IN THE COURT OF APPEALS OF IOWA

No. 1-464 / 10-1887
Filed September 8, 2011

SPLASH ENTERPRISES, L.C.,
Plaintiff-Appellant,

vs.

POLK COUNTY BOARD OF REVIEW,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Carla T. Schemmel, Judge.

Splash Enterprises appeals a tax assessment claiming the assessor's valuation of its car wash was inequitable and excessive. **REVERSED AND REMANDED.**

Louis R. Hockenberg, Samantha J. Gronewald, and Elizabeth N. Overton of Sullivan & Ward, P.C., West Des Moines, for appellant.

John P. Sarcone, County Attorney, and David W. Hibbard, Assistant County Attorney, for appellee.

Heard by Sackett, C.J., and Vogel and Danilson, JJ.

DANILSON, J.

This appeal is brought by Splash Enterprises, L.C. (Splash), concerning a tax assessment related to a car wash it owns in Ankeny, Iowa. All parties agree "equipment used for the washing, waxing, drying, or vacuuming of motor vehicles" is exempt from taxation pursuant to Iowa Code section 427A.1(6) (2007). The taxpayer has failed to establish specific items asserted to be exempt fall within that statutory exemption or the exemption of section 427A.1(3). However, upon our de novo review, we conclude the assessment is excessive as it exceeds the estimates of the expert witnesses. We therefore reverse the district court's ruling upholding the assessment. We determine the tax assessment value of the subject property for 2007 is $1,310,000.

I. Background Facts and Proceedings.

Splash is an eight-bay car wash in Ankeny built in 2004. For purposes of the 2007 property tax assessments, Splash had six self-service bays and two automatic bays. The Polk County Assessor issued a $1,434,000 assessment of Splash as of January 1, 2007.

Splash filed a petition with the Polk County Board of Review (Board) protesting the assessment on three grounds: (1) the assessment was not equitable as compared to three other properties, which ranged in assessments of $236,500 to $758,000;[1] (2) the assessment was excessive and claiming a value of $671,000; and (3) "a portion ($551,000) of the property is not assessable."

[1] None of the properties listed were used by either the plaintiff's or defendant's expert witness as a comparable sale.

The petition was denied "because this property currently has an appeal pending in district court for the prior year."

In July 2007, Splash appealed by filing this action in the district court. *See* Iowa Code § 441.38 (2007) (allowing trial de novo before the district court). Trial was continued several times, but was finally held on December 21-22, 2009. At trial Splash sought to introduce an amended report for its expert witness, Ted Frandson of Frandson & Associates. The Board objected to the late-filed exhibit. The district court ruled the amended report, having not been timely provided, would not be admitted.

Following the trial, the district court concluded the plaintiff

> has not met its initial burden to establish that the County improperly included equipment "used for the washing, waxing, drying, or vacuuming of motor vehicles and point-of-sale equipment necessary for the purchase of a car wash" in its assessment. Nor has it convinced the court that the County assigned improper values to the deducted equipment. The evidence showed that the County deducted the car washing from the 2007 assessment pursuant to the manual it is required to use in assessing property. And the additional equipment Plaintiff asserts should have been included in the exemption, such as the garage doors and heating and air-conditioning equipment for the building, are not subject to the exemptions set forth in the statute or case law . . . .

The court then noted that the experts who testified assessed the property (without the car wash equipment) "for more than the County's assessment." The court denied the appeal and upheld the assessment.

On appeal to this court, Splash argues (1) pursuant to Iowa Code section 441.21(3), the burden of proof should have been on the Board to prove the assessed value of the property; (2) the Board failed to meet its burden of proof relating to the assessed value of the property, and some of the equipment

included in the assessor's valuation was exempt car wash equipment pursuant to Iowa Code section 427A.1(1) and (6); (3) even if the burden did not shift to the Board, Splash demonstrated that the assessment was excessive and inequitable; and (4) the district court abused its discretion in excluding the amended report of Splash's expert witness. We will discuss each claim.

