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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

ROBERT D. FINNELL, trustee,
Plaintiff and Appellant,
v.
COUNTY OF MENDOCINO,
Defendant and Respondent.

A139784

(Mendocino County Super. Ct.
No. MCVK-CVCV-12-18339)

In this property tax assessment matter, Robert D. Finnell, as trustee for the Robert D. and Carolyn M. Finnell Family Trust dated May 11, 1999 (Finnell), appeals from the trial court's grant of summary judgment in favor of the County of Mendocino (County). Following Finnell's purchase of real property in Westport, the Mendocino County Assessor (Assessor) revalued the property for tax purposes in an amount significantly higher than the purchase price. Finnell applied to the Mendocino County Board of Equalization (Board) for changed assessment, claiming that the Assessor was required to adopt the purchase price as the property's base year value because the sale was an arm's length, open market transaction. The Board disagreed, finding that the Assessor—through analysis of comparable sales—had rebutted any presumption that the purchase price represented the true taxable value of the property. The trial court subsequently upheld the Board's decision on substantial evidence grounds. Because we conclude,

based on our de novo review of the matter, that the Assessor and the Board properly applied and rebutted the purchase price presumption in these proceedings, we affirm.

I. BACKGROUND

A. *Property Purchase and Reassessment*

The real property that is the subject of these proceedings (Subject Property) is a single-family residence located at 38970 North Highway 1 in Westport (APN 013-300-60-05). In July 2009, U.S. Bank, the foreclosing beneficiary, purchased the Subject Property at a trustee sale for \$500,000, based on an unpaid debt of \$653,027.45. On June 24, 2010, Finnell purchased the Subject Property for \$441,000 from U.S. Bank in an REO sale.¹ Following Finnell's purchase of the Subject Property, the Assessor reassessed it for tax purposes at \$510,000—an amount substantially higher than the purchase price—based on an analysis of comparable sales. Finnell filed an assessment appeal on April 26, 2011, arguing that the proper valuation for the Subject Property, which he had purchased as a vacation home, was the \$441,000 purchase price.

B. *Proceedings Before the Board*

Hearings were held before the Board with respect to the reassessment of the Subject Property on September 19 and November 14, 2011. At the September 19 hearing, the Assessor stated that the Subject Property was an “REO property foreclosure” described as follows: “The subject property is situated on a lot with an unobstructed view of the ocean. Residence[] is approximately ten years old and in good condition at sale and had been maintained through foreclosure period. It is classified as a D7. It is 1,372 square feet, two bedroom, two bath,² with an attached garage of 336 square feet and approximately 700 square feet of decking.” The Assessor then testified regarding the

¹ REO stands for “real estate owned” and refers to property owned by a lender, generally a bank, after an unsuccessful sale at a foreclosure auction. The bank will generally then go through the process of trying to sell the property on its own.

² The Assessor initially misstated the number of bathrooms in the Subject Property, subsequently reducing the number from two to 1.5. According to the Assessor, however, the appraiser had valued the property considering the fact that there was only one full bath.

five comparable properties contained in her report to the Board that were considered prior to determining the new base year value for the Subject Property.

In particular, the Assessor focused on two comparables which sold within one month of the Subject Property and which were located nearby in Westport. The first comparable was an ocean bluff parcel containing a 1466-square-foot home (D 6.5), two bedrooms, two baths, and 346 feet of decking. It was 14 years old, but in good condition. There was no garage. This first property sold for \$700,000. The second comparable was also an ocean bluff parcel. It contained a 1488-square-foot home (D7), two bedrooms, two baths, and 1000 feet of decking. It was built in 1989, but was in good condition. There was no garage. This second property sold for \$600,000. The Assessor discussed the similarities and differences between the Subject Property and these “best” comparables as follows: “Residences are similar in size, same number of beds and baths, all in good condition at purchase. . . . Both homes are older than subject residence that was built in 2001. Neither has a garage. They are both on the bluff, but the subject enjoys a great unobstructed view of the ocean and is only a stone’s throw from the bluff. Parcel that lies between subject and bluff is owned by the Westport Village Society and is maintained as open space for the enjoyment of the public. No potential for development at this time.”

