STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

Daniel Patru,
Petitioner/Appellant,

vs

City of Wayne,
Respondent/Appellee.

Supreme Court No. _____
Court of Appeals No. 346894
Lower Court No. 16-001828-TT

Application for Leave to Appeal

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Order Appealed From and Basis of Jurisdiction

Appellant seeks leave to appeal the order by the Michigan Court of Appeals, issued March 31, 2020, denying a timely filed motion for reconsideration. Per MCR 7.305(A)(2), a copy of the order denying reconsideration as well as opinion are attached.

This filing is timely because it is filed within 42 days an order denying a timely filed motion for reconsideration per MCL 7.305(C)(2)(c). Under this Court's Administrative Orders 2020-4 and 2020-8, the time period for filing did not begin to run until June 8, 2020.

Question Presented for Review

I. Does MCL 211.27(2) require the Tribunal to make an independent, fact-based determination of the before-repair and after-repair values if it finds that the current owner made normal repairs?

Appellant answers, "Yes." Appellee answers, "No." The Court of Appeals answers, "No."

The Tribunal answers, "No."

Introduction

Since 2016 Appellant has been trying to get the property tax protection of the Mathieu-Gast act, MCL 211.27(2), for repairs he made to a house that he bought and repaired in 2015. It has been difficult. So far, the Tax Tribunal has refused to apply nonconsideration treatment because it found, at various times in this litigation, that:

- Appellant bought the house in too poor of a condition,[1]
- Appellant bought the house from the wrong seller, a government agency,[2]
- Appellant repaired the house right away instead of waiting until after the new year,[3]
- the assessor valued the house too high in the year before Appellant bought the house,[4]
- the State Tax Commission did not require the nonconsideration treatment, or if it did, the Tribunal was not bound to follow its guidelines,[5] and
- the house was in average condition when Appellant bought it and did not need the repairs.[6]

[1]"It is undisputed that, when he purchased the property, [the house] was in substandard condition and required numerous repairs to make it livable. Patru completed the required repairs on the property as of December 31, 2015." *Patru v City of Wayne*, unpublished per curiam opinion of the Court of Appeals, issued May 8, 2018 (Docket No. 337547) (Patru I), p 1 (Appendix at 37).

[2]"Because the subject was being sold by a government entity, that entity's motivation may not have been to receive market value for the property." Tribunal's Order Denying Reconsideration of its 2nd FOJ (Tribunal's Denial of Reconsideration 2, MTT Docket Line 51, issued 12/14/2018), at 2.

[3]"While this interpretation may be correct with respect to repairs made during a tax year in which there is no transfer of ownership, it cannot apply to repairs made during a year in which there was a transfer of ownership . . . Thus, the tribunal correctly held that it was required to determine the TCV of the subject property on the basis of its fair market value as of December 31, 2015, regardless of any "normal repairs" made by petitioner in 2015 after he purchased the property." *Patru v City of Wayne*, unpublished per curiam opinion of the Court of Appeals, issued February 18, 2020 (Docket No. 346894) (Patru II), p 3-4

[4]"the assessment did not consider the "normal repairs." This is supported by the fact that the property record card indicates that Respondent believed the true cash value of the subject to be $48,000 before Petitioner purchased the property . . ." Tribunal's Denial of Reconsideration 2, at 2.

[5]"Although State Tax Commission Bulletin No. 7 of 2014 requires "before" and "after" appraisals, such appraisals are only required . . . In addition, STC guidance lacks the force of law." *Id.* at 2 n 7.

[6]"The tribunal reviewed petitioner's Multiple Listing Service (MLS) printouts and photographs for both the subject property and comparable properties. The tribunal found that petitioner's MLS listing for the subject property showed a property in 'average' condition, and that petitioner's photographs of the property, before any repairs, showed 'a property that is livable and habitable with reasonable marketability and appeal.' " *Patru II*, p 5.

Appellant is now asking the Supreme Court to clarify what the standards are for resolving a Mathieu-Gast case. There are no appellate cases to help in applying the Mathieu-Gast Act in particular, or at least the Courts and the parties have not cited any. And because the case appealed from is seriously deficient, the Supreme Court should not let this case be the guiding case.

Facts

I. First Appeal before the Tax Tribunal

This appeal comes as a result of the Appellant trying to take advantage of the Mathieu-Gast Act, MCL 211.27(2), for repairs that he made to a house that he bought in 2015. A Tribunal referee first refused in a Proposed Opinion and Judgment to apply the statute because the house had been in substandard condition before the repairs. Proposed Opinion and Judgment (POJ) (Tribunal entry 18, issued 12/01/2016), at 6.

Appellant filed Exceptions, pointing out that the statute did not depend on the house's condition. Exceptions (Tribunal entry 19, filed 12/21/2016), at 4. Attached with the Exceptions, Appellant submitted a spreadsheet showing that statutory category of each repair. *Id.* at 8.

In his Final Opinion, the Tribunal Judge recognized that the referee had erred, but upheld the referee's conclusion because the written evidence submitted before the case and the referee's Proposed Opinion did not show that Appellant had proved that he had performed normal repairs. First Final Opinion and Judgment (FOJ 1, Tribunal entry 20, issued 1/26/2017), at 1. The Tribunal Judge refused to consider Appellant's spreadsheet. *Id.* at 2.

II. First Appeal Before the Court of Appeals

Appellant appealed to the Court of Appeals, which reversed. *Patru I*. The Court ruled that the referee had erred.

> The hearing referee incorrectly interpreted MCL 211.27(2) by concluding that because repairs were done to a property in substandard condition, they did not constitute normal repairs. . . . This was improper . . . Nothing in MCL 211.27(2) provides that the repairs . . . are not normal repairs in the event that they are performed on a substandard property. Thus by reading a requirement into the statute that was not stated by the legislature, the trial erred . . . See *Mich Ed Ass'n v Secretary of State (On Rehearing)*, 489 Mich 194, 218; 801 NW2d 35 (2011) (stating that nothing will be read into a clear statute that is not within the manifest intention of the Legislature as derived from the language of the statute itself).

Patru I, p 5 (Appendix at 41).

The Court disagreed with the Tribunal that Appellant had not proved his case. The Court found that the spreadsheet had listed repairs that qualified for nonconsideration. If Appellant's testimony at the hearing had reflected the information in the spreadsheet, then Appellant had proved his case at the hearing. *Id.* p 5-6.

The Court reasoned that because the referee had misapprehended how to properly apply the statute, she did not fully evaluate the evidence at the hearing. *Id.* p 5. So the Court remanded for a new hearing to determine whether the repairs were normal under that statute. *Id.*

III. Second Appeal Before the Tax Tribunal

On remand, the Tribunal Judge Marcus L. Abood ruled that the repairs were normal repairs but still refused to apply nonconsideration because "Petitioner's property assessment did not change by virtue of the repairs Petitioner made to the subject property." Second Final Opinion and Judgment (FOJ 2, Tribunal entry 48, issued 12/04/2018), at 5. Appellant then filed a motion for reconsideration. Tribunal Judge David B. Marmon denied the motion. The following is a recap of the arguments

presented by the Tribunal.

A. J. Abood's 1st Argument: Uncapping exception

First, the FOJ appeared to claim that nonconsideration did not apply because the property's taxable value was uncapped because of the transfer of ownership. It did this in one sentence: "the subject property's assessment for 2016 changed based on the sale transaction in August 2015." *Id.* From this one sentence, it is not clear what the FOJ meant. The FOJ did not mention MCL 211.27a(3).[7]

Appellant in his motion to reconsider replied that assessments are done every year and are not triggered by sales. Appellant further offered that if the FOJ meant uncapping, then this was irrelevant because the case was not about uncapping. Petitioner's Motion for the Tribunal to Reconsider its 2nd FOJ (Tribunal Motion Reconsider 2, Tribunal entry 50, filed 12/05/2018), at 4.

