

**STATE OF MICHIGAN
IN THE COURT OF APPEALS
DETROIT OFFICE**

Daniel Patru,
Petitioner / Appellant,

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

vs

City of Wayne,
Respondent / Appellee.

**Appellant's Reply Brief
Proof of Service**

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Table of Contents

Table of Authorities	ii
Reply	1
I Not even Respondent agrees with Tribunal	1
II Appellee’s claim that Appellant has not met his burden of proof is lacking in several ways	2
A Appellee does not explain what it means by “bank sale”	2
B Appellee does not explain why the sale was not a reliable indicator of value	2
III properly determined after-repair value	4
IV Appellee’s brief does not address Mathieu-Gast nonconsideration	6
V Appellee’s brief does not justify the Tribunal’s cursory rejection of the subject’s sale	7
Relief Requested	11
Proof of Service	11

Table of Authorities

CASES	Page
<i>Jones & Laughlin Steel Corporation v. City of Warren</i> , 193 Mich App 348; 483 NW2nd 416 (1992)	5, 8
<i>Patru v City of Wayne</i> , unpublished per curiam opinion of the Court of Appeals, issued May 8, 2018 (Docket No. 337547) (Appendix at 37)	4, 11
CONSTITUTIONAL PROVISIONS, STATUTES AND RULES	
MCL 211.27(2)	4, 6, 7, 10
OTHER AUTHORITIES	
Michigan State Tax Commission (STC) Bulletin No. 7 of 2014 (Mathieu Gast Act) (Appendix at 43)	6

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. Appellant discusses each of these points below.

I. Not even Respondent agrees with Tribunal

Appellant raised three issues on appeal. He argued, in order of increasing specificity that:

1. the Tribunal erred when it refused to apply nonconsideration to normal repairs,
2. the Tribunal erred when it refused to determine the before-repair value (in accordance with the STC's procedure for applying nonconsideration and the Tribunal's duty to independently determine the true cash value at issue), and
3. the Tribunal erred when it cursorily rejected the subject's sale as evidence of the before-repair value.

Appellant noted in the "Questions Involved" section of his appeal brief that he did not know if Appellee disagreed with any of these issues. Appellant marked the answer to each question as "Appellee's answer is unknown." Appellant's brief at 3.

Now in its reply brief, Appellee does not contest any of these issues. Specifically, Appellee does not argue that the Tribunal was correct in finding normal repairs and yet not applying nonconsideration. Nor does Appellee defend the Tribunal's refusal to follow the STC's procedure for nonconsideration or the Tribunal's refusal to independently determine the before-repair true cash value. Nor does Appellee deny or defend the Tribunal's cursory rejection of the subject's sale.

Therefore this Court should overturn the Tribunal's decision according to the arguments made in Appellant's brief.

II. Appellee's claim that Appellant has not met his burden of proof is lacking in several ways

Instead of disputing the Appellant's points, Appellee raises two of its own issues. First, the Appellee claims that Appellant failed to satisfy his burden of proof, specifically as to the before-repair value of the property for which Appellant's evidence was the subject's sale. See heading "A. 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. There are several things wrong with Appellee's argument.

A. Appellee does not explain what it means by "bank sale"

Appellee does not explain what it means by "bank sale". The property did not sell at a foreclosure sale or auction. The subject was sold by Century 21 Castelli, a real estate broker, more than two months after first being listed on the MLS, just as any other property commonly for sale. 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. Also, there were two at least two accepted offers that failed to close before the property was bought by Appellant. MLS History (MTT Docket Line 33) (Appendix at 8).

The owner of the property was HUD, a government entity, not a bank. MLS Listing (MTT Docket Line 32) (Appendix at 9).

Appellee also does not cite to any facts in the record, nor does its own "Counter-statement of Facts" contain anything to show that the subject was a bank sale.

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

Besides not defining what it means by a bank sale, Appellee does not give any argument as to why any bank sale and this sale in particular is not a reliable indicator of value.

Mere allegation is not an argument.

Under its heading A, Appellee quotes from the Second Final Opinion and Judgment (MTT Docket Line 48) (FOJ), p 5 (Appendix at 22). These quotes come from a single paragraph in which four separate arguments are made. Appellant addressed these arguments in his Motion for Reconsideration (MTT Docket Line 52), p 4-5 (Appendix at 29–30) in the section “Conclusions of Law”. In response,

The FOJ is confusing here because it packs into one paragraph four reasons for denying “Petitioner’s contentions related to his purchase price and ‘normal’ repairs.” Appellant addressed these issues individually in the Motion for Reconsideration, p 4-5 (Appendix at 29–30). The Tribunal clarified its reasoning in the denial of the motion. The Tribunal made clear that it was rejecting the subject’s sale based on the fact that the seller was HUD:

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 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. Order Denying Reconsideration (MTT Docket Line 51), p 2 (Appendix at 35) (cleaned up).