In response, Finnell ignored the Assessor’s comparables and argued that, as a legal matter, the Assessor had to accept the purchase price as the fair market value of the Subject Property unless sufficient evidence was offered that the purchase was not an open market transaction. The Assessor disagreed, arguing that the presumption that the purchase price represented the full cash value of a property was always rebuttable, even in the context of an open market sale. In fact, the Assessor stipulated that the purchase of the Subject Property was an open market sale, stating: “That is correct that we are not contending that this is not an open market transaction.” Ultimately, the hearing was continued so that the parties could provide additional information and brief the legal issue with respect to the applicability of the purchase price presumption.

At the continued hearing on November 14, 2011, counsel for the Assessor reiterated his argument that evidence could always be submitted rebutting the presumption that the purchase price for a property represented its full cash value, even in the context of an open market transaction. In addition—although he indicated that he did not want to “disavow” his prior stipulation—Assessor’s counsel admitted that it may have been error to stipulate that the transaction at issue was an open market sale due to its REO status. Specifically, he pointed out that the sale was similar to a foreclosure sale, which is not deemed to be an open market transaction for assessment purposes. Finally, since Finnell had submitted materials asserting numerous factors which he believed distinguished the Assessor’s comparable properties from the Subject Property, the Assessor provided rebuttal with respect to each factor.

In response, Finnell challenged the Assessor’s legal and factual arguments. He argued that his purchase of the Subject Property was not similar to a foreclosure situation. He did concede, however, that, under *Dennis v. County of Santa Clara* (1989) 215 Cal.App.3d 1019 (*Dennis*), the Assessor could produce evidence to dispute the presumption that an open market sales price is the correct valuation. He just believed that the Assessor had not rebutted the presumption under *Dennis* in this case. After discussion, the Board concluded that the Assessor’s valuation of the Subject Property at \$510,000 was supported by the evidence. The matter was continued for the preparation of formal findings.

Thereafter, on January 10, 2012, the Board adopted findings of fact, concluding that the Assessor meet the burden of proof necessary to rebut the purchase price presumption and presented sufficient evidence to support a full cash value for the Subject Property of \$510,000. The findings outline the comparable sales relied upon by the Assessor and describe the Assessor’s rebuttal to each of Finnell’s challenges to those comparables. In addition, the findings expressly reject Finnell’s argument that the \$441,000 purchase price must be adopted as the full cash value of the Subject Property absent specific evidence, under *Dennis*, of a skewing in the market.

C. *Proceedings in the Trial Court*

Finnell filed his Second Amended Complaint for Refund in Mendocino County Superior Court on September 21, 2012, challenging the Board’s decision. Finnell again argued that the Assessor had not proven that the purchase of the Subject Property was anything other than an open market transaction; nor had the Assessor presented “any evidence, factors or variables that *skewed* the purchase price.” Thus, Finnell asserted, the Board’s decision to uphold a full cash value for the Subject Property of \$510,000 was an abuse of discretion. He asked the court to find instead that the new base year value for the Subject Property be the \$441,000 purchase price. Both Finnell and the County subsequently filed cross-motions for summary judgment.

On June 12, 2013, the trial court issued its order granting the County’s motion for summary judgment. Specifically, after reviewing the administrative record, the trial court found that the Board’s decision was supported by substantial evidence, and thus the County was entitled to judgment in its favor as a matter of law. In reaching this conclusion, the trial court specifically rejected Finnell’s interpretation of *Dennis*. Judgment was entered on July 19, 2013, with notice of entry filed July 26, 2013. Finnell’s timely notice of appeal now brings the matter before this court.

II. DISCUSSION

A. *Standard of Review*

The standards for granting summary judgment are well-settled and easily delineated. A trial court must grant a motion for summary judgment “if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” (Code Civ. Proc., § 437c, subd. (c).) Our review of an order granting summary judgment is *de novo*. Under such circumstances, the trial court’s stated reasons for granting summary judgment “are not binding on us because we review its ruling, not its rationale.” (*Ram’s Gate Winery, LLC v. Roche* (2015) 235 Cal.App.4th 1071, 1079.)

