraisal district, and A/K appealed claiming that the trial court had excluded Williams's evidence erroneously.

The court of appeals explained that in order for it to reverse the trial court, A/K would have to show that the trial court excluded Williams's evidence erroneously *and that the exclusion of that evidence caused an improper judgment by the trial court*. The court of appeals concluded, however, that even if Williams's evidence had been admitted, it would not have made any difference, the trial court would have still been correct in ruling against A/K. Even if Williams's evidence had been admitted, there would be no evidence that A/K used its aircraft for business purposes. There would be no evidence that the aircraft was taxable in any other state. Even if the trial court erred in excluding Williams's evidence, its error was harmless. The court of appeals affirmed the trial court's judgment.

Edgewater Seed Market v. Magnolia Independent School District

2008 WL 4512851 (Tex. App. – Eastland October 9, 2008, no pet.)(not reported)

Issues: excess proceeds from tax sale

Taxing units filed a delinquent tax suit against Lee Mui Leung, trustee for Wai Leung William Ng whose address was in California. After Leung failed to answer, the court entered judgment for the taxing units, and the real property was sold in tax sale resulting in approximately \$14,000 in excess proceeds. Edgewater filed a claim for the delinquent proceeds. At the hearing, it introduced a judgment from a New York court against Lee Mui, and claimed that it was attempting to collect on the judgment. The trial court denied Edgewater's claim and ruled that the excess proceeds had escheated to the taxing units. Edgewater appealed.

The court of appeals upheld the judgment against Edgewater. The court explained that Edgewater had the burden of proving that it was entitled to the excess proceed and that it had failed to do so. Edgewater has offered no evidence that the Lee Mui named in the New York judgment was the same defendant sued in the delinquent tax suit and no evidence that the defendant owned the property individually instead of as a trustee. The trial court correctly denied Edgewater's claim.

Miller v. Kenna

2008 WL 4425610 (Tex. App. – Texarkana October 2, 2008, no pet.)(not reported)

Issues: challenge to tax sale

In May of 2004, Kenna purchased a 52.5 acre tract at a tax sale and promptly recorded her deed. Miller sued Kenna in December of 2006 claiming that she owned 13.5 acres of the land purchased by Kenna. Miller had not been a party to the original delinquent-tax suit. Kenna filed a motion for summary judgment claiming: 1) that Miller's suit was filed too late; and 2) that Miller had no evidence to show that she owned any of Kenna's land. Miller produced records from the appraisal district indicating that she owned 13.5 acres identified as tract number R22610. Miller also claimed to have paid taxes on Tract R22610. Kenna responded with an affidavit from the chief appraiser explaining that the appraisal district's records were erroneous and that the tract claimed by Miller did not exist. The number for Kenna's tract was R22611. The trial court granted a summary judgment for Kenna, and Kenna appealed.

The court of appeals upheld the summary judgment for Kenna. The court explained that the appraisal district's records did not constitute any evidence that Miller owned any part of Kenna's land. Further, Miller had filed her suit after the deadline imposed by §33.54 of the Tax Code. Miller's alleged tax payments did not extend that deadline because she offered no evidence that her payments applied to any part of Kenna's land.

Peoples Gas Light and Coke Co. v. Harrison Central Appraisal District

270 S.W.3d 208 (Tex. App. – Texarkana September 24, 2008, no pet. hist.)

Issues: ownership of commingled natural gas; interstate commerce

Peoples is a natural gas utility providing gas to customers in Chicago. It purchased gas in south Texas during the warmer months of the year and contracted with a pipeline company to store the gas and then deliver it to Chicago when Peoples needed it during the winter. The contract did not specify where the gas was to be stored; that decision was left to the pipeline company. The pipeline company commingled the gas belonging to its various customers making it impossible to say that a particular molecule of gas belonged to Peoples or to any other particular customer. The pipeline company operated several storage facilities, but its largest storage facility lying along its pipeline from south Texas to Chicago was in Harrison County, Texas. A large volume of gas was stored in the pipeline company's Harrison County facility. When the Harrison County Appraisal District asked the pipeline company to identify the owners of the gas stored there on January 1, the pipeline company determined that some of the gas belonged to

Peoples. The appraisal district appraised that volume of stored gas in Peoples's name, and Peoples protested.

Peoples argued that it did not own any gas in Harrison County. The pipeline company, not Peoples, had control of the gas stored there. Because Peoples had already paid for having the gas piped to Chicago, the pipeline company had accounting records showing that Peoples's gas was already there, not in Harrison County. The pipeline company's employees, however, explained that the accounting records did not reflect the actual whereabouts of Peoples's gas. Peoples also argued that the gas was in transit in interstate commerce and protected from local taxation under the United States Constitution. The appraisal district argued that the gas was not moving in interstate commerce because it had not crossed a state line and because it was stored in Texas for months at a time. Even if the gas was in interstate commerce, it was taxable under the applicable federal law. The ARB denied the protest, and, when Peoples filed suit, the trial court ruled against it. Peoples appealed.

The court of appeals ruled that Peoples did own gas stored in Harrison County. Under federal law, a pipeline company cannot own the gas that it transports. Therefore, the gas must belong to the pipeline company's customers. The pipeline company's accounting records did not prove that Peoples's gas was physically in Chicago. The court, however, ruled that the gas was in transit in interstate commerce. It based this ruling on the facts that: 1) the gas was in the possession of an interstate common-carrier pipeline company regulated by the Federal Energy Regulatory Commission; and 2) Peoples did not choose the storage site for the gas. The gas could not be taxed because Peoples did not have a sufficient nexus with Texas. It had no offices or employees in Texas, and it did not choose the storage site for the gas. Although most of the stored gas was produced in Texas, the court could not determine with certainty just where Peoples's gas was produced. The court also ruled that the taxes on the gas were not "reasonably related to the extent of the taxpayer's presence or activities within the taxing state and to the taxpayer's consequent enjoyment of the opportunities which the state has afforded." Consequently, the court of appeals reversed the trial court and ruled that Peoples's gas was not taxable in Harrison County or in Texas.