Reviewing Tribunal Judge Marmon dropped the reasoning after admitting that "the plain language of MCL 211.27(2) prevents an assessor from increasing the true cash value of a property 'that is a result of expenditures for normal repairs,' and does not speak to whether a property has been uncapped." Tribunal's Denial of Reconsideration 2, at 1-2.

The reason we know that the FOJ here was discussing uncapping is because the Court of Appeals says so and makes it the centerpiece of its rationale for affirming. "Initially, we agree with the Tax Tribunal that because there was a transfer of ownership of the subject property in 2015, MCL 211.27(2) did not prohibit the assessor from considering the impact of any "normal repairs" on the property's TCV for purposes of the 2016 tax year." *Patru II*, p 3. "[T]he restriction on consideration of "normal repairs" for purposes of calculating increases in TCV is intended to apply only while property

[7]MCL 211.27a(3) provides: "Upon a transfer of ownership of property after 1994, the property's taxable value for the calendar year following the year of the transfer is the property's state equalized valuation for the calendar year following the transfer."

is owned by the same party, and thus would not apply to repairs performed during a year in which ownership of the property is transferred." *Id.* p 4.

B. J. Abood's 2nd Argument: The property's condition on tax day controls

Second, the FOJ said that the property's average condition tax day, December 31, 2015, "is integral to the market value as of that date." FOJ 2, at 5.

Appellant replied that he was not contesting that the property was in average condition on tax day, but, "[w]hen normal repairs have been done, the assessor must remove their contribution to the assessed value." Tribunal Motion Reconsider 2, at 5. The reviewing Tribunal Judge Marmon did not defend this rationale.

C. J. Abood's 3rd Argument: Photographs show the property in average condition

Third, the FOJ said that the MLS photographs show that the property was in average condition, not neglected or vandalized. FOJ 2, at 5.

After Appellant replied that this was irrelevant as to whether MCL 211.27(2) applied or even as to the issue of whether the house needed repairs, reviewing Tribunal Judge Marmon did not defend this rationale, but instead incorporated it into a new argument (his second) discussed below.

D. J. Abood's 4th Argument: The subject's sale has no credibility

Finally, the FOJ argued that the subject's sale price was given no weight or credibility:

> Petitioner did not contend that his purchase of the subject property was an arm's length sale transaction under the definition of *market value.* The grantor in this bank sale transaction was the U.S. Department of Housing and Urban Development (HUD). Petitioner's purchase price is not the presumptive determination of market value. Therefore, Petitioner's contentions related to his purchase price and "normal" repairs are given no weight or

credibility in the determination of market value for the subject property.

FOJ 2, at 6.

After Appellant replied that the "whole point of providing evidence of professional marketing efforts is to show that the property sale was a market sale," Tribunal Judge Marmon did not sustain this rationale. However he did say that the FOJ did not err "when it concluded that Petitioner's contentions concerning the purchase price, i.e. the true cash value before repairs, was entitled to no weight or credibility." Tribunal's Denial of Reconsideration 2, at 2. For support, the Tribunal cited MCL 211.27(6)[8] and referred to the property's seller: "Because the subject was being sold by a government entity, that entity's motivation may not have been to receive market value for the property." *Id.*

Thus of the four arguments presented in the FOJ, only the last one was partially sustained by reviewing Tribunal Judge Marmon in his Denial of Reconsideration. Instead, the reviewing Tribunal Judge Marmon offered two of his own arguments.

E. J. Marmon's 1st New Argument: Before-repair and after-repair appraisals are not required

Tribunal Judge Marmon argued that before-repair and after-repair appraisals were not required because Appellant's proof of the before-repair value, the sale of the property, was entitled to no weight or credibility because the seller was a government entity:

> [T]here is nothing in MCL 211.27(2) requiring "before repair" and "after repair" appraisals when determining whether an assessment includes the true cash value of normal repairs." Rather, in a proceeding before the Tribunal, Petitioner bears the burden of proof. Further, the Tribunal cannot conclude that the FOJ erred when it concluded that Petitioner's contentions concerning the purchase price, i.e. the true cash value before repairs, was entitled to no weight or credibility. The selling price of a property is not is presumptive true cash value. Despite Petitioner's assertions that the

[8]MCL 211.27(6) provides ". . . the purchase price paid in a transfer of property is not the presumptive true cash value of the property transferred. . . ." The Tribunal actually cited to MCL 211.27(5) but this was a typo because this subsection addresses present economic income.

> marketing efforts for the subject show that the sale was a "market sale," the home was being sold by the U.S. Department of Housing and Urban Development ("HUD"). Because the subject was being sold by a government entity, that entity's motivation may not have been to receive market value for the property.

Tribunal's Denial of Reconsideration 2, at 2 (footnotes removed).

F. J. Marmon's 2nd New Argument: an assessor satisfies MCL 211.27(2) if she believes that repairs are not necessary to justify the true cash value

Finally, the Tribunal seems to argue that the statute can be satisfied by the assessor's subjective belief that appeals to repairs are not necessary to justify the TCV.

> The Tribunal also concludes that it was not a palpable error to conclude that the assessment did not consider the "normal repairs." This is supported by the fact that the property record card indicates that Respondent believed the true cash value of the subject to be $48,000 before Petitioner purchased the property [9] and $50,400 as of December 31, 2015, after the repairs were complete. An increase of $2,400 in true cash value (5%) is easily attributable to inflation and increases in the market. In addition, as stated by the FOJ, the interior photographs depict a property in average condition before Petitioner acquired it. Although not necessarily evidence of true cash value, this evidence supports the property's assessment as a property in average condition both at the time Petitioner acquired it and after he completed the normal repairs. In other words, the record evidence supports the conclusion that the assessment did not consider the increase in true cash value that was the result of normal repairs.

Tribunal's Denial of Reconsideration 2, at 2.

[9] The Tribunal includes the following as footnote 10 at Tribunal's Denial of Reconsideration 2, at 2:

> In this regard, the Tribunal notes that the property record card shows an assessed value in 2015 of $24,000, and because assessed value is 50% of true cash value, see MCL 211.27a(1), this means that Respondent believed the true cash value of the subject was $48,000 as of December 31, 2014. See MCL 211.2(2).

IV. Second Appeal Before the Court of Appeals

Appellant appealed to the Court of Appeals a second time. The Court of Appeals affirmed.

A. COA's 1st argument: Uncapping exception

The first argument by the Court of Appeals is an expansion of Tribunal Judge Abood's first argument above. The Court's argument is effectively summarized in its conclusion:

> Because petitioner purchased the subject property in August 2015, the taxable value of the property became uncapped between August 2015 and December 31, 2015, and, for the 2016 tax year, the assessor was required to determine the property's TCV as of December 31, 2015.
>
> Petitioner argues that under MCL 211.27(2), respondent can consider the value added by "normal repairs" only when petitioner sells the property, because the statute states that "[t]he assessor shall not consider the increase in true cash value that is a result of expenditures for normal repairs, replacement, and maintenance in determining the true cash value of property for assessment purposes until the property is sold."
>
> While this interpretation may be correct with respect to repairs made during a tax year in which there is no transfer of ownership, it cannot apply to repairs made during a year in which there was a transfer of ownership because "the property's taxable value for the calendar year following the year of the transfer is the property's state equalized valuation for the calendar year following the transfer," MCL 211.27a(3), which in turn is "determined as of each December 31 of the immediately preceding year," MCL 211.2(2).
>
> Thus, the tribunal correctly held that it was required to determine the TCV of the subject property on the basis of its fair market value as of December 31, 2015, regardless of any "normal repairs" made by petitioner in 2015 after he purchased the property.