II. The District Court Did Not Abuse Its Discretion in Excluding the Taxpayer's Expert Witness's Revised Report.

We review evidentiary rulings for the correction of errors at law. *See* Iowa R. App. P. 6.907. Trial courts are granted broad discretion concerning the admissibility of evidence. *Horak v. Argosy Gaming Co.,* 648 N.W.2d 137, 149 (Iowa 2002). Discretion is abused when the court exercises discretion on grounds or for reasons that are clearly untenable. *Graber v. City of Ankeny*, 616 N.W.2d 633, 638 (Iowa 2000). Splash has not established an abuse of discretion here.

Splash attempted to introduce Exhibit 29, which consists of several replacement pages for Frandson's appraisal report for the subject property. Frandson's original report includes a letter to counsel dated October 29, 2009. It was delivered to counsel for the Board on November 2, 2009, in compliance with the court's scheduling order. The week before the December 21, 2009 trial, Splash informed the Board it would be amending the report to include additional equipment Splash believed was exempt from taxation. The morning of trial,

Splash presented an amended list of excludable equipment (Exhibit 11)[2] and replacement pages for Frandson's report. The district court allowed Exhibit 11, but refused to allow the amended report:

> [I]n this case my recollection is, and I think the file reflects, that we had a series of meetings concerning the preparation and production of an exhibit or a report by the expert in this case. And the fact that the pages with the amounts on them were not physically provided to counsel for the defendant as soon as they were created, coupled with the actions prior to that time, makes this court believe it is appropriate to exclude what is listed in Exhibit 29.

We find no abuse of discretion in disallowing the last minute filing of an amended expert witness appraisal. *See* Iowa Rs. Civ. P. 1.517(2)(*b*)(2), 1.602(5) (allowing sanctions for failure to obey a scheduling order, including prohibiting a party from introducing designated matters into evidence).

Splash argues it has been prejudiced because, having allowed its amended list of excludable equipment, the court abused its discretion in not allowing its expert to change his valuation of the property as a result of that list of exclusions. For the reasons that follow, Splash's claim of prejudice fails.

III. Attachments Are Assessed and Taxed As Real Property.

Iowa Code section 427A.1(1) provides that "unless otherwise qualified for exemption" the following are assessed and taxed as real property:

> c. Buildings, structures or improvements, any of which are constructed on or in the land, attached to the land, or placed upon a foundation whether or not attached to the foundation. . . .
>
> d. Buildings, structures, equipment, machinery or improvements, any of which are *attached to the buildings*, structures, or improvements defined in paragraph "c" of this subsection.

[2] Splash claimed as additional "excludable equipment" ten overhead garage doors, an equipment room heater, an office heater, and an office air conditioner. On appeal, Splash argues only with respect to the garage doors.

(Emphasis added.)

"Attached" means connected "by an adhesive preparation"; or "in a manner so that disconnecting requires the removal of one or more fastening devices, other than electric plugs;" or "in a manner so that removal requires substantial modification or alteration of the property removed or the property from which it is removed." Iowa Code § 427A.1(2). Garage doors are "attached" to a building and the assessor (as well as the hired appraisers) included the garage doors in its appraisals.

Splash argues, however, that the garage doors are "qualified for exemption" under Iowa Code section 427A.1 and thus not to be assessed or taxed. *See id*. § 427A.1(3), (6).

We review tax protests de novo. *Compiano v. Bd. of Review*, 771 N.W.2d 392, 395 (Iowa 2009). In considering the parties' arguments, we keep in mind that "'[t]ax exemption statutes are construed strictly, with all doubts resolved in favor of taxation.'" *Sherwin-Williams Co. v. Iowa Dep't of Revenue*, 789 N.W.2d 417, 424 (Iowa 2010) (citations omitted).