With respect to the assessment questions at issue in this case, “[w]hether the valuation method used by an assessor is valid constitutes a question of law.” (*Dennis*,

supra, 215 Cal.App.3d at p. 1025; see also *Maples v. Kern County Assessment Appeals Bd.* (2002) 103 Cal.App.4th 172, 178.) Thus, our review is de novo and we must determine “ ‘whether the challenged method of valuation is arbitrary, in excess of discretion, or in violation of the standards prescribed by law.’ ” (*Dennis, supra*, 215 Cal.App.3d at pp. 1025-1026.) In contrast, when “reviewing the application of a valid valuation method” in a particular case, the entire record is reviewed to determine if the findings are supported by substantial evidence. (*Id.* at p. 1026.) Finally, to the extent our analysis involves issues of statutory interpretation, our review is, of course, de novo. (*Robles v. Employment Development Dept.* (2015) 236 Cal.App.4th 530, 546.)

Finnell’s argument in the present case is, in a nutshell, that the Assessor was required to accept the purchase price of the Subject Property as its full cash value for purposes of reassessment. Specifically, he asserts that when property is purchased in an open market transaction, the purchase price must be adopted as the property’s fair market value absent evidence of specific variables or factors that skewed the sale. We view this as an argument that the Assessor applied a method of valuation—rebuttal of the purchase price presumption in an open market transaction with no skewing factors—that violated the “ ‘standards prescribed by law.’ ” (*Dennis, supra*, 215 Cal.App.3d at pp. 1025-1026.) We will thus independently review Finnell’s claims.³

B. *Application of the Purchase Price Presumption*

Article XIII A of the California Constitution—adopted by the voters in 1978 as Proposition 13—limits the ad valorem tax on real property to one percent of the property’s “full cash value.” (See Cal. Const., art. XIII A, § 1, subd. (a).) Consequently, state law demands that county assessors “assess all property subject to general property

³ Although the County argues on appeal that its use of a comparable sales methodology to determine the full cash value of the Subject Property was supported by substantial evidence, we need not reach this issue as Finnell has not challenged the Assessor’s application of the comparable sales methodology on appeal. Indeed, he complains that the County spent “an inordinate and unnecessary amount of time and discussion on its comparable sales data analysis and process, which is not applicable to the key legal issues of this appeal.” We therefore confine our comments to the legal argument raised.

taxation at its full value.” (Rev. & Tax. Code, § 401.)⁴ As is relevant here, “full cash value” is “*the appraised value* of real property when purchased, newly constructed, or a *change in ownership* has occurred after the 1975 assessment.” (Cal. Const., art. XIII A, § 2, subd. (a), italics added.) Thus, every time a change of ownership occurs after 1975, the property at issue is reassessed and given a new base year value based on its appraised value as of the date of the transfer. (See § 110.1, subd. (a)(2) [full cash value means “the fair market value as determined pursuant to Section 110” as of the date of the change in ownership]; see also *Duea v. County of San Diego* (2012) 204 Cal.App.4th 691, 693.)

For purposes of assessment, “full cash value” or “fair market value” is defined by section 110 of the Revenue and Taxation Code. Specifically, section 110 states in pertinent part: “Except as is otherwise provided in Section 110.1, ‘full cash value’ or ‘fair market value’ means the amount of cash or its equivalent that property would bring if exposed for sale in the open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other, and both the buyer and the seller have knowledge of all of the uses and purposes to which the property is adapted and for which it is capable of being used, and of the enforceable restrictions upon those uses and purposes.” (§ 110, subd. (a).) With respect to the purchase price presumption here at issue, section 110 goes on to provide: “For purposes of determining the ‘full cash value’ or ‘fair market value’ of real property . . . being appraised upon a purchase, ‘full cash value’ or ‘fair market value’ is the purchase price paid in the transaction unless it is established by a preponderance of the evidence that the real property would not have transferred for that purchase price in an open market transaction. The purchase price shall, however, be rebuttably presumed to be the ‘full cash value’ or ‘fair market value’ if the terms of the transaction were negotiated at arm’s length between a knowledgeable transferor and transferee neither of which could take advantage of the exigencies of the other.” (*Id.*, subd. (b).)