Patru II, p 3-4 (linebreaks added to improve readability).

B. COA's 2nd argument: repairs did not affect the TCV

After discussing the law of the case (which Appellant is not appealing here) the Court of Appeals next argued Tribunal Judge Marmon's second argument shown above.

> Petitioner further argues that the tribunal erred by also finding that, regardless of the proper construction of MCL 211.27(2), petitioner's repairs did not have any bearing on the property's TCV, which was determined to be $50,400 as of December 31, 2015.
>
> We again disagree. The tribunal did not credit petitioner's argument that the property was in substandard condition when he purchased it. The tribunal reviewed petitioner's Multiple Listing Service (MLS) printouts and photographs for both the subject property and comparable properties. The tribunal found that petitioner's MLS listing for the subject property showed a property in "average" condition, and that petitioner's photographs of the property, before any repairs, showed "a property that is livable and habitable with reasonable marketability and appeal." The tribunal noted that the purpose of petitioner's repairs was "to ready the property as a tenant rental."
>
> It is undisputed that the assessed TCV of the property for the 2015 tax year was $48,000. Given this evidence, it was appropriate for the tribunal to draw conclusions about the value of the property before and after petitioner's purchase, specifically, that the prior year's assessment of $48,000 was reflective of the property's TCV before petitioner purchased it, that an increase of $2,400 could be attributed to inflation and -5-increases in the market, and that petitioner's "normal repairs" were not attributable to the property's substandard condition, but rather were intended primarily to prepare the property as rental property.
>
> The tribunal concluded that the "evidence supports the property's assessment as a property in average condition both at the time Petitioner acquired it and after he completed the normal repairs," and that "the assessment did not consider the increase in true cash value that was the result of normal repairs."

Id. p 5-6 (linebreaks added for readability).

C. COA's 3rd argument: The STC supports an uncapping exception

Next the Court of Appeals argues that the STC supports an uncapping exception.

> We reject petitioner's argument that the tribunal was required to calculate the property's TCV using a "before repairs" appraisal and an "after repairs" appraisal. Petitioner's reliance on the State Tax Commission's 2014 Bulletin No. 7 in support of this argument is misplaced. Indeed, page 3 of the Bulletin states:

> The exemption for normal repairs, replacements and maintenance ends in the year after the owner who made the repairs, replacements and maintenance sells the property. *In the year following a sale, the assessed value shall be based on the true cash value of the entire property.* The amount of assessment increase attributable to the value of formerly exempt property returning to the assessment roll is new for equalization purposes. (Emphasis added by the Court.)
>
> As already explained, because the taxable value of the subject property was uncapped due to the transfer of ownership in 2015, and respondent was permitted to assess the property on the basis of its actual TCV as of December 31, 2015, there was no need to determine the property's values before and after petitioner's "normal repairs" in 2015.

Id. p 6.

D. COA's 4th argument: The Tribunal made its own independent, determination of the TCV

In response to Appellant's claim in his appeal brief at 17 that Tribunal Judge Marmon's 1st argument violated the teaching *Jones & Laughlin Steel Corporation v City of Warren*, 193 Mich App 348, 354-346; 483 NW2nd 416 (1992), that "Even if the tribunal had correctly concluded that petitioner's proofs had failed, the tribunal still would be required to make an independent determination . . ." the Court of Appeals argued that the Tribunal had made its independent determination when it analyzed Respondent's sale-comparision data.

> Petitioner also argues that the tribunal erred by failing to make its own independent determination of the property's TCV. See *Jones & Laughlin Steel Corporation v City of Warren*, 193 Mich App 348, 354-356; 483 NW2nd 416 (1992). The record does not support this argument. The tribunal evaluated the evidence and proposed valuation methods offered by both parties. The tribunal found that "[r]espondent's sales comparison approach is the most reliable and credible valuation evidence which also supports the assessment and 2016 uncapping of the subject property." The tribunal did not just automatically accept respondent's valuation. Rather, it analyzed respondent's sales-comparison data and found that "a reasoned and reconciled determination of market value is obtainable from Respondent's sales,"

> which it concluded "supports the assessment and 2016 uncapping of the subject property."

Patru II, p 6.

E. COA's 5th argument: The Tribunal's rejection of the purchase price was proper

Finally the Court of Appeals argues that the Tribunal did not err in rejecting the subject's purchase price because it gave greater weight to the Respondent's evidence.

> Petitioner further argues that the tribunal erred by rejecting his 2015 purchase price of the property as determinative of its TCV. MCL 211.27(6)provides:
>
> > Except as otherwise provided in subsection (7), the purchase price paid in a transfer of property is not the presumptive true cash value of the property transferred. In determining the true cash value of transferred property, an assessing officer shall assess that property using the same valuation method used to value all other property of that same classification in the assessing jurisdiction. As used in this subsection and subsection (7), "purchase price" means the total consideration agreed to in an arms-length transaction and not at a forced sale paid by the purchaser of the property, stated in dollars, whether or not paid in dollars.
>
> In this case, the tribunal considered petitioner's evidence of the 2015 purchase price for the property, but it also considered the nature of the sale, which involved a bank sale in which the grantor was the United States Department of Housing and Urban Development. The tribunal found that the seller was not necessarily motivated to receive market value for the property and that the property's purchase price was not presumptive of its TCV. The tribunal instead gave greater weight to the evidence submitted by respondent in support of its sales-comparison approach to valuation, which was based on sales of five properties similar in age and with comparable square footage, style, siding, and condition. The tribunal found that respondent's evidence provided "the most reliable and credible valuation evidence" and supported respondent's assessment of the subject property.

Patru II, p 5-6.

F. Motion for Reconsideration

Appellant filed a motion for reconsideration. Appellee answered it. But Court denied it without comment.

Mathieu-Gast Statute – MCL 211.27(2)

> The assessor shall not consider the increase in true cash value that is a result of expenditures for normal repairs, replacement, and maintenance in determining the true cash value of property for assessment purposes until the property is sold.
>
> For the purpose of implementing this subsection, the assessor shall not increase the construction quality classification or reduce the effective age for depreciation purposes, except if the appraisal of the property was erroneous before nonconsideration of the normal repair, replacement, or maintenance, and shall not assign an economic condition factor to the property that differs from the economic condition factor assigned to similar properties as defined by appraisal procedures applied in the jurisdiction.
>
> The increase in value attributable to the items included in subdivisions (a) to (o) that is known to the assessor and excluded from true cash value shall be indicated on the assessment roll.
>
> This subsection applies only to residential property.
>
> The following repairs are considered normal maintenance if they are not part of a structural addition or completion: [repairs (a)-(o) omitted]

Argument: Once it finds that the current owner made normal repairs, the Tribunal must make an independent, fact-based determination of the before-repair and after-repair value of the property

When reviewing Tribunal cases, a reviewing court looks for misapplication of the law or adoption of a wrong principle. Statutory interpretation is reviewed de novo. *Briggs Tax Service, LLC v Detroit Pub. Schools*, 485 Mich 69, 75; 780 NW2d 753, 757-758 (2010).

I. The plain words of the statute show that the value added by the repairs must be determined

The argument that MCL 211.27(2) requires before-repair and after-repair appraisals starts with the language of the statute, specifically the sentence: "The increase in value attributable to the items included in subdivisions (a) to (o) that is known to the assessor and excluded from true cash value shall be indicated on the assessment roll." The statute says that the increase attributable to the normal repairs "*shall be indicated* on the assessment roll."

There is no leeway in the statute that allows an assessor to simply ignore normal repairs. She must indicate their value on the assessment roll. And she cannot do that without valuing them.

