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

Motion and Brief for Reconsideration

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Motion

Petioner moves for reconsideration of this Court's opinion under MCR 7.215(I).

Issues

1. Did this Court make a palpable error when it ruled that normal repairs under MCL 211.27(2) should be considered if they were done in the year of a transfer, even if the repairs were done by the new owner and there was no sale after the repairs?
2. Is it palpable error for this Court to affirm the tribunal's ruling because the repairs did not affect the property's value?
3. Does this Court's decision palpably violate the law of the case?
4. Did this Court make a palpable error when it affirmed the tribunal's rejection of the purchase price?

Facts

Before it was bought by Appellant, the subject house was owned by HUD. MLS Listing (MTT Docket Line 32) (Appendix at 9). The house had been listed on the MLS on and off since April 2013; it's initial asking price was $29,900, but by the time Appellant bought the house, the asking price was $32,000, which was the price Appellant paid. MLS History (MTT Docket Line 33) (Appendix at 8).

Before the City of Wayne (Appellee/Respondent) granted Appellant a certificate of occupancy, it required numerous repairs. List of Repairs (MTT Docket Line 36) (Appendix at 10). "It is undisputed that, when he purchased the property, it was in substandard condition and required numerous repairs to make it livable. Patru completed the required repairs on the property as of December 31, 2015." *Patru v City of Wayne*, unpublished per curiam opinion of the Court of Appeals, issued May 8, 2018 (Docket No. 337547), p 1 (Appendix at 37).

I. First Appeal

Appellee assessed the subject property for 2016 at a true cash value of $50,400. Appellant appealed this assessment, arguing that the assessment was the after-repair value as of December 31, 2015. Appellant contended that the repairs were normal repairs under MCL 211.27(2) and that the house must be valued at its before-repair value. "Petitioner claims that under MCL 211.27(2) we should not increase the subject's true cash value for normal repairs and maintenance until the subject is sold." *Patru 1*, p 2 (Appendix at 38) (quoting the tribunal's POJ in the first appeal).

The Tax Tribunal referee ruled that MCL 211.27(2) nonconsideration did not apply because the property was in substandard condition. This Court reversed:

> The hearing referee incorrectly interpreted MCL 211.27(2) by concluding that because repairs were done to a property in substandard condition, they did not constitute normal repairs. . . . This was improper . . . Nothing in MCL 211.27(2) provides that the repairs . . . are not normal repairs in the event that they are performed on a substandard property. Thus by reading a requirement into the statute that was not stated by the legislature, the trial erred . . . See *Mich Ed Ass'n v Secretary of State (On Rehearing)*, 489 Mich 194, 218; 801 NW2d 35 (2011) (stating that 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 1, p 5 (Appendix at 41).

Even though this court had determined that the tribunal had erred, it could not fully resolve the case because the tax tribunal had not ruled that the repairs met the specific criteria of MCL 211.27(2). Petitioner had submitted a spreadsheet listing the repairs and their specific MCL 211.27(2) criteria, but the tribunal had refused to consider it because it was submitted after the hearing. Moreover, the referee had not established based on the hearing testimony that the repairs fell under the statute. So this Court remanded the case back to the tribunal. *Patru 1*, p 5-6 (Appendix at 41–42).

II. Second Appeal

On remand, the tribunal ruled that the repairs were normal, but it again found a reason not to apply MCL 211.27(2) nonconsideration. The tribunal ruled that MCL

211.27(2) did not apply for repairs done in a year of a transfer, even if the repairs were done by the new owner. This Court has now affirmed this interpretation.

Also, contrary to previously undisputed finding, the tribunal ruled that the property's before-repair condition was not substandard, but rather that the repairs "did not affect the assessed [true cash value] of the property . . .." Opinion at 1. This Court has now affirmed this finding also.

Standard of Review

MCL 2.119(F)(3) says:

> Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

A palpable error is a clear error "easily perceptible, plain, obvious, readily visible, noticeable, patent, distinct, manifest." *Luckow Estate v Luckow*, 291 Mich App 417, 426; 805 NW2d 453, 453 (2011) (cleaned up).

