STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

Daniel Patru,
Petitioner/Appellant,

vs

City of Wayne,
Respondent/Appellee.

Supreme Court No. 161680
Court of Appeals No. 346894
Lower Court No. 16-001828-TT

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Appellant's Reply to Answer to Leave to Appeal

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Reply

- ☐ one idea per paragraph
- ☐ Review for content: incorporate the 750 words and keep notes into body.
- ☐ Review for accuracy: Read the answer, marking all assertions, and then make sure they are addressed in the reply.
- ☐ Write an introduction in the Reply section.
- ☐ Write a relief section.
- ☐ Review for structure. Can you make the argument clearer?
- ☐ Review for wording. Are you using the right words?
- ☐ Review for errors. Did you spell everything correct?
- ☐ Check references for accuracy.
- ☐ Send a copy for review to Tim and Delia.
- ☐ Efile it.

Summarize

I. This Court should hear this case because it represents a common situation

Appellee's counter-statement of the question presented characterizes this case as "garden-variety." This is both right and wrong. It is right because the facts of this case do represent a common, three-step situation:

1. A house is allowed to fall into disrepair.
2. The house sells at a discount compared to similar but well-maintained houses.
3. The house is bought and repaired.

While the house is falling into disrepair, the taxing authority continues to assess the property as if it were in average condition.[1] The owner who is not able or willing to keep the house repaired often also fails to appeal the assessment, so the house's over-assessment is left unchallanged until the house is sold. It then falls on the purchaser to repair the house and appeal the assessment.

Appellant believes that this situation is common; he is counsel to five tax-tribunal cases (18-002532, 18-002570, 18-002661, 18-002662, and 18-002664) that are waiting for the outcome of this case, because they involve this situation and the same issues.

Although the factual situation of this case is common, the approach taken by the tax tribunal is new. The way cases like this were usually handled is detailed in the Michigan State Tax Commission (STC) Bulletin No. 7 of 2014 (Mathieu Gast Act).[2] The bulletin at paragraphs 3 and 4 under the section "General Information" requires that assessors determine the true cash value of repairs by performing before-repair and after-repair appraisals. This allows the assessor to fulfill the statute's requirement to first determine and then "indicate on the assessment roll" the value added by the repairs. Appellant's Question Presented asks this Court to endorse this approach.

In this case, the tax tribunal has departed from the STC's guidance[3] and come up with several exceptions to the statute which avoid the STC's approach. The first exception was that the statute does not apply to properties in substandard condition. This was rejected by the court of appeals in *Patru v City of Wayne*, unpublished per

[1]The assessor in this case testified that she uses mass appraisal which "does not account for properties one-by-one", but rather "assumes that properties are in 'average' condition." Second Final Opinion and Judgment (FOJ 2, Tribunal entry 48, issued December 4, 2018), at 4.

[2]STC Bulletin 7 of 2014 was superceded by STC Bulletin 7 of 2020 because the Mathieu-Gast Statute was amended to include alternative energy systems. Other than being updated to reflect the amended statute, the 2020 bulletin is the essentially same as the 2014 bulletin. (The only additional change is that the 2020 bulletin adds underlining to the third paragraph in the section "Calculating New and Loss for Assessment and Equalization Purposes" but does not change the wording.)

[3]Neither the tax tribunal nor explicitly acknowledged that they were departing from the STC's guidance but their opinions make it clear that they do. The tax tribunal addresses this in footnote 7 of its Order Denying Reconsideration of 2nd FOJ (MTT Docket Line 51, issued December 14, 2018) where it quotes STC Bulletin 7 of 2014 out of context and then asserts that "STC guidance lacks the force of law." The court of appeals claims that it is in accord with the STC but, as pointed out in Petitioner's Leave to Appeal (filed July 20, 2020), at 17, it also reads the STC's bulletin out of context.

curiam opinion of the Court of Appeals, issued May 8, 2018 (Docket No. 337547) (*Patru I*). On remand, the tribunal found two more exceptions which were then endorsed by the court of appeals in *Patru v City of Wayne*, unpublished per curiam opinion of the Court of Appeals, issued February 18, 2020 (Docket No. 346894) (*Patru II*):

1. **The uncapping exception**: Mathieu-Gast does not apply to repairs done after a sale but before tax day (December 31) because the property's taxable value is uncapped for the tax year following a transfer.
2. **The prior assessment exception**: Mathieu-Gast does not apply if the prior year's assessed value supports the assessed value.