How must the repairs be valued?

In 1987, the Court of Appeals addressed this in *Fisher v. Sunfield Township*, 163 Mich App 735; 415 NW2nd 297 (1987). At the time, the Mathieu-Gast statute provided:

> The assessor, beginning December 31, 1976, *shall not consider expenditures for normal repairs, replacement, and maintenance in determining the true cash value of property for assessment purposes until the property is sold.* Value attributable to the items included in subdivisions (a) to (o) which is known to the assessor and excluded from true cash value shall be indicated on the assessment roll. This subsection shall apply only to residential property. The following repairs shall be considered normal maintenance if they are not part of a structural addition or completion: . . . [emphasis added by the Court in *Fisher*]

The argument in *Fisher* was whether the actual expenditures should be used for nonconsideration or if should be the contribution to the total cash value of the property should be used. The Court said that the actual expenditures should be used. "We conclude that the use of the phrase "value attributable" simply refers to "expenditures" and does not constitute a separate meaning therefrom." *Id.* at 741.

In this case, the statute is different. Instead of "expenditures for normal repairs"

today's statute reads "the increase in true cash value that is a result of expenditures for normal repairs." It is clear that the nonconsideration amount is the value added, or the difference in value between the property before the repairs and after the repairs.

II. *Jones & Laughlin* teaches that the Tribunal must make its own independent findings of fact

Once a petitioner has presented evidence, the Tribunal must make an independent determination of the true cash value at issue, even if the evidence is unconvincing. In *Jones & Laughlin*, this Court reversed when the Tribunal violated this rule:

> The tribunal further erred in failing to make an independent determination of the true cash value of the property. The tribunal apparently believed that no such determination was necessary after it concluded that petitioner had failed to meet its burden of proof and dismissed petitioner's appeal. The tribunal correctly noted that the burden of proof was on petitioner, This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing; and (2) the burden of going forward with the evidence, which may shift to the opposing party. The tribunal's decision, however, seems analogous to the entry of a directed verdict upon the failure of a plaintiff's proofs. To the extent this analogy may be accurate in this case, the entry of judgment against petitioner for its failure to provide sufficient evidence was erroneous because, while petitioner may not have met its burden of persuasion, it did meet its burden of going forward with evidence.
>
> Even if the tribunal had correctly concluded that petitioner's proofs had failed, the tribunal still would be required to make an independent determination of the true cash value of the property. The tribunal may not automatically accept a respondent's assessment, but must make its own findings of fact and arrive at a legally supportable true cash value. . . . On remand, the tribunal shall make an independent determination of true cash value.

Jones & Laughlin, 193 Mich App at 354-356 (cleaned up).

Although the Court in *Jones & Laughlin* was addressing a normal valuation case and not a case involving nonconsideration treatment, there is no reason not to apply the teaching here. A taxpayer should not lose the protection of an independent

determination simply because he made normal repairs.

III. MCL 211.27a(3) does not affect MCL 211.27(2)

Tribunal Judge Abood and the Court of Appeals have ruled that there is an uncapping exception to MCL 211.27(2). This confuses the Mathieu-Gast Act with the changes brought about to the tax law because of Proposal A.

A. Mathieu-Gast is different from Proposal A

The Mathieu-Gast Act, MCL 211.27(2), was meant "to encourage both owners of homes in which they reside and owners of homes which they rent to others to maintain and imporve their properties with no resulting property tax increase." *Kohn v. Twp of Columbus*, Final Opinion and Judgment (MTT No. 315243, 2009), p 12. Former Tribunal Judge Susan Grimes Width reached this conclusion after examining the bill's legislative history:

> The Analysis of House Bill 628131 [House Legislative Analysis Section, Second Analysis, House Bill 6281 (as enrolled) 12-23-76] lists as one of the "Arguments For" the bill a section titled "Urban blight," which states:
>
> > . . . the spreading deterioration of residential and business property – contributes heavily to the decay of contemporary cities. People are reluctant to remain in neighborhoods full of ugly, run-down houses, and they dislike doing business in areas where commercial property is not kept attractive. If the bill becomes law, homeowners and landlords would know exactly what they could do to their properties without running the risk of higher taxes, and they would be encouraged to maintain and beautify them. Eventually, people would not feel it is necessary to move out of the cities to find attractive places to live.
>
> In defining the problem the same analysis states "[m]any contend that if the law contained specific instructions concerning what assessors should not consider when setting cash value, property owners would be encouraged to beautify their homes and perform regular maintenance."

Id.

On the other hand, Proposal A was designed to limit tax increases generally.

> In 1994, voters passed Proposal A, amending article 9, § 3 of the Michigan Constitution to limit the annual increase in property tax assessments and to authorize enabling legislation. The purpose of Proposal A was to limit tax increases on property as long as it remains owned by the same party, even though the actual market value of the property may have risen at a greater rate. Toll Northville Ltd. v. Northville Twp., 480 Mich. 6, 12, 743 N.W.2d 902 (2008). The Michigan Legislature was charged with determining the specifics needed to give effect to Proposal A's mandate. See Const 1963, art 9, § 3 (providing for the reassessment of a parcel's value when ownership has been transferred "as defined by law") (emphasis added). The 1995 amendments of the GPTA [2] fixed the cap on assessment increases at the lesser amount of either 5 percent of the assessed value of the property for the previous year or the increase in the rate of inflation from theprevious year. MCL 211.27a(2). After certain "transfer[s] of ownership" occur, however, property becomes uncapped and thus subject to reassessment based on actual property value. MCL 211.27a(3). [3]

Nathan Klooster v City of Charlevoix, 488 Mich. 289, 584; 795 N.W.2d 578 (2011).

The two schemes are very different. They were implemented at different times: Mathieu-Gast was enacted in the late 1970s; Proposal A, in the 1990s. They use different statutes. Mathieu-Gast uses MCL 211.27(2); Proposal A uses MCL 211.27a(3). They use different terms and mechanisms. Mathieu-Gast is written in terms of normal repairs whose value added to the true cash value is not considered but indicated on the assessment roll until the property is sold. Proposal A is written in terms of Taxable Value which is capped and lags behind the Assessed Value until the tax day after the transfer, at which time the Taxable Value is uncapped.

B. The plain language of Mathieu-Gast does not allow for an uncapping exception

The Mathieu-Gast requires nonconsideration treatment[10] for normal repairs "until the property is sold." The word "until" means that there must be a sale *after* the repairs to

[10]The term "nonconsideration treatment" is not in the statute itself, but is used to explain the statute in Michigan State Tax Commission (STC) Bulletin No. 7 of 2014 (Mathieu Gast Act) (Appendix at 43). The term is a shorthand for the statute's requirement that the value added by normal repairs be "indicated on the assessment roll" but not considered "in determining the true cash value of the property for assessment purposes until the property is sold."

cause nonconsideration treatment to end. But the Tribunal and the Court of Appeals ignore the word "until" and refuse to require nonconsideration treatment because of a sale that occurs *before* the repairs but in the same year. This is violates the plain language of the statute.

IV. The Tribunal may not presume that the prior year's true cash value is the before-repair value

The Tribunal may not presume that the prior year's true cash value is the before-repair value. This case illustrates the danger of doing so. The assessor in this case testified that her assessments are done using mass appraisal which "does not account for properties one-by-one", but rather she "*assumes* that properties are in 'average' condition." FOJ 2, at 4 (emphasis added). Thus the prior year's true cash value assessment of $48,000 was based on an assumption, not evidence.