The Tribunal considered the MLS pictures as evidence of a different point, that the assessor could have assessed the property without considering the repairs:

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 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. Order Denying Reconsideration (MTT Docket Line 51), p 2 (Appendix at 35) (cleaned up, emphasis added).

Thus the MLS pictures were not used by the Tribunal to reject the sale of the subject. Instead, the pictures were used to support the Tribunal's theory that the assessor did not violate MCL 211.27(2) because she thought the property did not need repairs. (Appellant's brief, Argument section IA and IB at 7-13 rebuts this theory.)

Not only did the Tribunal not actually reject the subject's sale based on the MLS pictures, but the evidence in this case does not support the implication that the property did not need repairs when it sold. Prior to the Tribunal's suggestion in the second FOJ, the consensus among Petitioner, Respondent, and the Tribunal was, as this Court summarized in its first ruling on this case, "It is undisputed that, when he purchased the property, it was in substandard condition and required numerous repairs to make it livable." *Patru v City of Wayne*, unpublished per curiam opinion of the Court of Appeals, issued May 8, 2018 (Docket No. 337547), p 1 (Appendix at 37). (See Appellant's brief Argument section IB at 12-13 for more argument on this point.)

Therefore, Appellee's brief does not justify the Tribunal's rejection of the subject sale. Appellee's other arguments

step back: Appellant implicitly concedes that the before-repair value should be determined. It just disagrees as to the sufficiency of the evidence.

step back: even if true, this does not excuse the Tribunal from making a reasoned determination of the before-repair value as argued in Appellant's brief.

III. properly determined after-repair value

Appellee's second issue is irrelevant and not a real issue.

4 which discuss this issue,

, specifically the was correct in ruling that the Tribunal the STC's pr

Instead, Appellee has ignored Appellant's issues and raised two of its own issues. The first issue raised by Appellee is that Appellant failed to meet his burden of proof, specifically with regard to the before-repair value,

1. Did the Tribunal err when it refused to apply nonconsideration to normal repairs?
2. Did the Tribunal err when it refused to determine the before-repair value?
3. Did the Tribunal err when it gave the selling price of the property before-repair "no weight or credibility" based solely on the fact that the seller was HUD and speculation that the seller may not have been motivated to receive market value?

All three issues have to do with Mathieu-Gast nonconsideration. Issue one is whether nonconsideration should be applied at all, and issue two is whether the STC's interpretation of nonconsideration should be applied, that is, whether the before-repair value should be determined as well as the after-repair value. And the third issue is whether the Tribunal improperly dismissed evidence regarding the before-repair value. The third issue is reached only if the first two issues are decided for the Appellant.

Appellee's reply does not address any of these issues directly. Instead, it alleges 1) that Appellant failed to meet his burden of proof with regard to the subject's sale and 2) that the Tribunal properly valued the property after it was repaired. This is unhelpful because even if Appellee is correct on these issues, this Court still must independently resolve Appellant's issues. Th

Regarding burden of proof, Appellant has quoted at length in his brief on pages for this Court's decision in *Jones & Laughlin Steel Corporation v. City of Warren*, 193 Mich App 348, 354-356; 483 NW2d 416 (1992), to the effect that even if the Tribunal disagrees with Petitioner's proofs *Id.* at 353-354.

in as to Appellee's issue 2, Instead Appellee in its second issue asserts an uncontested fact: that the Tribunal's determination of the after-repair value 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.”

whether the Tribunal correctly applied +

IV. Appellee’s brief does not address Mathieu-Gast nonconsideration

Appellee’s brief does not address the main issues of the case, whether the Tribunal erred in regarding Mathieu-Gast nonconsideration, MCL 211.27(2).

MCL 211.27(2) requires nonconsideration treatment for normal repairs. Nonconsideration treatment involves three steps:

1. determining the value of the repairs using before-repair and after-repair appraisals (“[T]he true cash value of the item shall be calculated by performing ‘before’ and ‘after’ appraisals and then deducting the ‘before’ true cash value from the ‘after’ true cash value.” Michigan State Tax Commission (STC) Bulletin No. 7 of 2014 (Mathieu Gast Act) at 2 (Appendix at 44); “The assessor is required to estimate the true cash value of the property both before and after the expenditures.” STC Form 865 Request for Nonconsideration (MTT Docket Line 35), p 2 (Appendix at 12)),
2. excluding the value of the value of the repairs from the true cash value for assessment purposes (“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.” MCL 211.27(2), first sentence), and
3. indicating the value of the repairs in the assessment roll (“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.” MCL 211.27(2), third sentence).

Except for determining the after-repair value, the Tribunal did none of these

things and most of Appellant's brief is devoted to explaining why the Tribunal erred by not doing them. Appellee's brief does not add anything to the discussion, either explicitly (it does not mention MCL 211.27(2) at all other than in the Statement of Facts) nor implicitly.