A. Garage doors are not "a kind of property which would ordinarily be removed when the owner of the property moves to another location" under section 427A.1(3). At trial, Splash claimed its ten overhead garage doors are exempt from taxation under section 427A.1(3), which provides:

> Notwithstanding the definition of "attached" in subsection 2, property is not "attached" if it is a kind of property which would ordinarily be removed when the owner of the property moves to another location. In making this determination the assessing authority shall not take into account the intent of the particular owner.

"Whether the disputed items are property that would ordinarily be removed when the owner moves to another location is a factual question." *Rose Acre Farms, Inc. v. Bd. of Review*, 479 N.W.2d 260, 263 (Iowa 1991).

Splash introduced some testimony that garage doors installed at car washes are specially designed for the wet environment in which they are used. It also introduced the testimony of a car wash equipment supplier, Craig Havens, who stated there is a market for used car wash garage doors.

Even if garage doors *can and may* be removed, that does not support a finding such doors "would *ordinarily* be removed when the owner of the property moves to another location." Iowa Code § 427A.1(3) (emphasis added). Splash failed to establish that garage doors would ordinarily be removed when the owner moves to another location. As an example, Jack Stapleton, the owner and operator of Splash, testified he had built one other car wash and had "been involved in two other car washes." He did not testify he removed the garage doors from any of those car washes when he moved. He testified the garage doors at Splash were purchased new. Having failed to establish that garage doors "are a kind of property which would ordinarily be removed when the owner of the property moves to another location," we decline to further discuss the factors enunciated in *Rose Acre Farms*, 479 N.W.2d at 263-64, as it would serve no useful purpose.

B. Garage doors are not "equipment used for the washing, waxing, drying, or vacuuming of motor vehicles" under section 427A.1(6). Splash's argument here generically states that "car wash equipment" is exempt from taxation. From

this premise, it appears to be Splash's contention that any item that is detachable from the building in which a car wash is located constitutes car wash equipment (e.g., electrical panels, garage doors, heaters, air conditioners, ceiling panels, copper tubing). This contention paints with too broad a brush.

Section 427A.1(6) provides:

> Notwithstanding the other provisions of this section, property that is equipment used for the washing, waxing, drying, or vacuuming of motor vehicles and point-of-sale equipment necessary for the purchase of car wash services shall not be assessed and taxed as real property.

See also Iowa Admin. Code r. 701-80.25 ("Property that is equipment used for the washing, waxing, drying, or vacuuming of motor vehicles and point-of-sale equipment necessary for the purchase of car wash services shall not be assessed and taxed as real property.").

In support of assessing the garage doors as real property, Randy Ripperger, chief deputy assessor for Polk County, testified that in 2006 all car wash property in Polk County was revalued as a result of a "2005 law that assessors in Iowa had to use the Iowa real estate appraisal manual to value all property."[3]

> So at that time our office went through and looked at car washes. At that time we were inconsistent as far as how we handled car wash equipment. . . . In the real estate property

[3] *See* Iowa Code §§ 421.17(17) (requiring director of revenue to "prepare and issue a state appraisal manual which each county and city assessor shall use in assessing and valuing all classes of property in the state"), 441.21(1)(h), (i) (requiring assessor to "determine the value of real property in accordance with rules adopted by the department of revenue and in accordance with forms and guidelines contained in the real property appraisal manual prepared by the department as updated from time to time" and if assessor is not in compliance "a penalty may be imposed"); *Soifer v. Floyd County Bd. of Review*, 759 N.W.2d 775, 791 (Iowa 2009) ("The Board correctly points out that the county assessor is required by law to use a state appraisal manual prepared by the director of the department of revenue.").

> manual, it listed car wash equipment, so the determination was made that we had to assess the car wash equipment. In order for it to be equitable, we decided to do all car wash property for 2006.