"The rule [MCL 2.119(F)(3)] does not categorically prevent a trial court from revisiting an issue even when the motion for reconsideration presents the same issue already ruled upon; in fact, it allows considerable discretion to correct mistakes." *Macomb County Department of Human Services v Anderson*, 304 Mich App 750, 754; 849 NW2d 408 (2014).

Argument

I. This Court creates an unsupported exception to Mathieu Gast

This court reviews the Tax Tribunal's statutory interpretation de novo. *Briggs Tax Service, LLC v Detroit Pub. Schools*, 485 Mich 69, 75; 780 NW2d 753 (2010).

In its previous decision in this case, this Court faulted the Tax Tribunal for

violating the rule that "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 1*, p 5 (Appendix at 41), quoting *Mich Ed*, 489 Mich at 218. By reading into MCL 211.27(2) an exception for repairs done in the year of a transfer but after the sale, this Court now makes the same error.

The statute specifies that repairs should not considered "*until* the property is sold." This clearly indicates that nonconsideration ends only if there is a sale after the repairs. Here there was no sale after Appellant's repairs. Instead this Court would use a sale before the repairs to end the nonconsideration period. This violates the plain words of the statute.

Besides violating the plain words of the statute, this Court's interpretation of Mathieu Gast violates the intent of the statute. By reading into the statute an unwritten exclusion for repairs in the year of purchase, this Court transforms Mathieu Gast from a pure incentive for homeowners to repair their properties into a trap which punishes diligent purchasers who, relying on the plain words of the statute, repair right away rather than waiting until the year after purchase.

This Court relies on MCL 211.27a(3), which discusses uncapping, and MCL 211.2(2), which defines tax day as December 31 of the previous year, to support its position that when uncapped, the true cash value of the property in the year after the transfer should be its fair market value as of December 31 in the year of the transfer, "regardless of any "normal repairs" made by petitioner in [the year of purchase]." Opinion at 5.

The Court errs in assuming that true cash value is simply the fair market value. Although there are many cases that make this assertion (this Court cites *Pontiac Country Club v Waterford Twp*, 299 Mich App 427, 434-435; 830 NW2d 785 (2013)), this is actually just a useful approximation. True cash value is defined in MCL 211.27, which has eight subsections, which would span several pages if reproduced here. All of

these subsections refine the meaning of true cash value. Subsection 1 uses the term "usual selling price" which means fair market value. This is good enough for most cases. But a three-word term cannot replace every aspect of a multiple page statute. For example, in this case, this Court should consider subsection 2 which specifies that the value due to normal repairs is not part of true cash value until the property is sold.

Furthermore, MCL 211.27(2), as part of the definition, or specification, of true cash value, is not dependent on the capped or uncapped status of the taxable value defined in the next section, MCL 211.27a. *Anytime* the true cash value is determined, MCL 211.27(2) operates to exclude from the true cash value the value of normal repairs unless the normal repairs have been followed by a sale of the property. This means that normal repairs which have not been followed by a sale cannot be considered when determining the assessed value and taxable (capped or uncapped) values defined in MCL 211.27a.

Contrary to this Court's assertion, its interpretation of Mathieu Gast is not supported by the State Tax Commission. On page 6 of its opinion, this Court cites, with its own emphasis, Michigan State Tax Commission (STC) Bulletin No. 7 of 2014 (Mathieu Gast Act), at 3 (Appendix at 45):

> The exemption for normal repairs, replacements and maintenance ends in the year after the owner who made the repairs, replacements and maintenance sells the property. *In the year following a sale, the assessed value shall be based on the true cash value of the entire property.* The amount of assessment increase attributable to the value of formerly exempt property returning to the assessment roll is new for equalization purposes.

This Court reads the just the second, emphasized, sentence out of its context. The first sentence of paragraph gives the topic: "The exemption for normal repairs . . . ends in the year after *the owner who made the repairs* . . . sells the property." The second sentence of this paragraph merely explains that after the repairer sells the property, the value of the previously exempt repairs is included in the assessed value. The second sentence does not create a major exception to the statute in the middle of an unrelated paragraph. There is no elephant in a mouse hole here.

II. This Court should not sustain the tribunal on the grounds that the repairs did not affect the true cash value

This Court accepts the Tax Tribunal's factual findings if they are supported by competent, material, and substantial evidence on the whole record. *Briggs*, 485 Mich at 75.

