STATE OF MICHIGAN
IN THE COURT OF APPEALS
DETROIT OFFICE

Daniel Patru,
Petitioner/Appellant,

vs

City of Wayne,
Respondent/Appellee.

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

Appellant's Reply Brief
Proof of Service

Daniel Patru, P74387, Appellant
3309 Solway
Knoxville, TN 37931
(734) 274-9624
dpatru@gmail.com

City of Wayne, Appellee
3355 South Wayne Rd,
Wayne, MI 48184
(734) 722-2000

Stephen J. Hitchcock (P15005)
John C. Clark (P51356)
Attorneys for Respondent/Appellee
Giarmarco, Mullins & Horton, P.C.
101 W. Big Beaver Road, 10th floor
Troy, MI 48084
(248) 457-7024
sjh@gmhlaw.com

Table of Contents

Table of Authorities

Reply

Appellee's brief does not dispute Appellant's issues, but instead raises two different issues which do not affect the issues of this case. Also, Appellee's Counter-Statement of Facts makes mistakes. Appellant discusses each of these points below.

I. Appellee does not dispute Appellant's issues

Appellant raised three issues on appeal. He argues that the Tribunal erred when it:

1. refused to apply nonconsideration treatment to normal repairs, contrary to the clear language of MCL 211.27(2);
2. refused to determine the before-repair value, contrary to both the STC's guidance and the Tribunal's duty to independently determine the true cash value; and
3. cursorily rejected the subject's sale as evidence of the before-repair value, contrary to the teaching of this Court in *Jones & Laughlin Steel Corporation v. City of Warren*, 193 Mich App 348; 483 NW2nd 416 (1992).

Appellee's brief does not dispute any of these issues. Appellee is a city represented by experienced counsel from a large law firm. This Court does not need to search out arguments on behalf of Appellee. It may therefore find that Appellee has conceded these issues.

II. Appellee's first issue is a mere variation of the Tribunal's rejection of the subject's sale and does not dispute Appellant's arguments

Instead of disputing Appellant's points, Appellee raises two of its own issues. First, Appellee claims that Appellant failed to satisfy his burden of proof because "The Subject's Purchase Price Is Not a Reliable Indicator of Value Due to the Home at the Time of Purchase, it Being a Bank Sale." Appellee's brief at 4.

The Tribunal rejected both the need to determine the before-repair value and the sufficiency of the subject's sale to prove the before-repair value. Appellant has

appealed these issues as the second and third questions presented in his brief.

Appellee's brief does not address the arguments presented in Appellant's brief, but merely repeats a variation of the Tribunal's rejection of the subject's sale. The Tribunal rejected the sale because the seller was HUD. Appellee rejects the sale because it was a "bank sale".

A. The subject's sale is not disfavored by MCL 211.27(1)

Appellee does not explain what it means by "bank sale". Also the term does not appear in a full text search of Michigan's laws via www.legislature.mi.gov.

MCL 211.27(1), in its first four sentences, describes sale methods with respect to "true cash value":

> (1) As used in this act, "true cash value" 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 private sale, and not at auction sale except as otherwise provided in this section, or at forced sale.
>
> The usual selling price may include sales at public auction held by a nongovernmental agency or person if those sales have become a common method of acquisition in the jurisdiction for the class of property being valued.
>
> The usual selling price does not include sales at public auction if the sale is part of a liquidation of the seller's assets in a bankruptcy proceeding or if the seller is unable to use common marketing techniques to obtain the usual selling price for the property.
>
> A sale or other disposition by this state or an agency or political subdivision of this state of land acquired for delinquent taxes or an appraisal made in connection with the sale or other disposition or the value attributed to the property of regulated public utilities by a governmental regulatory agency for rate-making purposes is not controlling evidence of true cash value for assessment purposes.

The subject did not sell at an auction sale or other kind of sale disfavored by MCL 211.27(1). Rather, it was sold more than two months after being listed on the MLS by Century 21 Castelli, a real estate broker. Before being listed by Century 21 Castelli, the subject was listed on the MLS for more than six months by Jeffery Packer, another real estate broker. MLS History (MTT Docket Line 33) (Appendix at 8).

Furthermore the subject was not sold under circumstances that would require a buyer to pay cash immediately on sale such as in a foreclosure sale. Rather the listing specifically encourages buyers to pay on credit. It says in the remarks that the home is "203K elig[able]" and "203B with Repair Escrow financing availability is subject to buyer's appraisal." MLS Listing (MTT Docket Line 32) (Appendix at 9). These are FHA mortgages that allow for the purchase of homes that need to be repaired.

