STATE OF MICHIGAN

IN THE COURT OF APPEALS

DANIEL PATRU,

Petitioner-Appellant,

vs

COA Case No. 346894
MTT Docket No. 16-001828-TT

CITY OF WAYNE,

Respondent-Appellee.

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RESPONDENT-APPELLEE CITY OF WAYNE'S ANSWER TO PETITIONER-APPELLANT DANIEL PATRU'S MOTION FOR RECONSIDERATION

PROOF OF SERVICE

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COUNTER-STATEMENT OF THE QUESTION PRESENTED

I. DID THIS COURT COMMIT 'PALPABLE ERROR' WHEN IT AFFIRMED THE MICHIGAN TAX TRIBUNAL'S 12/04/18 FINAL OPINION AND JUDGMENT?

Respondent-Appellee answers, "**No**."
Petitioner-Appellant answers, "**Yes**."
This Court should answer, "**No**."

COUNTER-STATEMENT OF MATERIAL FACTS

A. BACKGROUND

This is a tax case.[1] Specifically, Petitioner-Appellant, Daniel Patru, takes issue with Respondent-Appellee's assessment of his residential property – which is located on Winifred Street in the City of Wayne – for the 2016 tax year. (*See* **Exhibit A**, COA Opinion, p. 1).

B. THE MTT'S 12/04/18 DECISION

On December 4, 2018, the MTT issued a Final Opinion and Judgment affirming Respondent-Appellee's assessment of the Subject Property. (*See* **Exhibit B**, MTT Opinion). In so doing, the Tribunal made several key findings of fact, *viz.* (1) Petitioner made approximately $10,000 worth of "normal" repairs after purchasing the Subject Property in August of 2015; (2) that purchase "uncapped" the assessment of the Property for the 2016 tax year; and (3) ***Respondent's 2016 assessment was not based on the aforementioned repairs***. (*Id.* at 4-5).

Having set forth the above facts, the Tribunal went on to conclude, as a matter of law, that Respondent's assessment was reasonable and, moreover, supported by the "sales comparison" evidence produced at the October 18, 2018 hearing. (*Id.* at 5-6). Petitioner subsequently moved for

[1] The Court of Appeals' review of a Michigan Tax Tribunal decision is *extremely* limited. In fact, "[a]bsent 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). Likewise, any factual findings must be upheld unless they are "not supported by competent, material, and substantial evidence." *Id.*

reconsideration, which the Tribunal denied in a 2-page Order dated December 14, 2018. (*See* **Exhibit C**, MTT Order Denying Reconsideration). The instant appeal followed shortly thereafter.

C. THIS COURT'S 2/18/20 DECISION

On February 18, 2020, this Court issued a 7-page Opinion and Order affirming the MTT's decision to assess the Subject Property with a true cash value ("TCV") of $50,400.00. (*See* **Exhibit A**, COA Opinion, p. 1). In so doing, the Court agreed with the Tribunal's analysis of the applicable statute, MCL 211.27(2) (*Id.* at 3-4), as well as its factual finding that the repairs undertaken by Petitioner did not impact Respondent's assessment of the Subject Property. (*Id.* at 5-6). The Court also rejected Petitioner's cursory argument that the law of the case doctrine somehow required a ruling in his favor. (*Id.*).

Mr. Patru now seeks reconsideration of this Court's decision under MCR 7.215(I). As explained at greater length *infra*, Petitioner's Motion should be denied because he has failed to make the requisite showing of "palpable error." *Id.*

APPLICABLE LEGAL STANDARDS

MCR 7.215(I)

MCR 7.215(I)(1), which governs motions for rehearing and reconsideration in the Court of Appeals, states that "[m]otions for reconsideration are subject to the restrictions contained in MCR 2.119(F)(3)." *Id.* MCR 2.119(F)(3), in turn, provides that:

> Generally, and without restricting the discretion of the court, ***a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted.*** The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

Id. (emphasis added).

ARGUMENT

I. THIS COURT CORRECTLY AFFIRMED THE MTT'S 2016 ASSESSMENT OF THE SUBJECT PROPERTY.

The instant Motion should be denied for two (2) principal reasons. First and foremost, the recycled arguments in Petitioner's Brief do not meet the exacting standard set by the applicable Court Rule, MCR 7.215(I)(1). Second, and to the extent the Court is inclined to re-examine the substance of Petitioner's argument(s), there is not a single reversible error to be found in this Court's well-reasoned 2/18/20 decision.

A. The Instant Motion Is Comprised Of Recycled Arguments That Have Already Been Rejected By This Court.

As noted previously in this Brief, "a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted." MCR 7.215(I)(1). Here, each one of the arguments raised by Petitioner in his Motion/Brief was considered – and, ultimately, *rejected* – by this Court in its thorough 2/18/20 Opinion and Order.[2] Therefore, given the relevant facts and law, Petitioner's Motion for Reconsideration should be denied. *Id.*

B. There Is No 'Palpable Error' To Be Found In This Court's 2/18/20 Decision.

Assuming *arguendo* that the Court is inclined to re-examine Petitioner's various arguments, they are devoid of merit – just as they were back in February. For ease of reference, Respondent will address each argument in turn.

1. *The Court's Analysis Of MCL 211.27(2) Is Entirely Correct.*

In his Motion, and previously in his Brief on Appeal, Petitioner argues that Respondent's assessment of the Subject Property violated MCL 211.27(2). That statute states, in pertinent part,

[2] *See* **Exhibit A**, 2/18/20 Opinion.

that:

> 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***.

Id. (emphasis added). As this Court correctly observed in its 2/18/20 Opinion, § 27(2) *requires* municipalities to "determine the TCV of the subject property on the basis of its fair market value as of December 31," if the property was sold earlier that year.[3] In short, while Petitioner may question whether this is a sound tax-policy, the fact of the matter is that this Court determined, correctly, that the Subject Property was assessed in accordance with the applicable Michigan law.[4]

2. ***Petitioner's Reliance On The 'Law Of The Case' Doctrine Is Misplaced.***

Petitioner also argues that this Court's decision ignored the law of the case doctrine. This argument, however, was succinctly rejected at page 5 of the Court's 2/18/20 Opinion:

> 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.***

(*Id.* at 5) (emphasis added). In short, because the doctrine only applies to issues that were "actually decided" in the prior appeal,[5] this Court correctly rejected Petitioner's specious argument.

3. ***The Subject Repairs Had No Bearing, Whatsoever, On Respondent's Assessment.***

[3] See Exhibit A, 2/18/20 Opinion, p. 4.
[4] *Id.*
[5] *See Grievance Admin v Lopatin*, 462 Mich 235, 260; 612 NW2d 120 (2000).

Finally, even if Petitioner's various arguments were *not* so demonstrably incorrect, the Tribunal – and, subsequently, *this* Court – made it a point to explain that Petitioner's repairs had no bearing, whatsoever, on Respondent's 2016 assessment. It is, of course, well-settled that Michigan law requires the MTT to makes its own "independent" determination of TCV. *See Great Lakes Div of Nat'l Steel Corp*, 227 Mich App 379, 390; 576 NW2d 667 (1998). Here, as noted by the Court at pp. 5-6 of its Opinion, that is precisely what happened here:

> 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***.'

(*Id.* at 5-6) (emphasis added). In light of the foregoing, Petitioner's myopic focus on his repair-work is completely misplaced.

RELIEF REQUESTED

For these reasons, Petitioner-Appellant's Motion for Reconsideration should be denied.

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