Even if the prior year's TCV were reliable, its use would violate the Tribunal's duty to make an independent determination of value. The Tribunal would be assuming the taxing authority's conclusion rather than using more basic fact about sales to make its own conclusion. Allowing the Tribunal to presume the correctness of the prior year's TCV would short-circuit the value determination process not just in Mathieu-Gast cases, but also in other cases. Instead of using sales studies to derive valuations from scratch, the Tribunal could just start with the prior year's TCV and make adjustments up or down. This would perpetuate assessing errors.

Is the TCV always factual determination? May the Tribunal use the prior year's TCV to determine, as a matter of law, the TCV at issue? No. In this case, the prior year's TCV reflected the value of the property in good or average condition. This was not a result of the assessor's personal inspection. On the contrary, the assessor testified that mass appraisal assumes the property was in normal condition. Nevertheless, the Tribunal used the prior year's TCV in two ways: First, the Tribunal found that

the assessor did not consider the value added by the repairs because she simply adjusted the previous year's TCV for inflation without regard to repairs. Second and alternatively, the Tribunal determined that the value of the repairs was zero because the prior TCV, when the property was unrepaired, is, adjusted for inflation, the same as the current TCV, when the property is repaired.

V. The STC teaches that before-repair and after-repair appraisals should be performed

Contrary to the assertion of the Court of Appeals, its interpretation of Mathieu Gast is unsupported by the State Tax Commission. Its opinion on page 6 cites, with its own emphasis, STC Bulletin, at 3 ((Appendix at 45)):

> The exemption for normal repairs, replacements and maintenance ends in the year after the owner who made the repairs, replacements and maintenance sells the property. *In the year following a sale, the assessed value shall be based on the true cash value of the entire property.* The amount of assessment increase attributable to the value of formerly exempt property returning to the assessment roll is new for equalization purposes.

The Court reads just the second, emphasized, sentence out of its context. The first sentence of the paragraph gives the topic: "The exemption . . . ends in the year after *the owner who made the repairs* . . . sells the property." In this context, the second sentence's "entire property" means the property with the seller's repairs considered. The buyer's repairs are not in the paragraph's scope.[11]

VI. The Court of Appeals erred when it equated TCV with fair market value regardless of any normal repairs

The Court of Appeals erred in its analysis when it equated true cash value with fair market value "regardless of any "normal repairs" made by petitioner in [the year of purchase]." *Patru II*, p 5. MCL 211.27(2) is part of the section (MCL 211.27) which

[11]The opinion of the Court of Appeals at 6 uses this out-of-context quote to justify its holding that before-repair and after-repairs appraisals were not required.

defines true cash value. It explicitly excludes from the true cash value for assessment purposes the value added by normal repairs.

Relief

Therefore, under MCR 7.305(B)(3), MCR 7.305(B)(5a), and MCR 7.305(B)(5b), this Court should take up this case on appeal.

Respectfully Submitted,
/s/ Daniel Patru, P74387
July 21, 2020

Court of Appeals, State of Michigan

ORDER

Daniel Patru v City of Wayne

Docket No. 346894

LC No. 16-001828-TT

Karen M. Fort Hood
Presiding Judge

Jane M. Beckering

Mark T. Boonstra
Judges

The Court orders that the motion for reconsideration is DENIED.

Presiding Judge

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

MAR 3 1 2020
Date

Chief Clerk

STATE OF MICHIGAN

COURT OF APPEALS

DANIEL PATRU, Petitioner-Appellant,	UNPUBLISHED February 18, 2020
v	No. 346894 Tax Tribunal
CITY OF WAYNE, Respondent-Appellee.	LC No. 16-001828-TT

Before: FORT HOOD, P.J., and BECKERING and BOONSTRA, JJ.

PER CURIAM.

Petitioner challenges respondent's assessment of residential property in the city of Wayne for the 2016 tax year. Petitioner purchased the property in August 2015 for $32,000 and thereafter made approximately $10,000 worth of repairs to the property. For the 2016 tax year, respondent assessed the property as having a true cash value (TCV) of $50,400, and a taxable value of $25,200. Petitioner appealed these assessments to the Michigan Tax Tribunal, which issued a decision in January 2017 upholding the assessments. In a prior appeal, this Court noted that under MCL 211.27(2), an increase in TCV attributable to normal repairs cannot be considered by an assessor until property is sold, and because the record was insufficient to determine whether the repairs performed by petitioner qualified as normal repairs, this Court reversed and remanded for further proceedings "to determine whether the repairs were normal repairs within the meaning of MCL 211.27(2)." *Patru v City of Wayne*, unpublished per curiam opinion of the Court of Appeals, issued May 8, 2018 (Docket No. 337547) ("*Patru I*"), p 5. On remand, the tribunal agreed that petitioner's repairs qualified as "normal repairs," but determined that respondent's assessment of the property's TCV was proper because of the 2015 change in ownership. The tribunal further found, however, that petitioner's repairs, which were intended primarily to ready the property as rental property, did not affect the assessed TCV value of the property in any event. Accordingly, the tribunal again established the TCV of petitioner's property at $50,400, and the taxable value at $25,200, for the 2016 tax year. Petitioner again appeals as of right, and we now affirm.

In *Briggs Tax Serv, LLC v Detroit Pub Sch*, 485 Mich 69, 75; 780 NW2d 753 (2010), our Supreme Court explained:

> The standard of review of Tax Tribunal cases is multifaceted. If fraud is not claimed, this Court reviews the Tax Tribunal's decision for misapplication of the law or adoption of a wrong principle. We deem the Tax Tribunal's factual findings conclusive if they are supported by "competent, material, and substantial evidence on the whole record." But when statutory interpretation is involved, this Court reviews the Tax Tribunal's decision de novo. [Footnotes omitted.]

A tax exemption statute must generally be narrowly construed in favor of the taxing authority, and this Court generally defers to the Tax Tribunal's interpretation of a statute it is charged with administering and enforcing, but these rules do "not permit a strained construction adverse to the Legislature's intent." *Moshier v Whitewater Twp*, 277 Mich App 403, 409; 745 NW2d 523 (2007).

Petitioner argues that under MCL 211.27(2), the tribunal should have determined the TCV of his property without regard to any "normal repairs" he made to the property after he purchased it in August 2015. At the time relevant to this appeal, MCL 211.27(2) provided:[1]

> (2) *The assessor shall not consider the increase in true cash value that is a result of expenditures for normal repairs, replacement, and maintenance in determining the true cash value of property for assessment purposes until the property is sold*. For the purpose of implementing this subsection, the assessor shall not increase the construction quality classification or reduce the effective age for depreciation purposes, except if the appraisal of the property was erroneous before nonconsideration of the normal repair, replacement, or maintenance, and shall not assign an economic condition factor to the property that differs from the economic condition factor assigned to similar properties as defined by appraisal procedures applied in the jurisdiction. The increase in value attributable to the items included in subdivisions (a) to (o) that is known to the assessor and excluded from true cash value shall be indicated on the assessment roll. This subsection applies only to residential property. The following repairs are considered normal maintenance if they are not part of a structural addition or completion:
>
> (a) Outside painting.
>
> (b) Repairing or replacing siding, roof, porches, steps, sidewalks, or drives.
>
> (c) Repainting, repairing, or replacing existing masonry.
>
> (d) Replacing awnings.
>
> (e) Adding or replacing gutters and downspouts.
>
> (f) Replacing storm windows or doors.

[1] MCL 211.27(2) was amended by 2019 PA 116, effective November 15, 2019, to add subsection (p), which addresses the installation, replacement, or repair of an alternative energy system.

(g) Insulating or weatherstripping.

(h) Complete rewiring.

(i) Replacing plumbing and light fixtures.

(j) Replacing a furnace with a new furnace of the same type or replacing an oil or gas burner.

(k) Repairing plaster, inside painting, or other redecorating.

(l) New ceiling, wall, or floor surfacing.

(m) Removing partitions to enlarge rooms.

