STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

Daniel Patru,
Petitioner/Appellant,

vs

City of Wayne,
Respondent/Appellee.

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

Application for Leave to Appeal

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Checklist

☐ Follow the example of

- ☐ Morningside Community
- ☐ Mackinac Center Legal Foundation Application for Leave to Appeal and
- ☐ Pro Se Application.

Table of Contents

Table of Authorities

Jurisdictional Statement

This an appeal from case

Questions Involved

Did this Court make palpable errors in holding that:

1. MCL 211.27(2) does not cover repairs by a new owner in the year of a sale,
2. the tribunal did not violate the law of the case, and
3. the tribunal properly found that the repairs did not affect the property's value,
4. the tribunal's rejection of the purchase price was proper?

Standard of Review

A motion for reconsideration "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." MCL 2.119(F)(3). 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). 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).

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; its 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 in August 2015. MLS History (MTT Docket Line 33) (Appendix at 8).

The City of Wayne (Respondent/Appellee) required repairs before it allowed occupancy. 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, arguing that Appellee's assessment was the after-repair value as of December 31, 2015. Appellant contended that the before-repair value should be used. "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).

This Court noted that Appellant "submitted a spreadsheet detailing the repairs he completed, which . . . included repairs that, under MCL 211.27(2), constitute normal repairs." *Patru 1*, p 4 (Appendix at 40). However, the Tribunal had not considered this evidence because it was submitted after the hearing.

Because this Court could not determine "whether the evidence Patru provided at the hearing was reflective of the information on the spreadsheet" this Court remanded the case back to the tribunal. *Id.* p 5.

II. Second Appeal

On remand, the tribunal ruled that the repairs were normal, but it again refused to apply MCL 211.27(2) nonconsideration, this time because the repairs were done in a year of a transfer. Opinion at 1. Also, the tribunal changed its previously undisputed finding that the property's before-repair condition was substandard. It now ruled that the repairs "did not affect the assessed [true cash value] of the property . . . ." *Id.* This Court has now affirmed. *Id.*

Argument

Logically, the tribunal's decision rests on two independent grounds:

1. MCL 211.27(2) does not apply in transfer years and the tribunal is not prohibited from considering this exception by the law of the case.
2. Even if nonconsideration is applied, the repairs did not affect value. Considering inflation, the before-repair value was essentially equal to the after-repair value. In particular, the subject's purchase price was not the before-repair value.

All of these propositions are proven false below. There is no exception to nonconsideration for transfer years. And even if there were such an exception, the law of the case requires that this should have been brought up on the first appeal. Second, the "fact" that the repairs did not affect value is not supported by the required evidence.

And in particular, the tribunal did not properly consider the subject's purchase price.

I. The exception to MCL 211.27(2) is unsupported

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).

This Court previously 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. But this Court now makes the same error by reading into MCL 211.27(2) an exception for repairs done in the year of a transfer.

The statute requires nonconsideration "*until* the property is sold." The word until means that there must be a sale after the repairs for nonconsideration to end. This Court's refusal to apply nonconsideration where there is no sale after the repairs is a violation of the plain words of the statute.

This Court also frustrates the intent of the statute which is to promote repairs. In direct violation of the statute's plain language, this Court uses the interaction of at least two other statutes to exempt from nonconsideration the repairs of diligent buyers who start repairs right away. Under the Court's view, they should wait until the year after the purchase so that the before-repair value can be determined on tax day.

Where did this Court err? This Court is correct up to the proposition that the uncapped taxable value is based on the true cash value of the property in the year after the transfer.[1] But it errs in equating true cash value with fair market value "regardless of any "normal repairs" made by petitioner in [the year of purchase]." Opinion at 5.

[1]The uncapped taxable value is the equalized assessed value (state equalized value). MCL 211.27a(3). The assessed value is one half of the true cash value. MCL 211.27a(1). The true cash value is always calculated as of tax day. "'true cash value' means the usual selling price . . . at the time of assessment," MCL 211.27(1). "The taxable status of . . . real . . . property for a tax year shall be determined as of each December 31 of the immediately preceding year, which is considered the tax day," MCL 211.2(2).

True cash value is defined in MCL 211.27[2], which has eight subsections, which if reproduced here would span five pages. Courts have summarized true cash value as "fair market value," based on the term "usual selling price" in subsection one. But this shorthand is used only in cases where a more complex definition is not needed. There is no case, except this Court's opinion here, that holds that the caselaw-derived term "fair market value" overrides or invalidates an applicable subsection of MCL 211.27.

MCL 211.27(2), as part of the definition 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. Rather, the dependency goes the other way. MCL 211.27(2) always operates to exclude the value of normal repairs no matter if true cash value is used to establish the assessed value of MCL 211.27a(1) or the additions of MCL 211.27a(2)(b).

This Court's interpretation of Mathieu Gast is unsupported by the State Tax Commission. Its opinion on page 6 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 just the second, emphasized, sentence out of its context. The first sentence of the paragraph gives the topic: "The exemption . . . ends in the year after *the owner who made the repairs* . . . sells the property." In this context, the second sentence's "entire property" means the property with the seller's repairs considered. The buyer's repairs are not in the paragraph's scope.[3]

[2]Internally MCL 211.27 may define true cash value in terms of itself. For example, MCL 211.27(2) uses "true cash value for assessment purposes" to distinguish from the "true cash value" that increased due to normal repairs. But outside of MCL 211.27, in the rest of the tax act, there is only one "true cash value" which incorporates all of MCL 211.27. For example, assessed value is defined in MCL 211.27a(1) as 50% of the true cash value. Obviously with respect to MCL 211.27(2) this means the "true cash value for assessment purposes." But, as it is outside of MCL 211.27, MCL 211.27a(1) uses the term "true cash value."

