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

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Reply

I. 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. Nonconconsideration 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.

II. 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 address Appellant’s argument regarding this issues head on. In particular, it does not seek to distinguish this case from *Jones & Laughlin Steel Corporation v. City of Warren*, 193 Mich App 348; 483 NW2nd 416 (1992) 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 Second Final Opinion and Judgment (MTT Docket Line 48) (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 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 (MTT Docket Line 52) (Appendix at 26)4-5. 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).

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, 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.

Relief Requested

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

Proof of Service

On 4/23/2019, I served a copy of this Brief on Appellee's counsel by electronic service.

Respectfully Submitted,

/s/ Daniel Patru, P74387

4/23/2019