Both of these exceptions are new. Neither the tax tribunal nor the court of appeals nor Appellee cite any caselaw in support. Appellant believes that these new approaches are wrong and asks this Court to overrule them and confirm that application of Mathieu-Gast requires before-repair and after-repair appraisals. The fact that this situation is a common one and likely to reoccur makes it important for this Court to hear this case now, while the errors are still in their infancy, rather than after the errors have been entrenched in many cases.

II. Appellee's defense of the uncapping exception is wrong both as a statement of law and as a summary of the argument of the court of appeals

Appellee's defense of the uncapping exception is wrong both as a statement of law and as a summary of the argument of the court of appeals. Appellee writes that the court of appeals "correctly observed" that the statute's words [emphasis added] *requires* [emphasis by Appellee] determination of the TCV "on the basis of its fair market value as of December 31, if the property was sold earlier that year." Appellee's Answer to Leave to Appeal (filed August 13, 2020), at 7.

To the contrary, the plain language of the statute requires nonconsideration "until the property is sold," that is, there must be a sale *after* the repairs to end

nonconsideration. Ending nonconsideration because of a sale *before* the repairs (earlier that year) violates the plain words of the statute. The court of appeals admits as much on pages 3-4 of its opinion, "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 transfered (i.e., the taxable value becomes uncapped), the statute must be read in conjunction with other provisions of the General Property Tax Act . . ."[4]

It is unclear what the litigation strategy of Appellee's counsel is, given the fact they rely on a legal argument which court of appeals admits does not support its case, while not asserting the court of appeals's own legal argument. Whatever their strategy, this Court is safe to conclude that at this stage (leave for appeal), the legal argument for appellee's position is shaky.

III. The prior assessment exception violates the plain language of Mathieu-Gast and the tribunal's duty to make an independent determination

Appellee claims that the fact that the "repairs had no bearing, whatsoever, on respondent's assessment . . . renders [Appellant's] arguments moot." Answer, at 8. But fact that the repairs had no bearing on the assessment, that the repairs were ignored, is a flaw in the opinion, not a winning feature. Mathieu-Gast's plain language does not permit normal repairs to be ignored. Instead, the value of the repairs must be determined and "indicated on the assessment roll" and the pre-repair value must be used for assessment purposes until the property is sold.

The court of appeals relies on the prior year's assessed value to avoid Mathieu-

[4]To support the uncapping exception, the court of appeals relies on a provision in the next section of the GPTA, MCL 211.27a(3), which implements Proposal A's uncapping: "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." *Patru II*, p 4.

As pointed out in the Leave to Appeal, at 18, and more extensively in the Petitioner's Motion to the Court of Appeals to Reconsider (filed March 8, 2020), at 4-5, the court of appeals errs when it equates true cash value with fair market value "regardless of any 'normal repairs' made by petitioner . . ." *Patru II*, p 5. True cash value is defined in MCL 211.27, which includes the Mathieu-Gast Statute, MCL 211.27(2). Thus, as used in the GPTA, the value due to normal repairs is never included in the true cash value until the property is sold.

Gast, what I have named "the prior assessment exception." The exception works by assuming that the prior year's assessment is correct and then ignoring Mathieu-Gast if the true cash value at issue is the same, adjusted for inflation. Contrary to Appellee's assertion in its Answer, at 8, this violates rather than meets the requirement that the tribunal make an independent determination.

This requirement was expressed in *Great Lakes Div of Nat'l Steel Corp v City of Ecorse*, 227 Mich. App. 379, 389-390 (1998)[5]:

> The Tax Tribunal is under a duty to apply its expertise to the facts of a case in order to determine the appropriate method of arriving at the true cash value of property, utilizing an approach that provides the most accurate valuation under the circumstances. . . . The Tax Tribunal has a duty to make its own, independent determination of true cash value. . . . The three most common approaches for determining true cash value are the capitalization-of-income approach, the sales-comparison or market approach, and the cost-less-depreciation approach. However, variations of these approaches and entirely new methods may be useful if found to be accurate and reasonably related to fair market value. [cleaned up]

Thus an independent determination refers to using an appraisal approach that is "accurate and reasonably related to fair market value" such as capitalization-of-income, sales-comparison, or cost-less-depreciation. The prior assessment exception is not such an appraisal approach.[6] Thus the tribunal's use of a prior assessment exception violated its duty to make an independent determination of the true cash value.

Not only is the prior assessment exception a violation of the duty of independent determination, but, as pointed out in Appellant's Leave to Appeal, at 15, it is also problematic in two other ways. First, an uncontested assessment is not particularly

[5]Appellant's Leave to Appeal, at 13-14, cites *Jones & Laughlin Steel Corporation v City of Warren*, 193 Mich App 348; 483 NW2nd 416 (1992) which also lists the same three approaches to valuation at page 353 and also makes it clear that the tribunal violated its duty of independent determination when it "simply accepted respondent's assessment without discussing why the assessment reflected the true cash value of the property." *Id.* at 355-356.