Besides ruling that MCL 211.27(2) was not applicable because of uncapping, the tribunal also ruled that the repairs did not affect the property's true cash value. This Court should not affirm the tribunal on this alternative ground.

This Court in this opinion starts off the discussion of this issue by saying: "The tribunal did not credit petitioner's argument that the property was in substandard condition when he purchased it." Opinion at 5. But the property's substandard condition is not merely Appellant's argument. Throughout the first trip to this Court until the tribunal's last Final Opinion, all the actors in this case, the Appellant/Petitioner, the Appellee/Respondent, the tribunal, and this Court assumed and were relying on the fact that the subject property was in substandard condition before the repairs. Indeed, the reason this case was first appealed to this Court was because "The hearing referee incorrectly interpreted MCL 211.27(2) by concluding that because the repairs were done to a property in substandard condition, they did not constitute normal repairs." *Patru 1*, p 5 (Appendix at 41). "It is undisputed that, when he purchased the property, it was in substandard condition and required numerous repairs to make it livable." *Id.* p 1. At the second hearing before the tribunal, neither Appellant/Petitioner nor Appellee/Respondent presented evidence or took the position that the house was not in substandard condition before repairs. The tribunal's reversal of a fact which was foundational to its first ruling was not based on new evidence. Therefore this Court should take a careful look at the tribunal's reasoning that prompted it to so drastically reinterpret the evidence.

The tribunal changed its mind based on pictures and the prior year's assessed value:

> The tribunal found that petitioner's MLS listing for the subject property showed a property in "average" condition, and that petitioner's photographs of the property, before any repairs, showed "a property that is livable and habitable with reasonable marketability and appeal." . . . It is undisputed that the assessed TCV of the property for the 2015 tax year was $48,000.

Opinion at 5. Regarding the photographs, the fact that they showed the house as livable and habitable must be considered in light of the City's different opinion. The City/Appellee/Respondent had inspected the house before it sold and refused to issue a certificate of occupancy until repairs were made; "the city required that the repairs be made." *Id.* p 2, quoting the tribunal's first Proposed Opinion. The spreadsheet listing the repairs also clearly shows that most of the repairs were required by the city. See List of Repairs (Appendix at 10). The fact that the realtor who put the pictures in the MLS had listed the property at $29,900 and then at $32,000, well below the market value of a repaired house, and that it took more than two years to sell, also raises doubts that the repairs did not add value.

Regarding the prior year's assessed value, Appellee/Respondent representative testified at the hearing that "mass appraisal does not account for properties one-by-one. In other words, properties are assessed uniformly and *Respondent assumes properties are in "average" condition.*" Second Final Opinion and Judgment (MTT Docket Line 48) (FOJ), p 4 (Appendix at 21), emphasis added. So the assessed value cannot be evidence of a property's before-repair value, because the assessed value is just the output of a mass appraisal computer program that assumes that all the properties are in average condition.

Therefore, on the whole record, the tribunal's finding that the repairs did not add value is not supported by competent, material, and substantial evidence.

III. This Court should reverse the tribunal because of the law of the case

This Court in this opinion says that this case is not governed by *Patru 1* because

> this Court did not resolve whether petitioner's 2015 repairs to the property could or could

> not be considered in determining the property's TCV for the 2016 tax year, but instead determined that "further proceedings are necessary to determine whether the repairs were normal repairs within the meaning of MCL 211.27(2)." . . . More significantly, this Court did not address the effect of the property's transfer of ownership in 2015 on the tribunal's consideration of "normal repairs" under MCL 211.27(2) for purposes of the 2016 tax year. Because this issue was not actually addressed and decided in the prior appeal, the law-of-the-case doctrine does not apply.

Opinion at 5. A more complete quote from this Court's prior opinion makes it clear that this Court had decided that MCL 211.27(2) applied to this case, but, based on the incomplete record, could not decide if Appellant's repairs conformed to the specific categories of repairs listed in the statute.