⁴ All statutory references are to the Revenue and Taxation Code unless otherwise specified.

In addition to section 110, the State Board of Equalization has promulgated several Property Tax Rules that discuss the application of the purchase price presumption to the reassessment of property upon a change in ownership. Property Tax Rules are implemented pursuant to Government Code section 15606, which provides that the State Board of Equalization shall “[p]rescribe rules and regulations to govern local boards of equalization when equalizing, and assessors when assessing” (Gov. Code, § 15606, subd. (c).) These administrative regulations are binding on local assessors and must be followed by the courts, absent a finding that the rule at issue violates statutory or constitutional law. (*Western States Petroleum Assn. v. Board of Equalization* (2013) 57 Cal.4th 401, 414-416; *Ocean Avenue LLC v. County of Los Angeles* (2014) 227 Cal.App.4th 344, 350; see also State Board of Equalization Letter to County Assessors No. 2003/039, Hierarchy of Property Tax Authorities at pp. 2-3 (May 29, 2003).)

As is relevant here, Property Tax Rule 2 states: “When valuing real property . . . as the result of a change in ownership . . . for consideration, it shall be rebuttably presumed that the consideration valued in money, whether paid in money or otherwise, is the full cash value of the property. The presumption shall shift the burden of proving value by a preponderance of the evidence to the party seeking to overcome the presumption. *The presumption may be rebutted by evidence that the full cash value of the property is significantly more or less than the total cash equivalent of the consideration paid for the property. A significant deviation means a deviation of more than 5% of the total consideration.*” (Cal. Code Regs., tit. 18, § 2, subd. (b), italics added.) In addition, Property Tax Rule 321 reiterates the appropriate burden of proof in determining full cash value as follows: “In hearings involving change in ownership, except as provided in section 110 of the Revenue and Taxation Code, the purchase price is rebuttably presumed to be the full cash value. The party seeking to rebut the presumption bears the burden of

proof by a preponderance of the evidence.” (Cal. Code Regs., tit. 18, § 321, subd. (e), italics omitted.)⁵

In our view, the clear import of these statutory and regulatory authorities is that, while the purchase price is an important factor in determining the full cash value of property upon a change in ownership, it is never the absolute arbiter of value. Rather, pursuant to section 110, if the assessor establishes that the transaction at issue was *not* an open market transaction, then the purchase price does not determine value at all, and the assessor must establish the full cash value of the property through other means. Moreover, even when a transaction appears to be an arm’s length, open-market sale, the presumption that the purchase price is indicative of the fair market value of the property is not absolute. Instead, under such circumstances, while the assessor is entitled to presume that the purchase price is equivalent to the property’s fair market value, such a presumption may nevertheless be rebutted by evidence that the price paid did not represent the full cash value of the property.

We can think of myriad ways in which the purchase price presumption could possibly be rebutted. However, the State Board of Equalization has provided one express example in Property Tax Rule 2. Specifically, as stated above, “the presumption may be rebutted by evidence that the full cash value of the property is significantly more or less than the total cash equivalent of the consideration paid for the property. A significant deviation means a deviation of more than 5% of the total consideration.” (Cal. Code

⁵ Finnell also cites section 167 of the Revenue and Taxation Code to support his position. That statute provides a rebuttable presumption in favor of the taxpayer in an administrative hearing involving the taxation of an owner-occupied single-family dwelling. (§ 167, subd. (a).) As Finnell acknowledges, this taxpayer presumption was amended effective January 1, 2012, to be applicable only when the dwelling at issue is the owner’s principal place of residence. (*Id.*, subd. (c)(1); Stats. 2011, ch. 220.) Here, Finnell purchased the Subject Property as a vacation home. Since the Board adopted its findings of fact on January 10, 2012, after the effective date of the amendment, section 167 is arguably inapposite. However, the Assessor in this case clearly accepted the burden of rebutting the presumption in favor of the taxpayer’s proposed valuation and was found to have successfully done so. Thus, even if Finnell was given the benefit of section 167, it would not change our analysis.

