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

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 contains mistakes. Appellant discusses each of these points below.

I. Appellee does not dispute Appellant's issues

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 determine the before-repair value per the STC's procedure for nonconsideration. Nor does Appellee deny or defend the Tribunal's cursory rejection of the subject's sale.

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

II. Appellee has not defined or supported its claim that Appellant has not met his burden of proof

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 as because the subject's sale was a "bank 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.

Appellant has argued that the before-repair value is evidenced by the subject's sale, when it was not repaired.

to the before-repair value of the property. Appellee's argument seems to be that 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.

The "arguments" or evidence that Appellee uses are irrelevant to its argument. (The argument being that the Appellant did not meet his burden of proof because the sale was not a reliable indicator of value.) Under its heading A, Appellee 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.

Nor does the Tribunal itself use the passages quoted by Appellee to support Appellee's argument. These quotes come from a single paragraph in which four separate arguments are made. Appellant addressed these arguments in in the section "Conclusions of Law" in his Motion for Reconsideration (MTT Docket Line 52), p 4-5 (Appendix at 29–30). In response, 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, not because of uncapping or MLS pictures:

> 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).

In its denial of reconsideration, the Tribunal dropped its argument regarding uncapping. The Tribunal admits that uncapping is irrelevant. "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 (MTT Docket Line 51), p 1-2 (Appendix at 34–35). The Tribunal then goes on to reject the motion on other grounds.

The Tribunal considered the MLS pictures as evidence of a different point, that the assessor did not violate MCL 211.27(2) because she thought, or could have thought, that the property did not need repairs:

> The Tribunal also concludes that it was not a palpable error to conclude that the assessment did not consider the "normal repairs." . . . *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).

Appellant addresses the Tribunal's argument above in his brief, Argument section IA and IB at 7-13. But the point here is that the Tribunal itself did not cite the MLS pictures do not support the Appellee's argument.

Therefore, this Court should reject Appellee's first issue because it is not defined nor supported.

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 contention is 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. Appellee does dispute this issue or even address it.

IV. Appellee has made 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 mention 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)

This paragraph is confusing because it 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.

This is important because 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 wrongly 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." Comparables 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, in the sense that 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 bids or offers on the subject had to be placed electronically. The 2nd paragraph of the remarks, meant for real estate agents, tells the selling agent to place offers electronically and directs them to the HUD website at www.HUDHomestore.com and www.BLBResources.com. There is no evidence that this affected the property's price or restricted its marketing.

D. Appellee does not explain that the property 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." This is misleading because Appellee does not point out 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 $48,000 assessment reflected in the property's record card was not a fact-based belief that took into consideration the repairs called out by the City's own inspectors, but rather an assumption that the property was in average condition.

E. Appellee misquotes from the FOJ and mischaracterizes the Order Denying Reconsideration

Appellee in the first paragraph on page 2 of its brief, says that "the MTT Presiding Judge signed a written, "Proposed Opinion and Judgment" . . . ." This was in fact a "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)." The block quote normally indicates a quotation. But here, Appellant appears to have extracted from the opinion four summary points. Points one and two were taken from page 5. Point three from page 6. Point four appears to be from page 6, but contains excepts from two paragraphs discussing different points.

Appellant's quotations from the Order Denying Reconsideration, p 2 (Appendix at 35), on pages 2 and 3 of its brief, 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. The implication is that the Tribunal used the property record card and MLS pictures to support its conclusion that MCL 211.27(2) does not require before-repair and after repair appraisals. This is at best confusing.

Relief Requested

Therefore, because Appellee has failed to rebut or even dispute Appellant's issues, Appellant respectfully asks this Court to reverse the ruling of the Tribunal.

Proof of Service

On 4/28/2019, I served a copy of this Brief on Appellee's counsel by electronic service.

Respectfully Submitted,

/s/ Daniel Patru, P74387

4/28/2019