Editor's Comment: Since this case was decided by the court of appeals, the Supreme Court of Oklahoma decided a case with almost identical facts. In the Oklahoma case, the court decided that the gas in question was taxable. *In re Assessment of Personal Property Taxes Against Missouri Gas Energy, a Division, a division of Southern Union Co.*, ___ P.3d ___, 2008 OK 94 (October 21, 2008)

Grace Memorial Baptist Church v. Harris County

2008 WL 4308450 (Tex. App. – Houston [14th Dist.] August 28, 2008, pet. denied) (not reported)

Issues: defenses to delinquent tax suit

Taxing units sued a church for delinquent taxes on a vacant duplex owned by the church. Their original petition named the church as the Grace Memorial Baptist Church, but they later filed an amended petition stating that the church was now known as the Church of the Lord Jesus Christ. The church admitted that the latter name was correct.

The suit documents were served on the church's pastor, who the church admitted to be its agent for service. At trial, the taxing units offered copies of their delinquent tax records showing the amounts owed on the duplex. The church admitted owning the duplex but claimed that it was "immune" from taxation and not subject to the court's jurisdiction. The trial court entered judgment for the taxing units, and the church appealed.

The court of appeals explained that the church had been properly named and served in the suit. Any error in the name of the church was corrected when the taxing units filed their amended petition stating the church's correct name. If the church wanted to claim a tax exemption, it should have filed an exemption application with the appraisal district. If that application had been denied, the church could have filed a protest with the ARB. Because the church did not follow those procedures, it could not claim an exemption in the delinquent tax suit. The church could not avoid these procedural requirements by claiming that it was "immune" from taxation. For the same reasons, the church could not claim that it could not "submit jurisdiction to any other by paying taxes or filling out demanded governmental forms." The court of appeals upheld the trial court's judgment for the taxing units.

Alaska Freight Services, LLC v. Dallas Central Appraisal District

261 S.W.3d 884 (Tex. App. – Dallas August 26, 2008, no pet.)

Issues: taxable situs

A Texas company acquired an aircraft in August of 2001. During the remainder of that year, the aircraft was principally based in Colorado. It made forty-two departures, nine of those in Texas. In mid November, the company brought it to Dallas for repairs and modifications. It stayed in Dallas until January 11, 2002 when it was flown to Alaska by an Alaskan lessee. Its other departures during 2002 were all in Alaska. The DCAD appraised the aircraft for the 2002 tax year. The owner protested and claimed that the aircraft did not have taxable situs in Texas. The ARB denied the owner's protest, and the owner filed suit. The trial court upheld the appraisal and taxation of the aircraft in Dallas County, and the owner appealed.

The court of appeals explained that the relevant time period was the 2001 calendar year. It cited §11.01 of the Tax Code, which states that personal property is taxable in Texas if it is "used continually, whether regularly or irregularly, in this state." The court focused on the meaning of the phrase "used continually." Property must be in Texas for "some period of the tax year," but it does not have to be in Texas exclusively. It may sometimes leave the state and still be taxable here. The aircraft made a significant percentage of its departures in Texas during 2001, and it was stopped in Dallas for repairs and modifications. It was used continually in Texas and was taxable in Dallas County in 2002. The court of appeals upheld the trial court's judgment for the appraisal district.

Editor's Comment: Section 11.01 reflects the 14th Amendment Due Process Clause of the U.S. Constitution and Due-Process principles first articulated by the U.S. Supreme

Court. The Dallas Court of Appeals could have resolved this case by referring to the federal law. It is not clear why the court chose instead to parse through dictionary definitions of the words continual and continue. Given a choice between ruling on the basis of established law and ruling on the basis of a dictionary, a court should generally choose established law.

Appraisal Review Board of Harris County Appraisal District v. O'Connor & Associates

267 S.W.3d 413 (Tex. App. – Houston [14th Dist.] August 19, 2008, no pet.)

Issues: exhaustion of administrative remedies

Several property owners and their tax-representative firm (the property owners) sued the ARB and its chairman claiming that the ARB was not conducting its hearings in a fair and orderly manner. Some of the property owners had filed protests, but none of them had received final, appealable orders from the ARB. The ARB urged the trial court to dismiss the case because the property owners had not exhausted their administrative remedies. The property owners claimed that they did not have to exhaust their administrative remedies for three reasons. First, they cited §41.45(f), which allows a property owner to sue an ARB when the ARB wrongfully refuses to conduct a hearing to which the property owner is entitled. Second, they claimed the right to seek a writ of mandamus ordering the ARB to conduct its hearings in the manner they would like. Third, they claimed that the ARB was acting outside its legal authority. The trial court refused to dismiss the case, and the ARB appealed.

The court of appeals reversed the trial court and dismissed the case. The court disagreed with all of the property owners' arguments. The court explained that §41.45(f) applies where an ARB completely refuses to hold a hearing, not where a property owner merely disagrees with the manner in which the ARB conducts its hearing. A court may not issue a writ of mandamus if the applicable law provides other remedies. The Tax Code provides a property owner with a remedy for any error or impropriety that an ARB may commit in the course of a hearing; the property owner can appeal the ARB's order to a court for *de novo* review. The rule allowing a suit against a governmental entity over conduct wholly outside the entity's jurisdiction did not apply because the ARB had the authority to conduct hearings on protests. The rule would not allow the property owners to complain about the manner in which the ARB conducted its hearings. Essentially, the court ruled that a protesting property owner who believes that he is being mistreated by an ARB must obtain a final order from the ARB and appeal that order under Chapter 42 of the Code.

Cenveo Corp. v. Dallas Central Appraisal District

260 S.W.3d 713 (Tex. App. – Dallas August 15, 2008, no pet.)

Issues: appraisal of omitted property

Cenveo operated a manufacturing facility and owned business personal property. It did not render its property in the spring of 2003, and the appraisal district appraised the

property based on a physical inspection. In late 2003, Cenveo filed an amnesty rendition. In response to that rendition, the district created a new account for personal property omitted from its original 2003 appraisal. Cenveo protested the district's actions, but the ARB denied the protest. Cenveo appealed to the trial court where it argued that the value determined by the district in its original appraisal was high enough to cover all of Cenveo's personal property. The district's appraiser testified that Cenveo's rendition included "unseen assets" not visible at the time of the inspection. Neither the records of the district's original appraisal nor Cenveo's rendition included an item-by-item list, but the rendition included categories not included on the district's records. The trial court upheld the district's appraisal of omitted property, and Cenveo appealed.

The court of appeals concluded that the evidence was sufficient to support the trial court's finding that Cenveo had personal property that was omitted from the district's original appraisal. The existence of omitted property was shown by the appraiser's testimony, the categories listed on Cenveo's rendition and the summaries of yearly purchases shown on the rendition. The appraisal district had the authority to create a new account to include that omitted property. The court affirmed the judgment in favor of the district.