(n) Replacing an automatic hot water heater.

(o) Replacing dated interior woodwork. [Emphasis added.]

Initially, we agree with the Tax Tribunal that because there was a transfer of ownership of the subject property in 2015, MCL 211.27(2) did not prohibit the assessor from considering the impact of any "normal repairs" on the property's TCV for purposes of the 2016 tax year.

The taxable status of real property for a given tax year is "determined as of each December 31 of the immediately preceding year." MCL 211.2(2). Generally, property is assessed at 50% of its true cash value[.]" MCL 211.27a(1). However, the "taxable value" of property is subject to "capping," meaning it is limited to the property's taxable value in the immediately preceding year, subject to certain allowable adjustments. MCL 211.27a(2)(a); Const 1963, art 9, § 3.[2] However, upon a transfer of ownership of property, the taxable value is "uncapped," meaning "the property's taxable value for the calendar year following the year of the transfer is the property's state equalized valuation for the calendar year following the transfer." MCL 211.27a(3). The taxable value does not become capped again until the end of the calendar year following the transfer of ownership. MCL 211.27a(4); *Michigan Props, LLC v Meridian Twp*, 491 Mich 518, 530; 817 NW2d 548 (2012). Thus, because petitioner purchased the property in 2015 (i.e., there was a transfer of ownership), the property's taxable value for the 2016 tax year was to be determined by its actual assessed value as of December 31, 2015, without regard to any capping limitations.

While MCL 211.27(2) does not expressly provide that it does not apply to "normal repairs" performed during a year when ownership of property is transferred (i.e., the taxable value becomes uncapped), the statute must be read in conjunction with other provisions of the General Property

[2] "[B]efore ownership of property is transferred, its taxable value may increase no more than the lesser of the rate of inflation or five percent." *Lyle Schmidt Farms, LLC v Mendon Twp*, 315 Mich App 824, 831; 891 NW2d 43 (2016). Once ownership of the property is transferred, its taxable value is "uncapped," see *id.*, and its taxable value for the year following the transfer is determined by the property's actual value, MCL 211.27a(3).

Tax Act, MCL 211.1 *et seq.*, and Const 1963, art 9, § 3. See *Bloomfield Twp v Kane*, 302 Mich App 170, 176; 839 NW2d 505 (2013) (statutes that relate to the same matter are considered to be *in pari materia* and must be read together as a whole). It is apparent that MCL 211.27(2) was adopted to distinguish "normal repairs" or property maintenance from other improvements (e.g., "additions") that increase the value of property as long as the property is owned by the same party. In *Toll Northville LTD v Twp of Northville*, 480 Mich 6, 12; 743 NW2d 902 (2008), our Supreme Court, quoting *WPW Acquisition Co v City of Troy*, 466 Mich 117, 121-122; 643 NW2d 692 (2001), observed that the purpose of Const 1963, art 9, § 3, as amended in 1994 by Proposal A, is

> to generally limit increases in property taxes on a parcel of property, as long as it remains owned by the same party, by capping the amount that the "taxable value" of the property may increase each year , even if the "true cash value," that is, the actual market value, of the property rises at a greater rate. However, a qualification is made to allow adjustments for "additions."

As indicated, however, when property is sold, it becomes "uncapped" and the property's value for the following tax year is determined by its value as of December 31 of the preceding year. In other words, the property's TCV for the tax year following a transfer of ownership is determined by its value as of December 31 of the calendar year in which the transfer of ownership occurred. Accordingly, the restriction on consideration of "normal repairs" for purposes of calculating increases in TCV is intended to apply only while property is owned by the same party, and thus would not apply to repairs performed during a year in which ownership of the property is transferred. Rather, the taxable value of property for the tax year following a transfer of ownership would be 50% of the property's TCV as of December 31 of the immediately preceding year (i.e., the year there was a transfer of ownership). MCL 211.2(2); MCL 211.27a(1) and (3).

TCV "means the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at a private sale, and not at auction sale except as otherwise provided in this section, or at forced sale." MCL 211.27(1). TCV is synonymous with fair market value. *Pontiac Country Club v Waterford Twp*, 299 Mich App 427, 434-435; 830 NW2d 785 (2013).

Because petitioner purchased the subject property in August 2015, the taxable value of the property became uncapped between August 2015 and December 31, 2015, and, for the 2016 tax year, the assessor was required to determine the property's TCV as of December 31, 2015. Petitioner argues that under MCL 211.27(2), respondent can consider the value added by "normal repairs" only when *petitioner* sells the property, because the statute states that "[t]he assessor shall not consider the increase in true cash value that is a result of expenditures for normal repairs, replacement, and maintenance in determining the true cash value of property for assessment purposes until the property is sold." While this interpretation may be correct with respect to repairs made during a tax year in which there is no transfer of ownership, it cannot apply to repairs made during a year in which there was a transfer of ownership because "the property's taxable value for the calendar year following the year of the transfer is the property's state equalized valuation for the calendar year following the transfer," MCL 211.27a(3), which in turn is "determined as of each December 31 of the immediately preceding year," MCL 211.2(2). Thus, the tribunal correctly held that it was required to determine the TCV of the subject property on the basis of its fair market

value as of December 31, 2015, regardless of any "normal repairs" made by petitioner in 2015 after he purchased the property.

Petitioner seems to rely on the law-of-the-case doctrine to argue that under *Patru I*, the tribunal was required to determine whether petitioner's repairs qualified as "normal repairs" and was further prohibited from considering the impact of any "normal repairs" in determining the property's TCV for purposes of the 2016 tax year. In *Lenawee Co v Wagley*, 301 Mich App 134, 149-150; 836 NW2d 193 (2013), this Court explained:

> "The law of the case doctrine holds that a ruling by an appellate court on a particular issue binds the appellate court and all lower tribunals with respect to that issue." *New Props, Inc v George D Newpower, Jr, Inc*, 282 Mich App 120, 132; 762 NW2d 178 (2009) (quotation marks and citation omitted). "[I]f an appellate court has passed on a legal question and remanded the case for further proceedings, the legal questions thus determined by the appellate court will not be differently determined on a subsequent appeal in the same case where the facts remain materially the same." *Id.* (quotation marks and citation omitted; alteration in original). The doctrine is applicable "only to issues actually decided, either implicitly or explicitly, in the prior appeal." *Grievance Administrator v Lopatin*, 462 Mich 235, 260; 612 NW2d 120 (2000). "The primary purpose of the doctrine is to maintain consistency and avoid reconsideration of matters once decided during the course of a single continuing lawsuit." *Ashker v Ford Motor Co*, 245 Mich App 9, 13; 627 NW2d 1 (2001).

In *Patru I*, this Court did not resolve whether petitioner's 2015 repairs to the property could or could not be considered in determining the property's TCV for the 2016 tax year, but instead determined that "further proceedings are necessary to determine whether the repairs were normal repairs within the meaning of MCL 211.27(2)." *Id.*, unpub op at 5. More significantly, this Court did not address the effect of the property's transfer of ownership in 2015 on the tribunal's consideration of "normal repairs" under MCL 211.27(2) for purposes of the 2016 tax year. Because this issue was not actually addressed and decided in the prior appeal, the law-of-the-case doctrine does not apply.