[3]The opinion at 6 uses this out-of-context quote to justify its holding that before-repair and after-

II. The law of the case requires reversal

> 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. . . . [T]he doctrine is discretionary, rather than mandatory.

Bennett v Bennett, 197 Mich. App. 497, 499-500; 496 N.W.2d 353 (1992).

The opinion at 5 gives two reasons why the law of the case does not apply. First, this Court had not resolved whether "the repairs were normal repairs within the meaning of MCL 211.27(2)." This was not resolved because the existing record was insufficient. *Patru 1*, p 5 (Appendix at 41). But the opinion specified that if the Tribunal found that the repairs listed on the spreadsheet had been performed, these would constitute normal repairs and should not be considered as part of the true cash value:

> 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.

Id. So on remand, the tribunal should have applied nonconsideration after it found that the repairs as listed on the spreadsheet were normal repairs.

Instead, despite finding that the repairs were normal, the tribunal did not apply nonconsideration because of the second reason: it now thought that the transfer of ownership and uncapping created an exception. Opinion at 5.

In *Bennett*, this Court was asked to reverse its earlier ruling based on a law which it had not explicitly considered the first time. This Court refused, reasoning that even though 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

repairs appraisals were not required. As this passage does not say what this Court thinks it says, this Court's holding on this point is without support.

doctrine is designed to discourage." *Bennett*, 197 Mich. App. 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.*

Thus *Bennett* teaches that the law of the case precludes even correct arguments if they could have been brought up in the first appeal. This is so here. Thus even if this Court agrees with the tribunal's latest decision, it should still reverse and affirm its earlier ruling.

III. The ruling that the repairs did not affect the value is unsupported

The tribunal's factual findings must be supported by "competent, material, and substantial evidence on the whole record." *Pontiac Country Club v Waterford Twp*, 299 Mich App 427, 434; 830 NW2d 785 (2013). "Substantial evidence supports the Tribunal's findings if a reasonable person would accept the evidence as sufficient to support the conclusion." *Id.*

Besides ruling that MCL 211.27(2) did not apply, the tribunal also ruled that the repairs did not affect the property's true cash value, or equivalently, that the before-repair value was the same as the after-repair value. The opinion says at 5: "The tribunal did not credit petitioner's argument that the property was in substandard condition when he purchased it."

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 parties, the tribunal and this Court relied on the well-established fact that the subject property was in substandard condition before the repairs.

> It is undisputed that, when he purchased the property, it was in substandard condition and required numerous repairs to make it livable.

Patru 1, p 1 (Appendix at 37). This case was first appealed to this Court because:

> [t]he 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). The tribunal's reversal of a fact which was foundational to its first ruling was not based on new evidence: neither party argued that the house was not in substandard condition before repairs. Therefore this Court should take a careful look at the tribunal's reasoning for this drastic reinterpretation of the evidence.

The tribunal relied on MLS photographs 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. The tribunal misused the MLS evidence. While an MLS sale may be used to support or contest a valuation, no principle of appraisal allows what the tribunal does here: reject an MLS sale as evidence of value, but then use the MLS sale for its pictures to argue that the sale price should have been higher. The MLS sale on its face supports a value $32,000, but the tribunal says it supports a value of $48,000. Thus, as used by the tribunal, the MLS photographs are not competent, material, and substantial evidence.

Here, there is direct, uncontested evidence that contradicts the tribunal's opinion of the MLS photographs. After having actually examined the house, the city's inspectors did not think that the house was livable and habitable, but instead, they required repairs before they would allow occupancy.

Regarding the prior year's assessed value, Respondent/Appellee testified:

> [M]ass 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. The assessed value here is just the output of a mass appraisal computer program that assumes average condition. It is not evidence that the house was in average condition.

Also, by presuming that the assessed value was correct, the tribunal violates the teaching of *Pontiac Country Club*, 299 Mich App at 435-36: "The Tribunal may adopt the assessed valuation on the tax rolls as its independent finding of true cash value when competent and substantial evidence supports doing so, *as long as it does not afford the original assessment presumptive validity.*" Emphasis added.

IV. This Court wrongly affirms the tribunal's rejection of the purchase price

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.

Contrary to this Court characterization, 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 teaching of *Jones & Laughlin Steel Corporation v City of Warren*, 193 Mich App 348, 353-354; 483 NW2nd 416 (1992):

> [T]he price at which an item of property actually sold is most certainly relevant evidence . . . 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.

Emphasis in original. Appellant just wants the tribunal to consider the sale price and not reject it out of hand.

The opinion at 7 asserts that the tribunal "considered petitioner's evidence of the 2015 purchase price" and also "considered the nature of the sale," but there is no record of such consideration *involving the particular facts of this case.*[4] The Tribunal gave the sale price "no weight or credibility" because the seller was HUD.[5] This amounts to a per se rule which excludes from consideration the sale price of all HUD-owned homes. This is the kind of cursory rejection that *Jones & Laughlin* forbids. Especially troubling is that the tribunal justifies this per se rule with bare speculation: "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 which completely undermine its logic, Appellant respectfully asks this Court to reconsider this case.

Respectfully Submitted,

/s/ Daniel Patru, P74387

April 24, 2020

[4]In this case the tribunal could have considered, but did not, that the subject house (1) had been listed by an independent, licensed real estate broker on the MLS, (2) had sold more than two years after it was first listed, (3) had had several offers on it, (4) was not reduced in price to make it sell faster, (5) sold at a price consistent with the repairs that were required.

[5]In support of its rejection of the sale price, the tribunal also cites MCL 211.27(6), prohibiting assessors from presuming that the selling price is the true cash value. But *Jones & Laughlin*, 193 Mich App at 354, specifically considered and rejected this as justifying a cursory rejection.