Canales v. Kleberg County Appraisal District

2008 WL 3522233 (Tex. App. – Corpus Christi August 14, 2008, no pet.) (not reported)

Issues: exhaustion of administrative remedies

Gus Canales was the executor of the estate of the late Gustavo Canales. The estate's dispute with the appraisal district concerned whether four tracts of land should be appraised in the name of this estate or in the names of the beneficiaries named in the decedent's will. That question would determine whether the land could continue to receive open-space agricultural appraisals despite the beneficiaries' failure to file applications in their own names. The estate filed a protest with the ARB for the year 2003. After a hearing the ARB denied the protest. Then, in August of 2003, the estate filed a lawsuit against the appraisal district, but the lawsuit was addressed to the year 2002. In 2004, the estate filed another protest, which was also denied by the ARB. In August of 2004, the estate amended its suit to include claims for 2003 and 2004. The appraisal district moved for the dismissal of the case, and the trial court dismissed it. The estate appealed.

The court of appeals explained that the estate had not exhausted its administrative remedies for 2002 because it had filed suit without having first filed a protest or correction motion with the ARB for that year. The estate had filed a protest for 2003, but after that protest had been determined by the ARB, the estate waited a year to add its 2003 claims to its lawsuit. It did not appeal the ARB's 2003 order within the forty-five days allowed by §42.21 of the Tax Code. The estate filed a protest for 2004, but the appellate record did not contain any evidence of when the estate received notice of the ARB's order determining that protest. Consequently, the estate had not proven that its 2004 appeal had been timely filed with the trial court. The court of appeals affirmed the trial court's dismissal of the case.

W.L. Pickens Grandchildren's Joint Venture v. Doh Oil Co.

281 S.W.3d 116 (Tex. App. – El Paso August 7, 2008, pet. denied)

Issues: challenge to tax sale

A joint venture failed to pay taxes on a mineral interest it owned. Taxing units filed a delinquent-tax suit but failed to name the joint venture as a party or serve it with the suit papers. The court ordered the interest sold, and Doh purchased it at the tax sale. Doh recorded its deed from the sheriff on July 20, 2001. After the tax sale, the joint venture did nothing until July of 2005 when it sued Doh in an effort to invalidate the tax sale. Doh responded by citing §33.54 of the Tax Code and arguing that the joint venture had waited too long to file its suit. Section 33.54 provides that a suit to challenge a tax sale may not be filed against a tax-sale purchaser more one year of the date on which the purchaser records his deed. The one-year limitation period does not apply to someone who was not served in the delinquent-tax suit and who continues to pay taxes on the property after the tax sale, but the joint venture did not claim to have paid any post-sale taxes. The trial court entered a summary judgment for Doh, and the joint venture appealed.

On appeal, the joint venture argued that §33.54 did not apply to it because it was not a party to the delinquent-tax suit. The court of appeals ruled that the statute applies to parties and non-parties alike. The joint venture argued that §33.54 violated the open-courts provision of the Texas Constitution (Art. I, §13). The court of appeals disagreed and explained that the statute gave the joint venture a reasonable opportunity to challenge the tax sale in court. The joint venture could have tolled the statute of limitations if it had paid the taxes after the tax sale. The joint venture next argued that the “discovery rule” should apply to §33.54. (The discovery rule may delay a limitations period where the injured party could not know of his injury right away.) The court explained that the discovery rule does not apply to §33.54 because the legislature made it clear that the period for filing suit starts when the tax-sale purchaser records his deed. Because the joint venture did not file its suit within the period prescribed by §33.54, the court of appeals affirmed the trial court’s summary judgment for Doh.

Belt v. Point Venture Property Owners' Association, Inc.

2008 WL 2938879 (Tex. App. – Austin July 30, 2008, no pet.)(not reported)

Issues: excess proceeds from tax sale

Taxing units sued Moore for delinquent taxes, and the court ordered the real property sold. Just before the scheduled tax sale, Belt bought Moore’s property. The tax sale occurred in May of 2007 and resulted in excess proceeds. Belt claimed the excess proceeds, but so did the property owners’ association (POA). The POA’s claim was based on unpaid dues for the years that Moore owned the property. The POA’s lien on the property was described in recorded deed restrictions. Belt argued that the POA could only sue Moore, not claim the excess proceeds. He argued that the POA’s claim for the excess proceeds was barred by the same statute of limitations that controlled

how much time the POA had in which to sue Moore. He also claimed that the POA's lien was not properly recorded because the deed restrictions filed with the county clerk did not specify the amount of the POA's secured debt. The trial court rejected Belt's arguments and awarded the excess proceeds to the POA. Belt appealed.

The court of appeals ruled that under §34.04, the holder of a lien on property sold at a tax sale can claim excess proceeds without first suing the person whose property was sold. The applicable statute of limitations is the one found in §34.04. A lienholder or someone else claiming excess proceeds can do so anytime within the two years following the tax sale. The POA's claim was timely because it was filed just a month after the tax sale. The recorded deed restrictions creating the POA's lien did not need to specify a specific amount of secured debt in order to be valid. The POA had a valid claim to the excess proceeds, and under §34.04, its claim had a higher priority than the claim that Belt asserted as a former owner of the property. The POA was entitled to the excess proceeds, and the court of appeals affirmed the trial court's judgment.

Belt v. Point Venture Property Owners' Association, Inc.

2008 WL 2938879 (Tex. App. – Austin July 30, 2008, no pet.)(not reported)

Issues: excess proceeds from tax sale

This case involved a different property than the case summarized above, but the issues were the same. The court made the same ruling that it made in the other case.

F-Star Socorro, L.P. v. City of El Paso

281 S.W.3d 103 (Tex. App. – El Paso July 3, 2008, no pet.)

Issues: evidence in delinquent tax case

The city sued F-Star for over \$700,000 in delinquent taxes on F-Star's land. At trial, the city offered evidence in the form of a certified tax statement bearing the seal and signature of the city's tax assessor-collector. The statement set out the taxes, penalties, interest and abstractor's fees due on the land. The trial court admitted the statement into evidence over F-Star's objection and signed a judgment awarding the city the amount that it claimed. F-Star appealed.