Petitioner further argues that the tribunal erred by also finding that, regardless of the proper construction of MCL 211.27(2), petitioner's repairs did not have any bearing on the property's TCV, which was determined to be $50,400 as of December 31, 2015. We again disagree. The tribunal did not credit petitioner's argument that the property was in substandard condition when he purchased it. The tribunal reviewed petitioner's Multiple Listing Service (MLS) printouts and photographs for both the subject property and comparable properties. The tribunal found that petitioner's MLS listing for the subject property showed a property in "average" condition, and that petitioner's photographs of the property, before any repairs, showed "a property that is livable and habitable with reasonable marketability and appeal." The tribunal noted that the purpose of petitioner's repairs was "to ready the property as a tenant rental." It is undisputed that the assessed TCV of the property for the 2015 tax year was $48,000. Given this evidence, it was appropriate for the tribunal to draw conclusions about the value of the property before and after petitioner's purchase, specifically, that the prior year's assessment of $48,000 was reflective of the property's TCV before petitioner purchased it, that an increase of $2,400 could be attributed to inflation and

increases in the market, and that petitioner's "normal repairs" were not attributable to the property's substandard condition, but rather were intended primarily to prepare the property as rental property. The tribunal concluded that the "evidence supports the property's assessment as a property in average condition both at the time Petitioner acquired it and after he completed the normal repairs," and that "the assessment did not consider the increase in true cash value that was the result of normal repairs."

We reject petitioner's argument that the tribunal was required to calculate the property's TCV using a "before repairs" appraisal and an "after repairs" appraisal. Petitioner's reliance on the State Tax Commission's 2014 Bulletin No. 7 in support of this argument is misplaced. Indeed, page 3 of the Bulletin states:

> The exemption for normal repairs, replacements and maintenance ends in the year after the owner who made the repairs, replacements and maintenance sells the property. *In the year following a sale, the assessed value shall be based on the true cash value of the entire property*. The amount of assessment increase attributable to the value of formerly exempt property returning to the assessment roll is new for equalization purposes. [Emphasis added.]

As already explained, because the taxable value of the subject property was uncapped due to the transfer of ownership in 2015, and respondent was permitted to assess the property on the basis of its actual TCV as of December 31, 2015, there was no need to determine the property's values before and after petitioner's "normal repairs" in 2015.

Petitioner also argues that the tribunal erred by failing to make its own independent determination of the property's TCV. See *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 354-356; 483 NW2d 416 (1992). The record does not support this argument. The tribunal evaluated the evidence and proposed valuation methods offered by both parties. The tribunal found that "[r]espondent's sales comparison approach is the most reliable and credible valuation evidence which also supports the assessment and 2016 uncapping of the subject property." The tribunal did not just automatically accept respondent's valuation. Rather, it analyzed respondent's sales-comparison data and found that "a reasoned and reconciled determination of market value is obtainable from Respondent's sales," which it concluded "supports the assessment and 2016 uncapping of the subject property."

Petitioner further argues that the tribunal erred by rejecting his 2015 purchase price of the property as determinative of its TCV. MCL 211.27(6) provides:

> Except as otherwise provided in subsection (7), the purchase price paid in a transfer of property is not the presumptive true cash value of the property transferred. In determining the true cash value of transferred property, an assessing officer shall assess that property using the same valuation method used to value all other property of that same classification in the assessing jurisdiction. As used in this subsection and subsection (7), "purchase price" means the total consideration agreed to in an arms-length transaction and not at a forced sale paid by the purchaser of the property, stated in dollars, whether or not paid in dollars.

In this case, the tribunal considered petitioner's evidence of the 2015 purchase price for the property, but it also considered the nature of the sale, which involved a bank sale in which the grantor was the United States Department of Housing and Urban Development. The tribunal found that the seller was not necessarily motivated to receive market value for the property and that the property's purchase price was not presumptive of its TCV. The tribunal instead gave greater weight to the evidence submitted by respondent in support of its sales-comparison approach to valuation, which was based on sales of five properties similar in age and with comparable square footage, style, siding, and condition. The tribunal found that respondent's evidence provided "the most reliable and credible valuation evidence" and supported respondent's assessment of the subject property.

In sum, petitioner has not shown that the Tax Tribunal committed an error of law or that its decision is not supported by competent, material, and substantial evidence on the whole record. Accordingly, we affirm its decision.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Jane M. Beckering
/s/ Mark T. Boonstra

STATE OF MICHIGAN

COURT OF APPEALS

DANIEL PATRU,

Petitioner-Appellant,

v

CITY OF WAYNE,

Respondent-Appellee.

UNPUBLISHED
May 8, 2018

No. 337547
Tax Tribunal
LC No. 16-001828-TT

Before: SHAPIRO, P.J., and M. J. KELLY and O'BRIEN, JJ.

PER CURIAM.

Petitioner, Daniel Patru, appeals by right the Tax Tribunal's order that established the true cash value (TCV) at $50,400 for the 2016 tax year on a certain residential property owned by Patru in Wayne County. For the reasons stated below, we reverse and remand for rehearing.

I. BASIC FACTS

In August 2015, Patru purchased a residential property in Wayne County for $32,000 in a bank sale. It is undisputed that, when he purchased the property, it was in substandard condition and required numerous repairs to make it livable. Patru completed the required repairs on the property as of December 31, 2015. Thereafter, respondent, the City of Wayne, determined that the TCV for his property was $50,400, rather than the $32,000 purchase price. Patru appealed the decision, first to the Board of Review, and then to the Tax Tribunal. Patru contended that under MCL 211.27(2), the City could not consider "the increase in true cash value that is a result of expenditures for normal repairs, replacement, and maintenance." In response, the City appears to have maintained that the TCV of the property reflected its value as a fully repaired property, and it presented a sales-comparison analysis that included no adjustments for the substandard condition of the property at the time of sale.

In October 2016, a hearing referee heard the parties' arguments and evidence in support of their respective positions. Relevant to this appeal, the referee found that the purchase price of $32,000 was not the presumptive true cash value, and it found that the seller *may* have been under financial duress, causing the property to sell for less than market value. The referee also recognized that the property was in need of repair when it was purchased. The referee concluded that:

> [T]he subject's purchase price reflected the condition of the subject property prior to the repairs and the repairs were completed by tax day. Petitioner claims that under MCL 211.27(2) we should not increase the subject's true cash value for normal repairs and maintenance until the subject property is sold. However, Petitioner even admitted that the subject was in substandard condition at the time of purchase and the city required that the repairs be made. Therefore, the Tribunal does not find that the repairs completed by Petitioner were normal repairs and maintenance as noted by the statute. Instead, the subject was in substandard condition at the time.

Thus, the referee determined that if a property is purchased in substandard condition, any repairs done on the property to bring it into good repair do not constitute normal repairs, maintenance, or replacement within the meaning of MCL 211.27(2), so the increase in TCV resulting from those repairs can be immediately considered in determining the TCV for assessment purposes. The referee then determined that the TCV for the property was $50,400.

Patru filed exceptions, arguing that the repairs he conducted were normal repairs and directing the Tribunal to the plain language of MCL 211.27(2). Patru also submitted a spreadsheet that detailed every repair he had performed on the property and the approximate cost of each. In reviewing the exceptions, however, the Tribunal focused on the fact that the spreadsheet was "new evidence" that had not been previously submitted to the Tribunal, refused to consider the new evidence, and concluded that, although the referee's statement of law was not necessarily correct, Patru had nevertheless failed to establish that the repairs he conducted were normal repairs within the meaning of the statute. Accordingly, the Tribunal upheld the referee's determination.

Patru moved for reconsideration, contending that he had presented sworn testimony and additional documentary evidence at the hearing in support of his argument that the repairs were "normal" repairs under MCL 211.27(2). The Tribunal denied the motion. In doing so, the Tribunal did not consider that Patru had offered evidence at the hearing in support of his argument that MCL 211.27(2) applied. Instead, the Tribunal stated that Patru had failed to establish the TCV for the property before repairs. The Tribunal reasoned that, as a result, it was "unable to conclude that the valuation adopted by the Hearing Referee in the Proposed Opinion and Judgment and the Tribunal in the Final Opinion and Judgment improperly includes value for normal maintenance and repairs."