Therefore the subject's sale was not of a type which would tend to result in a lower price and thus be disfavored by MCL 211.27(1).

B. Appellee does not explain why the sale was not a reliable indicator of value

In support of its argument that Appellant did not meet his burden of proof because the sale was not a reliable indicator of value, Appellee's brief on page 4 offers bare, out-of-context quotes from the Second Final Opinion and Judgment (MTT Docket Line 48) (FOJ), p 5 (Appendix at 22) about uncapping and MLS pictures. Appellee offers no explanation in its brief as to why these quotes support its argument.

C. Appellee does not address Appellant's arguments to the Tribunal's rejection of the subject's sale

The Tribunal rejected the subject's sale because the seller was HUD, a government entity, which may not have been motivated to receive market value for the property. Order Denying Reconsideration (MTT Docket Line 51), p 2 (Appendix at 35). Appellant rebutted the Tribunal's rejection in his brief at 18-19, relying on this Court's teaching in *Jones & Laughlin* which prohibits cursory rejections of the subject's sale. Appellee has not distinguished this case.

D. Even if the subject's sale were correctly rejected, this does not excuse the Tribunal from independently determining the before-repair value

Even if the Tribunal's reasons for rejecting the subject's sale were valid, this would still not excuse the Tribunal from independently determining the before-repair value. See Appellant's brief Argument IIB at 16-18. This Court also made this point the first time it heard this case:

> 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. *Patru v City of Wayne*, unpublished per curiam opinion of the Court of Appeals, issued May 8, 2018 (Docket No. 337547), p 6 (Appendix at 42).

Appellee has not disputed this argument.

Therefore Appellee's first issue is without merit.

III. Appellee's second issue does not address a dispute

Appellee's second issue asserts an uncontested fact: that the Tribunal's determination of the *after-repair* value, the value on tax day, is correct. Appellee correctly notes on page one of its brief that Appellant does not disagree: "Appellant acknowledges that he does not dispute the house is worth the assessed TCV of $50,400 on tax day December 31, 2015."

Appellant's contends that MCL 211.27(2) requires that the *before-repair* value should be used for assessment purposes because the after-repair value includes the value of the repairs. See, e.g., Appellant's brief page 4, quoted in this reply brief at page 5. The fact that the Tribunal refused to apply MCL 211.27(2) is at the center of this case as it was the last time this Court heard it.

Therefore Appellee's second issue is without merit.

IV. Appellee makes mistakes in its Counter-Statement of Facts

Appellee has made several mistakes in its Counter-Statement of Fact. Appellant discusses them here to help keep the record clean and to alert this Court to statements in the Appellee's version of the facts which may be confusing.

A. Appellee does not explain that Appellant's claim is based on Mathieu-Gast nonconsideration

The second paragraph on page 1 of Appellee's brief says:

> Appellant is contesting the true cash value (TCV) of the subject property, alleging that his purchase price of $32,000 is the TCV, with an SEV of $16,000. Appellant acknowledges that he does not dispute the house is worth the assessed TCV of $50,400 on tax day December 31, 2015. (See Appellant's Brief, p. 4)

Appellee fails to explain why Appellant could be claiming a true cash value of $32,000 when he admits that the property was worth $50,400 on tax day. Appellant's version of the facts clear this up. Here is the passage from Appellant's brief page 4, with references to the record removed:

> Appellant does not dispute that the house was worth $50,400 on tax day in its repaired condition. But he contends that under MCL 211.27(2) the repairs were normal repairs and that the true cash value for assessment purposes cannot include the value of the repairs. He contends that the correct true cash value is therefore the before-repair value.
>
> Appellant contends that the best evidence of the house's before-repair value is its sale price of $32,000 when it was unrepaired. The house was marketed in the normal way and for a sufficient time. Licensed real estate brokers listed the house on the MLS, initially for $29,900 on 4/3/2013 and later for $32,000 on 6/17/2015. Before Appellant bought the property there had been at least two accepted offers on the property that failed to close.

Appellant's main contentions on this appeal are that the Tribunal violated MCL 211.27(2). To leave out this important fact risks misleading this Court.

B. Appellee mistakenly says that the comparables required at most one adjustment

Appellee states in the third paragraph on page 1 of its brief "Appellee provided five comparable sales . . . with only one adjustment, if any, made per comparable." All five comparables are adjusted and most (2, 4, and 5) are adjusted for both air conditioning and garage/carport. City's Evidence (MTT Docket Line 11), p 2 (Appendix at 14).