On appeal, F-Star argued that the certified tax statement should not have been admitted as evidence because it was hearsay, because it was not authenticated and because it was prepared for the sole purpose of litigation. The court of appeals rejected F-Star's arguments. The court explained that §33.47 of the Tax Code contemplates that copies of delinquent-tax records will be admissible as evidence. Rule 803(8) of the Texas Rules of Evidence allows the admission of public records that set forth "factual findings resulting from an investigation made pursuant to authority granted by law" even if those records are hearsay. The statement was self-authenticating under Rule 902 (i.e., there was no need for a witness to testify about what it was) because it bore the seal and signature of the tax assessor-collector. There is no rule that makes a record inadmissible merely because it was prepared solely for purposes of litigation. The

certified tax statement was sufficient to prove not only the amount of taxes owed by F-Star but also the amounts of penalties and abstractor's fees. The court explained that "when a taxing authority introduces a copy of its delinquent-tax record, it establishes its prima-facie case as to every material fact necessary to establish its cause of action."

F-Star also claimed that it had paid the delinquent taxes on its land. The court of appeals said that payment was an affirmative defense to the city's claims. F-Star had not included the payment defense in the answer that it had filed in the trial court. Consequently, it had waived that defense, and it could not assert its claim of payment. The court of appeals affirmed the trial court's judgment in favor of the city.

Verm v. Harris County Appraisal District

2008 WL 2580041 (Tex. App. – Houston [14th Dist.] July 1, 2008, no pet.) (not reported)

Issues: agreement resolving protest

Verm protested the appraisal of his property. At the ARB hearing, his tax representative proposed a reduced value for the property, and the appraisal district's representative concurred. The ARB issued an order setting the appraised value at the level proposed by Verm's representative and sent out a copy of the order along with its standard documents describing a property owner's right to go to court. Verm then filed suit to appeal the ARB's order. The trial court concluded that Verm's agent had made an agreement with the appraisal district concerning the appraisal of the house and that Verm was bound by that agreement. The trial court signed a summary judgment for the district, and Verm appealed.

The court of appeals affirmed the judgment and agreed that Verm had made a binding agreement with the district. The court explained that under § 1.111 of the Tax Code, a protest that has not yet been determined by an ARB can be resolved by an agreement between the property owner and the appraisal district. An agreement is final and does not require the ARB's approval. When Verm's representative proposed a value and the appraisal district's representative concurred, they made an agreement even though they did not expressly use the word agreement. Their agreement constituted a final resolution of the protest. Verm argued that they had not "acted on" the agreement, but the court said that that did not matter. The ARB's order was unnecessary and irrelevant. Verm argued that if he could not appeal, his constitutional right to due process of law would be violated. The court explained that his due-process rights were protected because he was given a hearing before the ARB. He did not have a constitutional right to renege on his agent's agreement with the appraisal district.

Editor's Comment: When a protesting property owner and an appraisal district reach an agreement during the course of an ARB hearing, they should simply sign an agreement resolving the protest, typically called a settlement-and-waiver agreement. The ARB should not issue an order or send the property owner a notice saying that she has a right to appeal that order. Fortunately, the court recognized that the ARB's actions in this case were irrelevant.

Dolenz v. Dallas Central Appraisal District

259 S.W.3d 331 (Tex. App. – Dallas June 30, 2008, pet. denied)

Issues: Deadline for appeal of ARB order

Dolenz created a trust for the benefit of a church and made himself the trustee. He gave his house to the trust but had the trust give him back a life estate in the house. When the appraisal district denied a religious exemption for the house, Dolenz and the trust filed a protest. After the ARB denied the protest, Dolenz filed an appeal in the trial court on behalf of the trust. Dolenz was not a party to the appeal; rather, he purported to represent the trust even though he was not a lawyer. When the appraisal district objected to Dolenz acting as an unlicensed lawyer for the trust, he intervened in the case on his own behalf, making himself a party for the first time. Dolenz's intervention, however, came almost seven months after the ARB had issued its order denying the protest. The trial court dismissed the trust's claims when the trust failed to hire a licensed lawyer, leaving Dolenz as the only plaintiff. The court then dismissed the entire case because Dolenz had first become a party to the case after the deadline prescribed by §42.21 of the Tax Code. Dolenz appealed.

The court of appeals explained that under §42.21 a property owner who chooses to appeal an ARB's order determining his protest must file his suit within forty-five days after he receives notice of the order. Dolenz had missed that crucial deadline. The trial court did not have jurisdiction over his claims and correctly dismissed his case. The court of appeals further explained that the Code's rules for protests and appeals do not violate property owners' rights to due process of law. It affirmed the trial court's order.

Memorial Park Medical Center, Inc. v. River Bend Development Group, L.P.

264 S.W.3d 810 (Tex. App. – Eastland June 26, 2008, no pet.)

Issues: voiding a tax sale; adverse possession

In 1978, Pruett sold land to Day in exchange for a note and deed of trust, which was properly recorded. After a few years, Day stopped making payments to Pruett and stopped paying the taxes on the land. Pruett foreclosed his deed of trust and took the land back in 1989. The taxing units had sued Day for delinquent taxes on the land but had not named Pruett in their suit. When the sheriff conducted a tax sale in 1990, Williams was the high bidder, and the sheriff gave him a deed. The amount that he paid was much greater than the delinquent taxes on the land. In 1992, Williams realized that the sheriff's deed could not have given him title to the land because Pruett had not been named in the delinquent-tax suit. Williams petitioned the court to give him the excess proceeds from the tax sale under the version of §34.04 of the Tax Code that was in effect at the time. (The statute gave Williams a relatively simple way to get back most of his money without filing a new suit to challenge the tax sale.) Although the court did not expressly rule that the tax sale was void, it did award the excess proceeds to Williams. After several years and several conveyances, Pruett's interest in the land was owned by River Bend, and Memorial had a quitclaim deed from Williams. In a new lawsuit over the ownership of the land, the trial court ruled that River Bend was the owner. The court

also ruled that neither Williams nor Memorial had acquired the land through adverse possession. Memorial appealed.

The court of appeals explained that River Bend was not suing to void the 1990 tax sale; that had already been done when the court gave Williams his money back in the original delinquent-tax case. The tax sale was clearly void because the only defendant in the delinquent-tax suit was Day and he had lost his interest in the land prior to the time of the tax sale. Because River Bend was not suing to challenge the tax sale, it did not have to comply with the tax payment requirements of §34.08. The court cited various reasons why Williams and Memorial could not have acquired title through adverse possession: 1) for purposes of the three-year adverse-possession statute, the void sheriff's deed did not give them "color of title;" 2) for purposes of the five-year statute, the sheriff's deed was not a "duly registered deed" because it did not purport to convey Pruett's interest in the land; and 3) for purposes of the ten-year statute, the evidence failed to show that Williams and/or Memorial had actually and visibly appropriated the land. The court upheld the judgment in favor of River Bend.