> If the testimony provided was an oral recitation of the information included on the spreadsheet, then Patru presented testimony sufficient to establish that at least some of the repairs constituted normal repairs under MCL 211.27(2), and so the increase in TCV attributed to those repairs should not be considered in the property's TCV for assessment purposes until such time as Patru sells the property.

Patru 1, p 5 (Appendix at 41). On remand, this Court expected the tribunal to make a determination about the whether the repairs fit the criteria of MCL 211.27(2), and then apply nonconsideration to those repairs, using before-repair and after-repair appraisals.

> 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 1, p 6 (Appendix at 42), footnote 3.

This Court explained the law of the case in *Bennett v Bennett*, 197 Mich. App. 497, 499-500; 496 N.W.2d 353 (1992):

> Under the doctrine of the law of the case, if an appellate court has passed on a legal question and remanded the case for further proceedings, the legal question will not be differently determined in a subsequent appeal in the same case were the facts remain materially the same. The primary purpose of the law-of-the-case doctrine is to maintain consistency and avoid reconsideration of matters once decided during the course of a single continuing lawsuit. . . . the doctrine is discretionary, rather than mandatory.

In *Bennett*, the lower court had denied defendant's motion to terminate his child

support early. While the case was on appeal, a law was enacted which supported the lower court's decision. The law took effect before the appeals court called the case. The appeals court reversed the lower court, but did not mention the new law. On remand, plaintiff asked the lower court to deny defendant a second time, based on the new law which the appeals court had not addressed. The lower court refused because of the law of the case. Plaintiff appealed.

The appeals court affirmed, reasoning that even though it thought that its first decision was wrong, by substituting its judgment for the prior appeals court panel, it would be doing "the very activity the law-of-the-case doctrine is designed to discourage." *Id.* at 501. If the prior panel was not aware of the new law, the parties were at fault because "ultimately it is the responsibility of the parties to bring to this Court's attention that case law and those statutes that the parties wish the Court to consider in deciding the matter." *Id.*

Even if this Court agrees with the tribunal's latest decision that MCL 211.27(2) does not cover this case, it should still reverse and affirm its earlier ruling. As in Bennett, Appellee could have made its arguments (that MCL 211.27(2) does not apply if the repairs are made in the year of a transfer and that the property was in average condition before the repairs) before this Court on the first appeal.

IV. This Court's affirmance of the tribunal's rejection of the purchase price is palpably wrong

When reviewing Tax Tribunal cases, this Court looks for misapplication of the law or adoption of a wrong principle. Factual findings must be supported by competent, material, and substantial evidence on the whole record. Statutory interpretation is reviewed de novo. *Briggs*, 485 Mich at 75; 780 NW2d at 757-758

This Court mischaracterizes Appellant's complaint regarding the tribunal's treatment of the subject's sale price. Appellant is not complaining that "the tribunal erred

by rejecting his 2015 purchase price of the property as determinative of its TCV." Opinion at 6. Rather, Appellant's brief at 18-19 complains that the tribunal gave the sale price "no weight or credibility," Order Denying Reconsideration (MTT Docket Line 51), p 2 (Appendix at 35), contrary to the clear teaching of *Jones & Laughlin Steel Corporation v City of Warren*, 193 Mich App 348, 353-354; 483 NW2nd 416 (1992): "the price at which an item of property actually sold is most certainly relevant evidence" and "the tribunal's opinion that the evidence "has little or no bearing" on the property's earlier value suggests that the evidence was rejected out of hand. Such cursory rejection would be erroneous." Appellant just wants the tribunal to consider the sale price and not reject it out of hand.

The Tribunal's rejection of the sale price, giving it "no weight or credibility," because the seller was HUD, without reference to any fact particular to this case amounts to a rule of law which excludes from consideration the sale price of all HUD-owned homes. This is the kind of cursory rejection that *Jones & Laughlin* forbids. This is especially troubling because the tribunal cites no authority for this rule beyond its bare speculation that: "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).

Relief

Therefore because this Court's opinion contains palpable errors, Appellant respectfully asks this Court to reconsider or rehear this case.

Proof of Service

I certify that I served a copy of these Exceptions on Respondent's representative, Emily Pizzo, by email on the same day I emailed them to the tribunal.

Respectfully Submitted,

/s/ Daniel Patru, P74387

March 4, 2020