This appeal follows.

II. MCL 211.27(2)

A. STANDARD OF REVIEW

Patru argues that the Tribunal erred by determining the TCV for his property to be $50,400 for the 2016 tax year. "Absent fraud, this Court's review of a Tax Tribunal decision is limited to determining whether the tribunal made an error of law or adopted a wrong legal principle." *Meijer, Inc v Midland*, 240 Mich App 1, 5; 610 NW2d 242 (2000). We review de novo the proper interpretation and application of a statute. *Brecht v Hendry*, 297 Mich App 732, 736; 825 NW2d 110 (2012). When construing a statute containing a tax exemption, we must construe it narrowly and in favor of the taxing authority. *Moshier v Whitewater Twp*, 277 Mich App 403, 409; 745 NW2d 523 (2007). At the same time, we will not allow a "strained construction adverse to the Legislature's intent." *Id*. (quotation marks and citation omitted).

B. ANALYSIS

Under MCL 211.27(2), an assessor cannot consider "the increase in true cash value that is a result of expenditures for normal repairs, replacement, and maintenance in determining the true cash value of property for assessment purposes until the property is sold." To aid the assessor in determining what constitutes a normal repair, the Legislature set forth a list of repairs that are "considered normal maintenance if they are not part of a structural addition or completion." See MCL 211.27(2).[1]

---

[1] In relevant part, MCL 211.27(2) provides:

> The following repairs are considered normal maintenance if they are not part of a structural addition or completion:
>
> (a) Outside painting.
>
> (b) Repairing or replacing siding, roof, porches, steps, sidewalks, or drives.
>
> (c) Repainting, repairing, or replacing existing masonry.
>
> (d) Replacing awnings.
>
> (e) Adding or replacing gutters and downspouts.
>
> (f) Replacing storm windows or doors.
>
> (g) Insulating or weatherstripping.
>
> (h) Complete rewiring.
>
> (i) Replacing plumbing and light fixtures.

In this case, when Patru purchased the house it was in substandard condition and required numerous repairs to bring it into a livable condition. Moreover, it is undisputed that the repairs were actually completed. However, there is a question as to whether the repairs that were completed were normal repairs within the meaning of MCL 211.27(2). The record reflects that Patru provided evidence in support of his claim at the hearing before the referee, in support of his exceptions to the referee's proposed opinion and judgment, and in support of his motion for reconsideration. In particular, the referee's proposed opinion and judgment reflects that:

> At the hearing, [Patru] presented two pages of repairs that the city required to be completed. [Patru claimed that the] subject's purchase price reflected the fact that the subject needed repairs. [Patru] stated that he put approximately $10,000 into the subject property and did most of the work himself. The work involved carpentry, electrical, and cement. The repairs were completed and the property had a certificate of occupancy by December 31, 2015.
>
> * * *
>
> [Patru] stated that under MCL 211.27(2) the assessor shall not consider the normal repairs or maintenance until the property is sold. [Patru] presented two pages of repairs that the city required to be repaired on the subject property before allowing occupancy. [Patru] stated that about two weeks after moving in, the subject's basement flooded. [Patru] concluded by stating that the city cannot assess the repairs to the subject property until the property is sold pursuant to the statute.

Additionally, with his exceptions to the referee's proposed opinion and judgment, Patru submitted a spreadsheet detailing the repairs he completed, which, we note, included repairs that, under MCL 211.27(2), constitute normal repairs so long as they are not part of a structural addition or completion.[2]

> (j) Replacing a furnace with a new furnace of the same type or replacing an oil or gas burner.
>
> (k) Repairing plaster, inside painting, or other redecorating.
>
> (l) New ceiling, wall, or floor surfacing.
>
> (m) Removing partitions to enlarge rooms.
>
> (n) Replacing an automatic hot water heater.
>
> (o) Replacing dated interior woodwork.

[2] For example, Patru repaired the roof, which is a normal repair under MCL 211.27(2)(b), repaired chimney masonry, which is a normal repair under MCL 211.27(2)(c), repaired a service

The hearing referee incorrectly interpreted MCL 211.27(2) by concluding that because the repairs were done to a property in substandard condition, they did not constitute normal repairs. As a result, contrary to MCL 211.27(2), the referee *considered* the increase in value attributed to the repairs when determining the property's TCV. Stated differently, the referee's finding that the property's TCV was $50,400 was based on its assessment of the property's value after it had been repaired. This was improper because MCL 211.27(2) expressly provides that certain repairs constitute normal repairs so long as they are not part of a structural addition or completion. Nothing in MCL 211.27(2) provides that the repairs listed in subdivisions (a) through (o) are not normal repairs in the event that they are performed on a substandard property. Thus, by reading a requirement into the statute that was not stated by the legislature, the trial court erred by interpreting and applying MCL 211.27(2). See *Mich Ed Ass'n v Secretary of State (On Rehearing)*, 489 Mich 194, 218; 801 NW2d 35 (2011) (stating that nothing will be read into a clear statute that is not within the manifest intention of the Legislature as derived from the language of the statute itself).

In its final opinion and judgment, the Tribunal recognized that the referee erred in its interpretation of MCL 211.27(2); however, it nevertheless upheld the determination of TCV. The Tribunal reasoned that because the spreadsheet detailing the repairs completed on the property had not been submitted before the hearing, it had no obligation to consider that evidence, so it concluded that Patru failed to establish that the repairs constituted normal repairs. However, as stated above, Patru did present evidence at the hearing in support of his claim that MCL 211.27(2) applied. The referee did not fully evaluate that evidence—which included testimony—because it misapprehended how to properly apply MCL 211.27(2).

Further, because the hearing was not transcribed, we cannot determine whether the evidence Patru provided at the hearing was reflective of the information on the spreadsheet submitted with his exceptions. If the testimony provided was an oral recitation of the information included on the spreadsheet, then Patru presented testimony sufficient to establish that at least some of the repairs constituted normal repairs under MCL 211.27(2), and so the increase in TCV attributed to those repairs should not be considered in the property's TCV for assessment purposes until such time as Patru sells the property. However, if Patru merely testified that he did some carpentry, electrical, and masonry repairs and no further explanation of the work that was provided, then he would have arguably failed to support his claim. Either way, on the record before this Court, we cannot evaluate the sufficiency of the evidence presented at the hearing. Thus, we conclude that further proceedings are necessary in order to determine whether the repairs were normal repairs within the meaning of MCL 211.27(2). Accordingly, we remand to the Tax Tribunal for a rehearing. Further, because the existing record is insufficient to resolve whether the repairs are normal repairs within the meaning of the statute, the parties shall be afforded further opportunity to submit additional proofs. See *Fisher v Sunfield Township*, 163

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walk and broken treads on front steps, which is a normal repair under MCL 211.27(2)(b), and repainted the interior, which is a normal repair under MCL 211.27(2)(k).

Mich App 735, 743; 415 n 297 (1987) (requiring rehearing when it was not clear whether the proofs submitted were sufficient to establish that repair expenditures were normal repairs).[3]

Reversed and remanded for rehearing consistent with this opinion. We do not retain jurisdiction.

/s/ Douglas B. Shapiro
/s/ Michael J. Kelly
/s/ Colleen A. O'Brien

[3] We note that, on reconsideration, the Tribunal faulted Patru for failing to establish a pre-repair TCV. However, as the Tribunal must make its own, independent determination of TCV, *Great Lakes Div of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 389; 576 NW2d 667 (1998), we conclude that Patru's failure to persuade the Tribunal that the property's purchase price reflected the pre-repair TCV is irrelevant. The Tribunal independently had to evaluate all the evidence presented and, properly applying MCL 211.27(2), arrive at the property's TCV.