

STATE OF MICHIGAN  
COURT OF APPEALS

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FIFTY-NINE SEVENTY-THREE  
CORPORATION,

UNPUBLISHED  
July 24, 1998

Petitioner-Appellee,

v

No. 202520

MTT

CITY OF DETROIT,

LC Nos. 173282; 225484

Respondent-Appellant.

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Before: Griffin, P.J., and Gribbs and Talbot, JJ.

PER CURIAM.

Respondent appeals as of right from a judgment in favor of petitioner that was issued by the Michigan Tax Tribunal. Specifically, respondent contests the tribunal's valuation of a parcel of land. Petitioner leases the subject property from respondent and is responsible for paying taxes on the property. We affirm.

Respondent first argues that the tribunal committed an error of law or adopted a wrong legal principle by ruling that the property's value should be determined using the actual rental income even though such rent was of a nominal amount from the lease's inception. We disagree.

In *CAF Investment Co v State Tax Comm (CAF I)*, 392 Mich 442; 221 NW2d 588 (1974), the Supreme Court determined that the "present economic income" of property subject to a long-term lease could be calculated based on the actual rental income from that property. *Id.* at 454. This interpretation was later confirmed in *CAF Investment Co v Saginaw Twp (CAF II)*, 410 Mich 428, 458; 302 NW2d 164 (1981). While the Legislature later abrogated the effect of this decision by redefining "present economic income" for leased properties, it subsequently stated that the new definition would not apply to leases entered into prior to 1984. See MCL 211.27(4); MSA 7.27(4). The lease involved in this case was entered into, by respondent and a predecessor of petitioner, in 1978 and has not been renegotiated since that time. Therefore, the plain language of the 1983 amendment exempts this lease from the 1982 language requiring the use of market rental rates in the valuation of leased property. There is no ambiguity in the statutory language and

therefore, judicial construction is not required. *Lorencz v Ford Motor Co*, 439 Mich 370, 376; 483 NW2d 844 (1992); *Heinz v Chicago Rd Investment Co*, 216 Mich App 289, 295; 549 NW2d 47 (1996). The Supreme Court's interpretation of "present economic income" in the *CAF* cases is controlling.

Moreover, the *CAF* cases are not distinguishable on the basis that the lease in those cases was economically reasonable at its inception while the \$1 per year nominal lease in this case was not. While the Supreme Court recognized that the lease in the *CAF* cases was economically reasonable at its inception, *CAF II*, *supra* at 447, the Supreme Court did not limit its holding in the manner argued by respondent. The *CAF* cases stand for the proposition that the existence of a long-term lease cannot be ignored when valuing a property because the terms of that lease have an impact on the true cash value of the property. *Id.* at 459-460. Therefore, the actual rental income can be dispositive of the property's market value even if the rent is below prevailing market rates. The Supreme Court did warn against the use of actual rental rates if the resulting valuation was either too speculative or did not accurately reflect the property's fair market value. *Id.* at 460-461. Respondent failed to explain, however, why the tribunal's valuation was either too speculative or an otherwise inaccurate valuation of the property given the existence of the long-term lease. Respondent merely assumed that because the lease was not economically reasonable at its inception that it would automatically be inaccurate to use the actual rental amount as a basis for valuation. There is no support in the *CAF* cases for this assumption. The tribunal did not adopt a wrong legal principle by concluding that the property had only a nominal value given the existence of a 122-year lease which provided for only \$1 rental income per year. The existence of such a lease impacts the true cash value of the property. Therefore, it was not error for the tribunal to consider that factor in its valuation of the property.

Respondent also argues that the tribunal committed an error of law or adopted a wrong principle by ruling that the property should be taxed as property encumbered by a lease. We disagree.

Petitioner was responsible for the taxes on the land portion of the property pursuant to the lessee-user taxation statute, MCL 211.181; MSA 7.7(5), because the land was owned by respondent, a tax-exempt municipality. The tribunal properly valued the land based on the methodology approved by the Supreme Court in the *CAF* cases discussed above. Respondent failed to demonstrate how the assessment of the property's value should be different merely because the taxes were to be paid pursuant to MCL 211.181; MSA 7.7(5). Further, respondent failed to cite any authority which would authorize the tribunal to ignore the existence of the lease and assess the property as if it were unencumbered. The purpose of the lessee-user taxation statute is to "ensure that lessees of tax-exempt property will not receive an unfair advantage over lessees of privately-owned property." *Detroit v National Exposition Co*, 142 Mich App 539, 546; 370 NW2d 397 (1985). While petitioner was in an advantageous position due to the terms of its long-term lease, it did not have an unfair advantage because of the tax-exempt status of its property. Petitioner was required to pay taxes in accordance with the lessee-user statute in an amount equal to any other entity with the benefit of a pre-1984 long-term lease subject to the valuation methods set forth in the *CAF* cases. Therefore, the tribunal's valuation of the property

preserved the uniformity of taxation required by MCL 211.181; MSA 7.7(5), and did not constitute an error of law.

Affirmed.

/s/ Richard Allen Griffin

/s/ Roman S. Gibbs

/s/ Michael J. Talbot