Harris County Appraisal District v. Shell Oil Co.

2008 WL 2130441 (Tex. App. – Houston [1st Dist.] May 22, 2008, no pet.) (not reported)

Issues: Foreign trade zones; agreements concerning exemptions

In 1993, the federal government created a foreign trade sub-zone that included Shell's refinery and petrochemical plant. At that time, Shell made an agreement with Harris County. The county did not oppose the creation of the sub-zone, and Shell agreed that its personal property in the zone would not receive the tax exemption that normally applies in foreign trade zones (FTZs). Their agreement, however, provided that, "If a company in a similar industry is allowed exemption from Harris County ad valorem taxes, then Shell will be allowed a similar right of exemption." Shell paid taxes on its property through 2003 but claimed the FTZ exemption in 2004. It protested the appraisal district's appraisal of its property, and, when the ARB denied its protest, it sued to appeal the ARB's order. The appraisal district argued that the matter was a contract dispute between Shell and the county and that the Tax Code's procedures for protests and appeals did not apply. It argued that the county should be a party to the suit. The trial court rejected those arguments. Shell produced evidence that companies similar to Shell were receiving FTZ exemptions in Harris County and claimed that its property was also entitled to the exemption. The appraisal district did not produce contrary evidence. The trial court gave Shell a summary judgment, and the appraisal district appealed.

The court of appeals ruled that the case was governed by the Tax Code's procedures and that those procedures precluded the county from being a party to the suit. Section 42.031 does not allow a taxing unit to be a party to a property owner's suit against an appraisal district. Shell's undisputed evidence showed that companies in similar industries were receiving FTZ exemptions, and, because those companies were receiving the exemptions, Shell was also entitled to the exemption under its agreement with the county. The court upheld the judgment for Shell.

In Re Galveston Central Appraisal District

252 S.W.3d 904 (Tex. App. – Houston [14th Dist.] May 13, 2008, no pet.)

Issues: Pre-trial discovery; confidentiality of appraisal district records

Valero Refining raised excessive-value and unequal-value claims concerning the appraisal of its Texas City refinery. Valero claimed that the refinery was best appraised using the cost approach. The appraisal district argued that the market and income approaches were preferable. The appraisal district asked Valero for information that it had on recent refinery sales anywhere in the country. It also asked for information related to an equity valuation of Valero performed by Morgan Stanley. Valero asked the appraisal district to produce information that other companies had provided about their refineries in Galveston County. Neither Valero nor the appraisal district was willing to provide the information requested by the other side, and the trial court was asked to resolve their disputes. The trial court ruled that: 1) Valero did not have to produce information about refinery sales outside Galveston County; 2) Valero did not have to produce the Morgan Stanley information; and 3) the appraisal district did not have to produce the information about other refineries. Both parties then sought relief from the court of appeals.

The court of appeals upheld the trial court's ruling in all respects. The report prepared by the appraisal district's expert said that he had obtained sales information from a private consulting firm and that he had the information necessary to appraise Valero's refinery. The appraisal district's expert had also considered the cost approach. In light of that report, the court explained that the appraisal district had failed to prove that it needed nationwide sales information from Valero in order to appraise the refinery. The Morgan Stanley information was not in the record for the court of appeals to review. Consequently, the court could not say that the trial court had abused its discretion by refusing to allow the discovery of that information.

With respect to the appraisal district's information about other refineries, the court explained that the information was made confidential by §22.27(a) of the Tax Code. Valero argued that Subsection (b) made even confidential information available to it because the information had been subpoenaed in a court case. The court, however, focused on §25.195(b), which provides that a commercial property owner may not inspect an appraisal district's information that is confidential under §22.27. Because §25.195(b) was the newer of the two statutes, it should control to the extent that there was any conflict. The trial court did not abuse its discretion in refusing to allow Valero to discover the information about the other refineries.

Harris County Hospital District v. Textac Partners

257 S.W.3d 303 (Tex. App. – Houston [14th Dist] May 1, 2008, no pet.)

Issues: Condemnation; payment of taxes with funds held by court

The hospital district filed suit to condemn land owned by Textac. After special commissioners determined the value of the land, the hospital district tendered that amount to be held by the trial court. Textac objected to the condemnation on several grounds. While the case was pending, several taxing units petitioned the court to release some of the money to pay taxes that they had assessed on the land. When Textac did not object, the court ordered that the taxes be paid out of the money that it was holding. The hospital district then argued that Textac had waived its right to oppose the condemnation by allowing the taxes to be paid out of the money held by the court. The court rejected the hospital district's argument and ruled for Textac. The hospital district appealed.

The court of appeals agreed that Textac had not waived its right to oppose the condemnation. A property owner generally cannot object to the condemnation of his land and, at the same time, take the money offered him by the condemning authority. In this case, however, the court said that the payment of the taxes was not inconsistent with Textac's objections to the condemnation. The court was influenced by the fact that it was the taxing units and not Textac that had petitioned for the payment of the taxes. Although the court of appeals found that Textac had not waived its rights by failing to object to the tax payment, the court sent the case back to the trial court for the reconsideration of other issues.

Coastal Liquids Partners, LP v. Matagorda County Appraisal District

2008 WL 1902224 (Tex. App. – Corpus Christi April 30, 2008, no pet.) (not reported)

Issues: Appraisal of underground storage caverns

Coastal protested the appraised values of underground salt caverns that it used to store natural gas. When the ARB upheld the appraised values, Coastal appealed. At trial, the appraisal district presented the testimony of an expert from Pritchard & Abbott (P&A). He explained how P&A had appraised the caverns using the cost approach to valuation. P&A had gathered its cost data by consulting with industry representatives and had reached a consensus with those representatives. Coastal did not try to discredit P&A's cost-approach appraisal. Instead, it presented the testimony of its own expert who had appraised the caverns based on the market approach to valuation. The trial court ruled for the appraisal district and upheld the values determined by P&A. Coastal appealed arguing that the evidence did not support the trial court's decision.

The court of appeals explained that the cost and market approaches are both valid and are both recognized by the Tax Code. The trial court was responsible for weighing the evidence, and the evidence presented by the appraisal district's expert was sufficient to support the trial court's decision. The trial court was not clearly wrong or unjust in deciding to believe the testimony of the appraisal district's expert rather than Coastal's expert. The court of appeals affirmed the trial court's judgment in favor of the appraisal district.