He stated the manual "gives us the unit price" for the "various components of the car wash." In 2006, "we went out and inspected the property in the field and got the list of equipment." With respect to equipment subject to the exemption, Ripperger stated "we followed the equipment list from the Real Property Appraisal Manual." The assessor's 2006 cost report for Splash (Exhibit 31) included the following equipment: "car wash automatic wash touchless" (two) for a replacement cost new less depreciation (RCNLD) of $175,000; "car wash dryer" (two) for RCNLD of $51,250; "car wash self-service" (six) for RCNLD of $101,250; and "car wash vacuum station" (six) for RCNLD of $11,250. The amount for the valuation of equipment "came from the Department of Revenue's manual that was based on what our field personnel saw out in the field." If an item was not listed on the cost sheet, it was not assessed. The Splash assessment for 2006 was $1,894,890, which included "[r]oughly, $504,000" in equipment.

Ripperger also stated that in 2007 the county had to adjust all commercial property upward to come into compliance with state law: commercial land was increased by twelve percent and commercial improvements by three percent. The assessed value for Splash for 2007 was $1,434,000.

> Q. Did you put back into the assessment in 2007 any of the car wash equipment value that had been taken out by the Board?
> A. No, we didn't.

Thus, no excludable car wash equipment was assessed. All car wash garage doors were assessed as real property. However, the fact that all commercial

property and land had to be adjusted upward and the 2007 assessment excluded the same equipment as the 2006 assessment does not end our analysis. On appeal before the district court, there is no presumption the assessment or valuation is correct. Iowa Code §§ 441.38, 441.39; *Compiano*, 771 N.W.2d at 396.

As noted, Splash hired Frandson to provide an appraisal of the subject property. Ted Frandson testified his firm had appraised "a dozen" car washes in the last couple of years. He understood there was a statutory exemption of certain equipment. He stated his original appraisal value of car wash equipment[4] was estimated using the highest end of the range found in Marshall & Swift Valuation Service, "a cost manual designed for appraisers that estimates cost of a wide variety of real estate and equipment, including car washes." Frandson acknowledged that Marshall & Swift includes garage doors in the base cost for the building. Thus his original appraisal included garage doors as part of the building and not as exempt equipment.

The district court noted "equipment" is defined in Black's Law Dictionary as "the articles or implements used for a specific purpose or activity." Much was made at trial of the assertion that the garage doors here were specially designed to withstand the wet conditions of car washing. Garage doors may indeed be used *with* exempt equipment. But the district court was not convinced—nor are

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[4] Frandson's report notes the following in its summary of equipment and mechanical improvements to the property:

> Automatic car wash equipment is the Super 5000 Automatic Car Wash System with automatic dryers. Water softeners and heaters. 6 manual wash sytems with multiple settings. Overhead doors, automatic pay entry, 7 coin-operated vacuum units, change station, and vending machine.

we—that garage doors are articles or implements "*used for* the washing, waxing, drying, or vacuuming of motor vehicles." Iowa Code § 427A.1(6) (emphasis added). Doors may enclose or secure such equipment, but we conclude the garage doors themselves are not within the definition of property "otherwise qualified for exemption" under section 427A.1. The garage doors were properly assessed as real property. We conclude no excludable property was assessed.

IV. The Assessment was Excessive.

Our supreme court has recently provided an outline of the real estate tax assessment and appeal procedure. *See Compiano*, 771 N.W.2d at 395-97. In summary, in an appeal by a taxpayer challenging an assessment, the burden at the district court hearing is on the taxpayer to prove one of the statutory grounds for protest. *Id.* at 396.

> The burden of proof shall be upon any complainant attacking such valuation as excessive, inadequate, inequitable, or capricious; however, in protest or appeal proceedings when the complainant offers competent evidence by at least two disinterested witnesses that the market value of the property is less than the market value determined by the assessor, the burden of proof thereafter shall be upon the officials or persons seeking to uphold such valuation to be assessed.

Iowa Code § 441.21(3).

Splash argues it shifted the burden of proof and thus it was the Board's burden to uphold the assessment. The Board responds that the record is "devoid of any evidence of market value from any source" and thus Splash failed to shift the burden of proof; it states the only proof presented is of "taxable value."