C. Appellee does not explain that the subject's listing by electronic means was not unusual or significant

Appellee states in the third paragraph on page 1 of its brief "that the subject property was a HUD home, listed only by electronic means." This may be misleading because all listings now are electronic. The MLS is a computer database accessed via the internet. The subject was listed as any other property on the MLS by local, licensed real estate brokers. See MLS Listing (Appendix at 9) and MLS History (Appendix at 8).

Perhaps what Appellee meant to say is that offers on the subject had to be placed electronically. Many agents already choose to submit offers electronically via email, but HUD *requires* that offers for its houses be placed electronically via its website, www.HUDHomestore.com. The listing tells real estate agents: "Sold AS IS by elec bid only. . . . Bids due daily by 11:59 PM Central Time til sold. . . . For info visit www.HUDHomestore.com." MLS Listing (Appendix at 9). There is no evidence that this affected the property's price or restricted its marketing. Indeed before it sold to Appellant the property had at least two accepted offers that failed to close. MLS History (Appendix at 8).

D. Appellee does not disclose that the record card's valuation was based on the assumption that the subject was in average condition

Appellee states in the third paragraph on page 1 of its brief that "Appellee's property record card indicates that Appellee believes that TCV of the subject property to be

$48,000 before Appellant purchased the property." Appellant points out in his brief at page 12 that the assessor 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, p 4 (Appendix at 21) (emphasis added). Thus the assessment reflected in the record card was not a fact-based belief that took into consideration the repairs called for by the City's own inspectors, but rather an assumption that the property was in average condition. Appellee chose not to disclose this fact to this Court.

E. Appellee's characterizations of the Tribunal are confusing

Appellee in the first paragraph on page 2 of its brief, refers to a "Proposed Opinion and Judgment." This should be "Final Opinion and Judgement" (FOJ).

Also on page 2, Appellant has a large block quote ending with "(Exhibit 1, Final Opinion and Judgment, p 6)." Block quotes normally indicate a quotation, but here, Appellant appears to have extracted from the opinion four points and listed them numbered. Points one and two were taken from page 5. Points three and four are from page 6. Point four concatenates excerpts from two paragraphs discussing different points.

Appellant's quotations on pages 2 and 3 of its brief from the Order Denying Reconsideration, p 2 (Appendix at 35), also concatenates the beginning of one paragraph, discussing the Tribunal's refusal to follow the STC's requirement of before-repair and after-repair appraisals, with the tail of another paragraph, discussing why the assessment did not consider normal repairs. Appellee's grouping of these quotes, out of context, risks misleading this Court as to the Tribunal's actual argument.

This Court may be confused not only by Appellee's unusual use of block quotation and its presentation of out-of-context quotes, but also by Appellee's failure to inform this Court of the flow of the argument. For example, Appellee does not mention that

its first point from the FOJ ("Petitioner's property assessment did not change based on the sale transaction of August 2015.") is immediately followed by "To the contrary, the subject property's assessment for 2016 changed based on he sale transaction of the subject property in August 2015." FOJ, p 5 (Appendix at 22). Thus the reader is not alerted to the fact that the Tribunal is referring to uncapping here. Nor does Appellee inform the reader that Appellant rebutted the Tribunal on this point in his Motion for Reconsideration (MTT Docket Line 52), p 4 (Appendix at 29), and that the Tribunal conceded this point and did not rely on it in rejecting the motion to reconsider. "Although the Tribunal concludes that the plain language of MCL 211.27(2) . . . does not speak to whether a property has been uncapped, the Tribunal nonetheless concludes that the FOJ did not commit palpable error in its final conclusion." Order Denying Reconsideration, p 1-2 (Appendix at 34–35).

Relief Requested

Therefore, because Appellee has failed to rebut or even dispute Appellant's issues and because Appellee's own issues are without merit, Appellant respectfully asks this Court to reverse the ruling of the Tribunal on all three questions presented in his brief.

Note on Corrected Appendix

Appellant has discovered that the footers on pages 37-42 of his appendix do not reflect the document on those pages. Appellant includes the corrected appendix with this reply brief.

Proof of Service

On the subscribed date, I electronically served a copy of this Brief and Appendix on Appellee's counsel.

Respectfully Submitted,

/s/ Daniel Patru, P74387

4/30/2019