Instead Appellee in its second issue asserts an uncontested fact: that the Tribunal's determination of the after-repair value 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."

Appellee's other issue, that Appellant failed to satisfy his burden of proof, is likewise unhelpful to this Court. Appellant has pointed out in his brief (Argument, section IIB, pages 15-18) that this Court has ruled that even if the Tribunal disagrees with Petitioner's proofs, it is still required to independently determine the true cash value, here by applying Mathieu-Gast nonconsideration. Appellee has not contradicted this or even addressed the issue. Thus, even if Appellee were correct, that Appellant has not satisfied his burden of proof, this does not excuse the Tribunal from applying Mathieu-Gast nonconsideration. (Note that Appellant does not concede that his proofs were not sufficient, only that if they were insufficient, the Tribunal must still apply nonconsideration.)

Thus Appellee does not provide this Court with any arguments as to why Appellee is wrong to insist that the Tribunal must apply MCL 211.27(2) nonconsideration treatment.

V. Appellee's brief does not justify the Tribunal's cursory rejection of the subject's sale

Besides issues concerning the interpretation and application of Mathieu-Gast nonconsideration, the other issue raised by Appellant was the Tribunal's cursory rejection

of the subject's sale. The Tribunal ruled that the sale "was entitled to no weight or credibility" because:

1. "The selling price of a property is not its presumptive true cash value",
2. "the home was being sold by the U.S. Department of Housing and Urban Development", and
3. speculation that "[b]ecause the subject was being sold by a government entity, that entity's motivation may not have been to receive market value for the property."

Order Denying Reconsideration (MTT Docket Line 51), p 2 (Appendix at 35).

Appellee's brief does not directly address Appellant's argument regarding this issue. In particular, it does not seek to distinguish this case from *Jones & Laughlin* where this Court ruled that it is an error as a matter of law to cursorily reject the sale of the subject property:

The Tax Tribunal, however, erred as a matter of law in its treatment of petitioner's evidence regarding the sale. The tribunal held: "A sale that occurs *after* the tax date has little or no bearing on the assessment made prior to the sale." (Emphasis in original.) We disagree. Unlike some situations involving assessments of industrial property for which no ready market exists and a hypothetical buyer must be posited, in this case the equipment was actually sold in a commercial transaction, albeit after the tax date. We believe that evidence of the price at which an item of property actually sold is most certainly relevant evidence of its value at an earlier time within the meaning of the term "relevant evidence." MRE 401. *Id.* at 353-354.

In its subsection entitled "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", page 4, Appellee's brief gives two quotes without additional explanation from the FOJ, p 5 (Appendix at 22). The first quote ("Petitioner's property assessment did not change by virtue of the repairs Petitioner made to subject property. To the contrary, the subject property's assessment for 2016 changed based on the sale transaction of the subject property in August 2015.") seems to be a discussion of uncapping and does not justify

the Tribunal's cursory rejection of the subject's sale.

The second quote ("Petitioner's MLS print-out information for the subject and its comparable sales illustrate properties in "average" condition. Specifically, the subject and comparable sales' interior photographs do not depict neglected or vandalized p"Petitioner's property assessment did not change by virtue of the repairs Petitioner made to subject property. To the contrary, the subject property's assessment for 2016 changed based on the sale transaction of the subject property in August 2015.") seems to be a discussion of uncapping and does not justify the Tribunal's cursory rejection of the subject's sale.

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The second quote ("Petitioner's MLS print-out information for the subject and its comparable sales illustrate properties in "average" condition. Specifically, the subject and comparable sales' interior photographs do not depict neglected or vandalized properties.") is about the condition of the property as depicted in the MLS listing. The FOJ is confusing here because it packs into one paragraph four reasons for denying "Petitioner's contentions related to his purchase price and 'normal' repairs." Appellant addressed these issues individually in the Motion for Reconsideration, p 4-5 (Appendix at 29-30). The Tribunal clarified its reasoning in the denial of the motion. The Tribunal made clear that it was rejecting the subject's sale based on the fact that the seller was HUD:

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 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. Order Denying Reconsideration, p 2 (Appendix at 35) (cleaned up).

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he purchased the property, it was in substandard condition and required numerous repairs to make it livable.” *Patru*, p 1 (Appendix at 37). (See Appellant’s brief Argument section IB at 12-13 for more argument on this point.)

Therefore, Appellee’s brief does not justify the Tribunal’s rejection of the subject sale.

Relief Requested

Applicant respectfully asks this Court to reverse the ruling of the Tribunal.

Proof of Service

On 4/26/2019, I served a copy of this Brief on Appellee’s counsel by electronic service.

Respectfully Submitted,

/s/ Daniel Patru, P74387

4/26/2019