The assessor assessed the subject property at $1,434,000. Property is assessed at its actual value. *Id.* § 441.21(1)(a). The actual value is "the fair and

reasonable market value." *Id.* § 441.21(1)(b). "Market value" is in turn defined as "the fair and reasonable exchange in the year in which the property is listed and valued between a willing buyer and a willing seller, neither being under the compulsion to buy or sell." *Id.* Comparable sales are to be taken into consideration. *Id.*

Frandson testified as to his determination of market value, as did Lock and Ripperger. Their opinions are summarized in the table below:

	Comparison Sales	**Replacement Cost**	**Income Approach**	**Reconciliation excl. equipment**
Lock (less depreciated equipment cost)	1,810,000 -380,000 1,430,000	1,420,000 Real estate component only	1,520,000 -380,000 1,140,000	$1,400,000
Frandson (less depreciated equipment cost)	1,840,000 -512,688 1,327,312	2,067,000 -512,688 1,554,312	1,773,000 -512,688 1,260,312	$1,310,000
Ripperger				$1,434,000

While the Board may argue as to the weight of these opinions, we disagree that there is no proof of market value. Randy Ripperger acknowledged Iowa Appraisal's estimate of fair market value of the Splash property in 2007 (less equipment) was $1,400,000, which is less than assessed—Ripperger opined that value as "fair."

Returning to Splash's contention that the burden of proof shifted, we need not decide the issue because each of the witnesses that opined as to the market value concluded the actual value of the subject property was less than assessed.[5] *See Carlon Co. v. Bd. of Review*, 572 N.W.2d 146, 152 (Iowa 1997)

[5] The district court was mistaken when it found that the experts who testified assessed the property "for more than the County's assessment." The appraisals of the

("We need not decide this issue because we find Carlon's evidence sufficiently established the city's valuation was excessive."). Further, the assessed value or "actual value" may not exceed the fair and reasonable market value. *See* Iowa Code § 441.21(1)(g).

V. Actual Value of Splash.

Having determined Splash has proved the assessment was excessive, we must determine the value or correct assessment of the property. *Compiano*, 771 N.W.2d at 397. We make an independent determination of the value based on all the evidence. *Id.* ("[I]f the court determines the grounds of protest have been established, it must then determine the value or correct assessment of the property. This process is the second step. Here, the court makes its independent determination of the value based on all the evidence." (citations omitted)).

One of the statutory requirements is the assessor must use the comparable-sales approach to the valuation of real estate when comparable sales are available. Iowa Code § 441.21(1). An assessor can resort to the other methods of valuation only when comparable sales cannot readily be established. *Id.* § 441.21(2).

Jack Stapleton stated he was the owner and operator of Splash, a car wash located at 1325 North Ankeny Boulevard, consisting of six self-service bays and two automatic bays. Construction started in 2003 or 2004, and the car wash

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experts only exceed the assessment if one ignores the deductions for excludable equipment.

opened in September 2004. He opined a fair assessment of the market value of the property as of January 1, 2007, was "probably 1,000,000 to 1,200,000."[6]

As noted earlier, Splash's expert, Frandson, stated his firm had been involved in several car wash appraisals in recent years. Frandson testified that after adjustments of comparable sales of car wash properties for age, location, and number of car wash bays,

> the range of value on our unit of comparison is $220,500 to $241,500 per bay. We make our conclusion of eight bays times $230,000 per bay of $1,840,000 for the subject, including equipment, which is using this [improved sales comparison] approach.

Using an income approach, Frandson arrived at a value of $1,773,000. Using a cost approach, Frandson determined a value of $2,067.000. Reconciling the three approaches, Frandson opined the estimated market value of the property was $1,825,000, which included all improvements and equipment. Excluding exempt equipment Frandson stated the actual value of the real property was $1,310,000.