Regs., tit. 18, § 2, subd. (b).) This is precisely what happened here. Through reference to comparable sales, the Assessor provided evidence that the purchase price paid for the Subject Property deviated by more than five percent from its actual full cash value. Under such circumstances, the Assessor’s approach—allowing for the successful rebuttal of the purchase price presumption through reference to comparable sales—must be deemed a valid method of valuation.

Moreover, our statutory analysis in this case is buttressed by the Sixth District’s decision in *Dennis, supra*, 215 Cal.App.3d 1019, which considered the very question here at issue. In *Dennis*, purchasers of commercial real property filed an application for changed assessment after the local assessor revalued the property for tax purposes in an amount substantially higher than the purchase price, using market data and income methods of appraisal. (*Id.* at pp. 1022-1023.) The assessment appeals board upheld the assessor’s valuation, concluding that—although the sale of the property was an arm’s length transaction—the purchase price was “not a sufficiently reliable indicator of the market value” given the evidence of comparable sales introduced by the assessor and the fact that the property was purchased by an existing tenant without having been exposed for sale on the open market. (*Id.* at pp. 1023-1024.) The trial court reversed, holding that the board erred in rejecting the purchase price as a basis for determining full value because the purchase and sale was “an ‘open market transaction’ as a matter of law.” (*Id.* at p. 1025.)

On appeal, the *Dennis* court assumed that the purchase at issue was an arm’s length, open market transaction. It thus framed the issue before it as whether “[i]n reassessing the fair market value after real property is sold in an arm’s length, open market transaction,” the tax assessor is “bound by the purchase price agreed upon by the seller and buyer.” (*Dennis, supra*, 215 Cal.App.3d at p. 1027.) The appellate court determined that a tax assessor was not bound by the purchase price under such circumstances, opining: “We conclude that the purchase price may play a significant role in the reassessment of property upon its sale but that the purchase price is only the beginning and not necessarily the end of the inquiry.” (*Ibid.*) In support of this

conclusion, the *Dennis* court noted that “California courts have recognized that even an arm’s length, open market transaction may involve factors that skew the purchase price and make it an unreliable indicator of the fair market value.” (*Id.* at p. 1028.) However, “[r]egardless of the specific conditions affecting the value of the property to the individual owner, *the assessment method for property tax purposes must be objective.*” (*Id.* at p. 1030, italics added.) As our high court has explained: “The present owner may have invested well or poorly, may have contracted to pay very high or very low rent, and may have built expensive improvements or none at all. . . . [S]ince . . . the legislative standard of value is “full cash value,” it is clear that whatever may be the rationale of the property tax, it is not the profitableness of property to its present owner.” (*Ibid.*, quoting *De Luz Homes, Inc. v. County of San Diego* (1955) 45 Cal.2d 546, 566.)

Within this context, the *Dennis* court viewed the purchase price presumption set forth in section 110 as follows: “As we interpret the statute, an arm’s length, open market sale for a price that is not influenced by an exigency of either buyer or seller permits the assessor to presume fair market value from the purchase price, but *the presumption may nevertheless be rebutted by evidence that the fair market value of the property is otherwise.*” (*Dennis, supra*, 215 Cal.App.3d at p. 1028, italics added.) The court therefore concluded that the assessor properly looked beyond the purchase price in that case, relying on well-accepted methods of valuation. (*Id.* at pp. 1030-1031.) Moreover, the trial court’s error was “binding the assessor to the purchase price paid by plaintiffs in a concededly arm’s length, open market transaction, despite the existence of a variable that skewed the purchase price.” (*Id.* at p. 1031.)