Appraisal Review Board of Harris County Appraisal District v. Spencer Square, Ltd.

252 S.W.3d 842 (Tex. App. -- Houston [14th Dist.] April 29, 2008, no pet.)

Issues: Contesting alleged ARB hearing errors

Spencer Square protested the 2005 appraised value of its property. The ARB conducted a hearing, and, after hearing evidence from Spencer Square and from the appraisal district, the ARB ordered a reduction of the property's value. Spencer Square did not appeal. Almost a year later, however, Spencer Square claimed that the ARB had not conducted its hearing in the manner required by the Tax Code. It is not clear just what the ARB was accused of doing wrong. Spencer Square sued the ARB and asked the court to order the ARB to conduct a second hearing. The ARB asked the trial court to dismiss the case. When the court refused, the ARB appealed.

The court of appeals explained that a property owner must follow the Tax Code's protest and appeal procedures in order to contest the appraisal of his property. Section 41.45(f) allows a property owner to sue an ARB when the property owner is entitled to a hearing before the ARB but the ARB refuses to hold the hearing. But, that section does not apply where an ARB conducts a hearing and issues an order determining the property owner's protest. In that case, the property owner's only option is to appeal the ARB's order. The court will conduct a trial de novo, and any procedural errors that the ARB might have committed will not matter. For example, if the ARB considered improper evidence, the court can exclude that evidence when it tries the case. Because Spencer Square did not file a timely appeal of the ARB's order it could not claim that the ARB had conducted its hearing erroneously and could not require the ARB to conduct a second hearing. The court of appeals dismissed the case.

Morris v. Hardin-Jefferson Independent School District

2007 WL 5101235 (Tex. App. – Beaumont April 17, 2008, no pet.) (not reported)

Issues: Statute of limitations for delinquent taxes; severance of claims

Morris and her brother Norris Hardy were co-owners of a property that was appraised in Norris Hardy's name. In 2002, the school district filed suit for delinquent taxes on the property going back to 1983. Hardy was the only defendant named in the suit. In 2003, Hardy conveyed his interest in the property to another brother, Robert Hardy. The school district amended its suit in March of 2006 and added Morris and Robert as defendants. When the case came to trial in September of 2006, Morris appeared without a lawyer. The school district put on evidence proving the delinquent taxes. Morris admitted owing the taxes but asked for ninety days in which to consult a lawyer and talk to her brothers about getting the taxes paid. The court granted a ninety-day continuance. In November of 2006, Morris's new lawyer, without leave of court, filed an amended answer asserting the statute of limitations and various cross claims against her brothers and a conspiracy counterclaim against the school district. Morris claimed that the school district had violated the statute of limitations because by the time she was added as a defendant to the suit, some of the taxes had been delinquent for more

than twenty years. When the trial resumed in December, the court entered judgment for the school district for taxes going back to 1983 and severed Morris's cross claims and counterclaims for later consideration. The judge said that Morris could raise the statute of limitations again in a motion for a new trial. She did so, but when she never requested a hearing on that motion, it was overruled by operation of law. Morris appealed.

The court of appeals upheld the trial court's judgment and order of severance. The court explained that Morris could not raise the statute of limitations in an amended answer filed after the trial had already begun. The trial court did not abuse its discretion by not granting Morris a new trial based on an affirmative defense that was not raised in a timely manner. Further, the trial court did not abuse its discretion in severing Morris's counterclaims and cross claims because those claims did not necessarily involve the same facts and issues as the school district's delinquent-tax claims.

Mann v. Harris County Appraisal District

2008 WL 1747807 (Tex. App. – Houston [1st Dist.] April 17, 2008, no pet.) (not reported)

Issues: agreement resolving protest

Mann filed a protest claiming that his 13,000 square foot house in River Oaks was excessively and unequally appraised. At the ARB hearing, Mann's agent argued that the appraised value of the house should be reduced by approximately \$400,000. The appraisal district's representative first recommended a reduction of approximately \$650,000, but then announced that he would agree with the agent's proposed value. When the ARB gave the parties a chance to make final comments, the agent said "Unconditional." The ARB issued an order reflecting the agreed value and sent a copy of the order to the agent along with its standard documents describing a property owner's right to go to court. Mann then filed suit to appeal the ARB's order. The trial court concluded that Mann's agent had made an agreement with the appraisal district concerning the appraisal of the house and that Mann was bound by that agreement. The trial court signed a summary judgment for the district, and Mann appealed.

The court of appeals affirmed the judgment and agreed that Mann had made a binding agreement with the district. The court explained that under § 1.111 of the Tax Code, a protest that has not yet been determined by an ARB can be resolved by an agreement between the property owner and the appraisal district. An agreement is final and does not require the ARB's approval. An agreement is final regardless of whether it is later approved or adopted by the ARB. When the appraisal district's representative said that he agreed with the value claimed by Mann's agent, the parties had an agreement, a "harmony of opinion." Mann argued that if he could not appeal, his constitutional right to due process of law would be violated. The court explained that his due-process rights were protected because he was given a hearing before the ARB.

Shaw v. County of Dallas

251 S.W.3d 165 (Tex. App. – Dallas April 9, 2008, pet. denied)

Issues: Parties to delinquent-tax suit; attorney's fees

Shaw won a lawsuit against Anguiano and filed an abstract of judgment with the county clerk in order to impose a lien on any real property owned by Anguiano. After Shaw collected his money, he filed a release that identified a particular property. The county did not discover the release and filed a suit to collect delinquent taxes on another property owned by Anguiano. The original suit named Shaw as a lienholder, and the county later amended its suit to state that Shaw was being sued *in rem* only. Shaw counterclaimed for a declaration that he was not liable for the taxes. Anguiano died, and the county asked the trial court to continue the case in order for it to locate his heirs. The court granted the continuance over Shaw's objections. Before the trial, the delinquent taxes were paid. When the case came to trial, the county dismissed its claims. Shaw, however, claimed that the county should have to pay his attorney's fees. He cited the Declaratory Judgments Act and Rule 13 of the Texas Rules of Civil Procedure, which generally concerns frivolous lawsuits. The trial court did not award any attorney's fees to Shaw, and Shaw appealed.