The Board's appraiser, Fred Lock, a real estate appraiser of more than forty years and owner of Iowa Appraisal, testified he had conducted five to seven car wash appraisals in the "last couple of years." Lock stated that in employing the cost approach, he came to a value of $1,420,000 for the land and depreciated building. Using a sales comparison approach Lock stated the fair market value of the subject property was $1,810,000 ($310 per square foot) and after deducting the depreciated replacement cost of the car washing equipment

[6] We note this varies from his petition to the Board, which stated that "$671,000 is the actual value and is a fair assessment."

$1,430,000. Using the income approach, Lock estimated the value of the property was $1,140,000. He stated he relied more on the sales approach than the others, and concluded the actual value of the property in 2007 was $1,780,000, which he then adjusted to $1,400,000 after deducting exempt equipment.

Lock, like Frandson, used the Marshall's valuation service. Both appraisers stated there is a range of estimates for each piece of equipment. Lock estimated the value of fixtures and equipment, arriving at a value of $351,000. However, we note that Lock has included only one "self-wash, base" when in fact there were six. Thus using his own estimates, Lock's total replacement cost of $351,000 should be increased by $77,500 for a total of $428,500. Resuming with Lock's adjustments and considering the cost presented to Lock by the property owner ($561,000 adjusted for inflation to $599,148), Lock's "reconciled"[7] replacement cost for equipment (and rounded) is $514,000.[8] He used a twenty percent depreciation rate, so the depreciated replacement cost should have been $411,000. Consequently, Lock's equipment cost is underestimated and thus his estimate of actual, assessable value is overestimated.

We note, too, that Lock's report does not provide value for items Frandson's report did. We have attempted to compare the two estimates:

[7] Which appears to mean averaged and rounded: ($351,000+$599,148)/2=$475,074

[8] ($428,000+$599,148)/2=$513,574

Frandson	Lock
Deluxe Brushless System Base 2 @ $110,000	Drive-Through, Base 2 @ $85,000
Applicator Arch 4 @ $4800	Not included
Pay Entry 2 @ $11,550	Not included
Heat Freeze Protection 8 @ $4150	Not included
Air-Dry Blower 2 @ $31,500	Air Dry Blower 2 @ $22,500
Water Softener 1 @ $8225	Water Softener 1 @ $5000
Self-Wash Assembly System Base 6 @ $24,725	*Self-Wash, Base 1 @ $15,500
Self-Wash Soap, Wax,Rinse Equipment 6 @ $10,350	Self-Wash, Per Bay 6 @ $7000
Automated Pay Station/Change Station 8 @ $6875	Change Machine /Automated Pay Station 8 @ $4600
Water Filtration 1 @ $37,725	Water Reclamation 1 $20,500
Vacuum Stations 7 @ $3725	Vacuum Stations 6 @ $2500
Vending 2 @ $780	Towel Vending Machine 2 @ $600

(*See discussion above.)

Frandson critiqued Lock's appraisal. He criticized Lock's calculation of the cost approach, stating "it's difficult to decide from [Fred Lock's] report if he does or does not have a complete list of all the equipment" and "it's possible" it eliminated some equipment. Frandson opined Lock's depreciated cost of car wash equipment ($380,000) was improperly calculated and "understates the actual updated cost" of equipment replacement. He also was critical of the sales Lock used as comparables. We find Frandson's estimates related to replacement cost to be more definitive, accurate, and convincing.

We also note that Lock acknowledged the sales comparison approach of his appraisal is based upon square footage, but buyers determine the value of a car wash by the number of bays. He also admitted that a lower value would have

been obtained by considering the number of bays, Frandson's method, rather than square footage.

As we find Frandson's appraisal more convincing, upon our de novo review, we determine the actual value of the subject property as of January 1, 2007, which does not include exempt equipment, was $1,310,000.

VI. Disposition.

Because our determination of tax assessment value is different from that reached by the district court, we reverse. We remand for an order establishing the tax assessment value of the property at $1,310,000 as of January 1, 2007.

REVERSED AND REMANDED.