[6]The assessment is the *result* from a mass-appraisal computer program. A "mass-appraisal cost approach" can be a valid approach, but the record card for the relevant year and all the calculations must be provided. See Stephen Lasher, "STC - Defending your Assessment in a Tax Tribunal Small Claims Hearing", https://youtu.be/kPClBCIlW6U?t=315 (viewed August 25, 2020). Here no such documentation for the prior year's assessment was in evidence.

reliable for valuing a property that needs repairs because assessors use mass appraisal which, as the assessor testified in this case, "does not account for properties one-by-one", but rather "*assumes* that properties are in 'average' condition." FOJ 2, at 4 (emphasis added). And second, allowing a tribunal to start its analysis with a prior assessment and then simply adjust for inflation would perpetuate error because petitioner cannot contest the prior year's true cash value. By the time an petitioner files an appeal, the time for appealing the prior year's assessment has already passed.

IV. This case satisfies the grounds requirements of MCR 7.305(B)

Appellee asserts at Answer, at 5-6 that this case does not satisfy the grounds requirement of MCR 7.305(B). But as shown above, the court of appeals in this case interprets MCL 211.27(2) in a way that clearly violates the plain language of the statute. The court of appeals in *Patru I* reversed the tribunal for making this mistake citing *Mich Ed Ass'n v Secretary of State (On Rehearing)*, 489 Mich 194, 218; 801 NW2d 35 (2011), "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 II*, p 5. This is a "legal principle of major significance to the state's jurisprudence," MCR 7.305(B)(3). This Court should uphold this principle in this case. This Court may view this case as conflicting with the court of appeals cases which uphold this principle, so it may take the case on MCR 7.305(B)(5)(b).

Furthermore as shown above, the prior assessment exception invented by the tribunal and upheld by the court of appeals violates the plain language principle and the rule that the tribunal must make an independent determination. This satisfies MCR 7.305(B)(3) and MCR 7.305(B)(5)(b) as above.

Furthermore to the extent that the interpretation of the Mathieu-Gast Act, a statute more than forty years old, is of significant public interest, this case satisfies MCR 7.305(B)(2).

Finally Appellee asserts that the MTT's assessment would not cause material injustice because the amount in question here is a TCV increase of $2,400. Answer, at 6. Actually, the TCV in dispute is the difference between the unrepaired house ($32,000) and the repaired house ($50,400). The tax on the repaired house would be 57.5% more than on the unrepaired house. The deprivation of the protections of the Mathieu-Gast Act thus does cause Appellant material injustice and as the court of appeals is clearly erroneous, this Court may take this case under MCR 7.305(B)(5)(a).

V. The Law of the Case

Appellee discusses the law of the case at Answer, at 7. Although Appellant believes that *Patru II* violated the law of the case expressed in *Patru I*,[7] he did not make this argument in his Leave to Appeal. Appellant believes that this Court's limited and valuable time would be best spent on laying out the correct application of Mathieu-Gast, rather than simply correcting the outcome in this case only.

Summary

1. This Court should take this case *because* its situation is "garden-variety." This situation has already occurred again as several cases are waiting for resolution of this case.
2. While the situation is common, the tax tribunal's approach in creating two new exceptions to Mathieu-Gast is new and at odds with the STC. Therefore it is important that this Court clarify the law in this area.
3. Appellee's plain language defense of the uncapping exception is undermined by the court of appeals itself. Furthermore, Appellee has chosen not to defend the

[7] As explained in his Motion to COA for Reconsideration, at 6-7, Appellant believes that *Bennett v Bennett*, 197 Mich. App. 497, 501; 496 N.W.2d 353 (1992) teaches that the law of the case bars even correct arguments if they could have been brought up in the first appeal. Here the court in *Patru II* violated the law of the case because it accepted the tribunal's uncapping and prior assessment exceptions even though they could have been presented in the first appeal.

court of appeals's own arguments for the uncapping exception.

4. The prior assessment exception also violates the plain language of Mathieu-Gast as well as the tribunal's duty to make an independent determination, as laid out in *Jones & Laughlin* and *Great Lakes Div of Nat'l Steel Corp*.
5. This case satisfies the grounds requirement of MCR 7.305(B).

Relief Requested

Therefore, Appellant respectfully asks this Court to grant leave to appeal.

Respectfully Submitted,

/s/ Daniel Patru, P74387

August 27, 2020