The court of appeals explained that Rule 13 applies when a suit is groundless and filed either in bad faith or for purposes of harassment. The county's delinquent-tax suit did not violate the Rule because the release that Shaw had filed did not appear to apply to the property that was the subject of the county's suit. Even if it had found the release, the county could have reasonably believed that Shaw still had a lien on that property. Shaw was sued in his capacity as a lienholder and sued *in rem* only. Shaw did not call the release to the county's attention until the trial. Even if the county had been negligent in not finding the release earlier, mere negligence would not violate Rule 13. The Declaratory Judgments Act gives a trial court discretion with respect to awarding attorney's fees, and, under the circumstances, the trial court did not abuse its discretion when it refused to award attorney's fees to Shaw. The trial court did not abuse its discretion when it granted the county's request for a continuance. Shaw also attempted to claim that his constitutional right to due process of law had somehow been violated, but the court of appeals refused to consider that claim because it had not been raised before the trial court. The trial court's judgment was upheld.

Harris County Appraisal District v. Sigmor Corp.

2008 WL 921073 (Tex. App. – Houston [1st Dist.] April 3, 2008, no pet.) (not reported)

Issues: Appraisal of furniture, fixtures and equipment

After losing in a protest to the ARB, Valero sued to contest the appraised value of the furniture, fixtures and equipment (including underground fuel tanks) at several convenience stores. Valero's valuation expert estimated the price that particular items would sell for if sold one at a time to used equipment dealers and subtracted the cost of removing each item. He assumed that fuel tanks could not legally be reused and assigned a salvage value of \$100 each to tanks that had cost up to \$100,000 each.

The appraisal district's witnesses testified that the property should be appraised "in place" and "in use." The jury decided upon values that were well below even the values claimed by Valero's expert. When the trial court refused to disregard the jury's findings, the appraisal district appealed.

The court of appeals ruled that the evidence presented by Valero's expert was unreliable. The court explained that underground fuel tanks could legally be reused, and that the expert had erred when he assumed that they could not. The court also explained that there was no evidence to support the jury's findings. The jury's values were so low that they were outside the range of values for which there was evidentiary support. The jury was not free to arbitrarily pull numbers out of a hat. Consequently, the court of appeals entered judgment in favor of the appraisal district. The court did not discuss whether furniture, fixtures and equipment should be appraised as "in place" and "in use."

Dallas Independent School District v. Outreach Housing Corp./DeSoto I, Ltd.

251 S.W.3d 152 (Tex. App. – Dallas March 25, 2008, pet. denied)

Issues: low-income housing exemption

This case concerns the exemption created by §11.1825 for certain low-income housing. Subsection (v) of the statute states that in a county with at least 1.4 million people, a property owner seeking the exemption must apply to a taxing unit and have the unit's governing body approve the exemption. A governing body may deny the exemption if it concludes that the taxing unit cannot afford the loss of tax revenue. In this case, the school board denied the exemption requested by Outreach on the grounds that the school district was "not in a position to restrict" its potential tax revenues. Outreach sued to force the school district to approve the exemption. It claimed that the property in question was currently appraised as open-space agricultural land. Even with a 50% tax exemption, Outreach's planned housing development would generate more tax revenue than the continued use of the land for agriculture. Because there would be no loss of actual tax revenue, the school district should have to approve the exemption. The trial court ruled for Outreach, and the school district appealed.

The court of appeals reversed the trial court and ruled for the school district. The court explained that when a taxing unit's governing body considers whether an exemption will result in a loss of tax revenue, the governing body can consider the *potential* tax revenues that may come from a property with and without the exemption. The loss referred to in the statute "is loss as a result of approving an exemption, not loss of tax revenue when compared to tax revenues collected before a property is improved." The school board did not abuse its discretion when it decided to deny Outreach's request.

Irannezhad v. Aldine Independent School District

257 S.W.3d 260 (Tex. App. – Houston [1st Dist.] March 20, 2008, no pet.)

Issues: tax sales; delinquent post-judgment taxes

In September of 2002, a trial court signed a judgment awarding taxing units their delinquent taxes on a real property for the years 1987 through 2001. The judgment ordered the sale of the property and stated that it did not prejudice the taxing units' right to collect their taxes for 2002 and subsequent years. In September of 2003, the constable conducted a tax sale. When no one offered the minimum bid, the property was struck off to the school district for the benefit of all the taxing units. In January of 2005, the constable offered the property for public resale and Irannezhad bought it. The constable's deed to Irannezhad referred to the original delinquent-tax suit and tax sale and stated that it was conveying all of the rights, title and interests acquired or held by the taxing units. The school district then sued Irannezhad over the taxes that accrued for 2002 and the part of 2003 prior to the original tax sale (When the school district acquired the property in the original tax sale, it became tax-exempt public property). Irannezhad disputed the taxes and argued that after the school district acquired the property in the tax sale, the 2002-2003 tax liens merged into the school district's title. Those liens no longer existed as separate interests in the property. Thus, those liens did not follow the property when Irannezhad bought it. The trial court rejected Irannezhad's argument and ruled for the school district. Irannezhad appealed.

The court of appeals based its opinion on two sections of the Tax Code. Section 33.52(d) provides that, "A taxing unit's claim for taxes that become delinquent after the date of the judgment is not affected by the entry of the judgment or a tax sale conducted under that judgment. Those taxes may be collected by any remedy provided" by the Code. Section 34.01(l) provides that, "Notwithstanding that property is bid off to a taxing unit . . . , a taxing unit that established a lien in the suit may continue to enforce collection of any amount for which a former owner of the property is liable to the taxing unit, including any post-judgment taxes, penalties, and interest, in any other manner provided by law." The rule that a tax sale does not affect post-judgment taxes also applies to a re-sale of a property struck off to a taxing unit. Thus, neither the original tax sale nor the subsequent re-sale affected the 2002-2003 taxes on the property or the liens securing those taxes. When Irannezhad made his purchase, he acquired only the interest that had belonged to the delinquent taxpayer who lost the property. Irannezhad took the property subject to the liens for the 2002-2003 taxes, and the school district had the right to foreclose its liens. The court of appeals upheld the trial court's judgment for the school district.

National Golf Operating, P.S., L.P. v. Williamson County Appraisal District
251 S.W.3d 149 (Tex. App. – Austin March 13, 2008, no pet.)

Issues: non-binding arbitration; dismissal for want of prosecution

National Golf sued the appraisal district in 2000 to appeal an ARB order. For several years, National Golf failed to diligently prosecute the case. In 2006, the court notified the parties that it would dismiss the case unless National Golf could show good cause for its inactivity. Just before the dismissal hearing, National Golf filed a motion under §42.225 of the Tax Code asking the court to refer the case to non-binding arbitration. At the hearing the court denied that motion and dismissed the case. National Golf appealed.