We find *Dennis* on all fours with our analysis of the purchase price presumption in this case. Here, through use of a comparable sales analysis, the Assessor discovered a significant deviation between the purchase price paid by Finnell for the Subject Property and the appraised full cash value of that property. Pursuant to Property Tax Rule 4, “[w]hen reliable market data are available with respect to a given real property, the preferred method of valuation is by reference to sales prices.” (Cal. Code Regs., tit. 18, § 4; see also *Dennis, supra*, 215 Cal.App.3d at p. 1031 [“ [M]arket data on recent sales

of the property to be assessed and comparable properties, . . . is the most accurate way of arriving at the assessed value of the property.’ ”].) Thus, the Assessor’s presentation of comparable sales was strong evidence that the purchase price paid by Finnell was skewed and therefore an unreliable indicator of value. As such, it was sufficient to rebut the purchase price presumption codified in section 110. Indeed, this conclusion is expressly endorsed by Property Tax Rule 2. (See Cal. Code Regs., tit. 18, § 2, subd. (b) [“The presumption may be rebutted by evidence that the full cash value of the property is significantly more or less than the total cash equivalent of the consideration paid for the property. A significant deviation means a deviation of more than 5% of the total consideration.”].)

Finnell, however, claims that, under *Dennis*, the Assessor was required to identify specific factors or variables that *caused* the skewing of the purchase price, before it was permissible to resort to a comparable sales analysis to establish full cash value. His argument seems to be that, under *Dennis*, evidence undercutting the presumed open market nature of the sale—other than a significant deviation in price—must be present before the purchase price presumption can be rebutted. We do not read *Dennis* or section 110 so narrowly. Where such evidence is present—as, for instance, in *Dennis* where the sale was made to an existing tenant without having been exposed for sale on the open market, or here, where the REO status of the Subject Property may have contributed to its pricing—it certainly supports the conclusion that the purchase price may not represent full cash value. However, as set forth in Property Tax Rule 2, we believe a significant deviation between the purchase price and identified comparable sales is, in itself, sufficient “evidence that the fair market value of the property is otherwise.” (*Dennis*, *supra*, 215 Cal.App.3d at p. 1028.) Indeed, in many ways a significant deviation in the sales price is the *clearest* evidence of unreliable pricing. If Finnell had paid ten cents for the Subject Property but the Assessor could not identify any specific reason for the obviously depressed price, no one would argue that the full cash value of the property was a dime. Rather, the deviation in pricing would constitute conclusive evidence of the existence of some “variable that skewed the purchase price.” (*Id.* at p. 1031.)

Finnell argues finally that our approach collides with the underlying principles of Proposition 13, which caps real property taxes at one percent of a property's full cash value; prohibits reassessment except upon change in ownership or new construction; and restricts annual increases in taxable value. (Cal. Const., art. XIII A, §§ 1, subd. (a), 2, subds. (a) & (b); see *Nordlinger v. Hahn* (1992) 505 U.S. 1, 5 (*Hahn*)). Specifically, Finnell asserts that predictability in property taxation was a major purpose behind Proposition 13 and that a predictable base year value (presumably predicated on price) is "critically important" to a property taxpayer at the moment of purchase. We find Finnell's argument unpersuasive. While Proposition 13 did add predictability to the property taxation process, it did so by changing the property tax system from one based on *current value* to one based on *acquisition value*. (*Hahn, supra*, 505 U.S. at p. 5.) Thus, "[r]eal property is assessed at values related to the *value of the property at the time it is acquired* by the taxpayer rather than to the value it has in the current real estate market." (*Ibid.*, italics added.) Proposition 13 therefore demands reassessment upon a change in ownership based on "*the appraised value* of real property when purchased." (Cal. Const., art. XIII A, § 2, subd. (a), italics added.) Nothing in the initiative allows a taxpayer to avoid this obligation. In sum, the fact that Finnell may have gotten a good deal on his vacation home does not insulate him from paying his fair share of property taxes based on the actual full cash value of the Subject Property at the time he acquired it. From that point forward, his property tax obligation will be relatively fixed and predictable. Under such circumstances, summary judgment in the County's favor was appropriate.

III. DISPOSITION

The judgment is affirmed. Each party to bear their own costs.

Reardon, J.

We concur:

Ruvolo, P.J.

Rivera, J