On appeal, National Golf argued that §42.225 was mandatory and that the trial court had no choice about referring the case to arbitration. The court of appeals disagreed. It explained that courts have the inherent power to dismiss cases for want of prosecution. The legislature knew that when it enacted the statute, and it did nothing to restrict the courts' inherent power. Section 42.225 did not affect the trial court's authority to dismiss the case. The court of appeals upheld the dismissal of the case.

Koll Bren Fund IV, LP v. Harris County Appraisal District

2008 WL 525799 (Tex. App. – Houston [1st Dist.] February 28, 2008, pet. stricken) (not reported)

Issues: who can file a protest or appeal

In mid 2004 Koll sold a property to Hartman. Then, for no apparent reason, Koll protested the 2005 appraisal of the property. The ARB was apparently unaware that Koll no longer owned the property and actually ordered a small reduction in its appraised value. Koll then filed suit to appeal the ARB's order. Fifteen months later and well past the deadline for filing suit, Hartman appeared in the case as a plaintiff. The appraisal district moved for the dismissal of the case, and the trial court granted the motion. Koll and Hartman appealed the trial court's order.

The court of appeals upheld the trial court's decision. It explained that because Koll had ceased to own the property prior to 2005, it had no standing to contest the 2005 appraisal in a protest or lawsuit. Hartman was the owner of the property, but it had not been involved in the protest. Because Hartman had not exhausted its administrative remedies before the ARB, it could not sue to contest the 2005 appraisal. Section 42.21(e) of the Tax Code provides that after a property owner files a suit to appeal an ARB order, he can later amend his pleadings to correct or change the name of a party. That provision did not save Hartman, however, because Koll's original pleading had never invoked the jurisdiction of the trial court. There was no valid suit in which Hartman could appear.

Koll and Hartman also tried arguing that the Code's procedural requirements were not really mandatory and that the trial court had jurisdiction over their claims notwithstanding their failure to satisfy those requirements. The court of appeals flatly rejected those arguments.

Editor's Comment: The court of appeals was not asked to address one interesting question. If Koll had no standing to protest the appraisal, then what was the effect of the ARB's order reducing the value of the property? If the ARB had no jurisdiction to consider a protest by a non-owner, then its order should be a nullity.

Comunidad Balboa, LLC v. City of Nassau Bay

2008 WL 442583 (Tex. App. – Houston [14th Dist.] February 19, 2008, no pet.) (not reported)

Issues: appeal of a challenge; judgment by default

The city filed a challenge concerning a tax exemption granted by the appraisal district. When the ARB denied the challenge, the city filed suit to appeal the ARB's determination and named the appraisal district and the property owner as defendants. When the property owner failed to file an answer, the trial court entered a default judgment against it. Following the routine that it followed in non-tax cases, the court included a provision in the default judgment that would have allowed the city to come back later and provide proof of any money damages that it was claiming from the property owner. The default judgment did not apply to the appraisal district. Shortly after the trial court signed its default judgment, the property owner filed an untimely answer. In order to tie up the loose ends, the city filed a motion asking the court to modify the default judgment by removing the provision about money damages. In response, the court signed a second default judgment. Several months later, the court signed a judgment reflecting an agreement between the city and the appraisal district and disposing of the city's claims against the appraisal district. The property owner challenged the default judgment against it by filing a motion for new trial, which the trial court denied. The property owner appealed.

The court of appeals explained that the trial court's second default judgment against the property owner was erroneous because, at the time that second default judgment was signed, the property owner had filed an answer. The trial court's first default judgment was interlocutory (i.e., it did not finally resolve all the claims in the case) because it did not deal with the city's claims against the appraisal district. Consequently, the case was still alive and pending before the trial court when the property owner filed its answer. Even though the property owner's answer was late, the fact that it did file an answer precluded a subsequent default judgment. The court of appeals referred the case back to the trial court.

AIC Management v. Crews

246 S.W.3d 640 (Tex. January 25, 2008)

Issues: adequacy of tax-sale deed

In 1984, Crews acquired 8.5 acres of land partitioned out of a 24.4 acre tract. In 1989, taxing units sued Crews for delinquent taxes going back to 1960. The petition in the delinquent-tax suit referred to the 1984 deed to Crews, but described the property as "Tract 12 being 6.0 acres out of T.S. Roberts Survey Abstract 659 situated in Harris County, Texas." (The number 12 was assigned by the taxing units that had appraised the property before the creation of appraisal districts. The appraisal district had continued to use that number.) The court's judgment described the property as "TR 12 AB 659 T.S. Roberts situated in Harris County." As a result of the tax sale, the property was struck off to the taxing units. The constable's deed referred to the delinquent-tax suit and described the property as "all of Crews's right, title and interest to TR 12 AB 659 T.S. Roberts situated in Harris County." In 1997, the taxing units sold the property to AIC using essentially the same description in the deed. Several years later, the city filed a suit to condemn all of the original 24.4 acre tract, and the condemnation suit set off a controversy about who owned what. Crews claimed that she still owned all of her

8.5 acres because the deeds to the taxing units and to AIC were void as a result of faulty property descriptions. AIC claimed that the deeds were valid and that it owned the property. The trial court entered a summary judgment for Crews and ruled that the deeds to the taxing units and to AIC were void. The court of appeals affirmed the trial court's ruling, and the Texas Supreme Court decided to hear the case.

The Supreme Court reversed the lower courts and ruled that the evidence was not sufficient to support a summary judgment for Crews. The Supreme Court sent the case back to the trial court for further proceedings. In its opinion, the Supreme Court explained the requirements for a property description in a deed conveying a property in connection with a tax sale. Such a description is judged by the same standards that apply to property descriptions in deeds reflecting voluntary conveyances between private parties. A description is sufficient if the deed itself provides the information necessary to identify and locate the property or if it refers to other existing documents that contain that information. A court can consider documents other than the deed itself if those documents existed at the time the deed was executed. The reference in the deeds to "Tract 12" was a reference to the appraisal district's records, and if the records from the time of the delinquent-tax suit contained a sufficient description of "Tract 12", then the deeds would be valid, but the Court did not have all of those records. The constable's deed to the taxing units was not automatically valid because it referred to all of Crews's right, title and interest in "Tract 12" because it was not clear whether "Tract 12" referred to all of Crews's 8.5 acres or to something less. A description could be valid even if the property described were not the 6.0 acre size referred to in the petition.