

STATE OF MICHIGAN
COURT OF APPEALS

LANSING TOWERS,

Petitioner-Appellant,

v

CITY OF LANSING,

Respondent-Appellee.

UNPUBLISHED

November 16, 2010

No. 292756

Michigan Tax Tribunal

LC No. 00-314856

Before: CAVANAGH, P.J., and HOEKSTRA and GLEICHER, JJ.

PER CURIAM.

Petitioner appeals as of right the opinion and judgment of the Michigan Tax Tribunal (MTT) rejecting its challenge to respondent's assessment of taxes on its property for the tax year 2006. We affirm.

Petitioner argues that the MTT failed to make an independent determination of the true cash value (TCV) of the subject property for tax year 2006 because it adopted the assessed value shown on the property record card as the most accurate reflection of the TCV. Petitioner further argues that the MTT erred in using the cost-less-depreciation approach of the property record card because both parties' experts testified that it was the least reliable of the three standard methods of appraising property.

In the absence of fraud, our review of a decision by the MTT is limited to determining whether the tribunal erred in applying the law or adopted a wrong principle; its factual findings are conclusive if supported by competent, material, and substantial evidence on the whole record. Const 1963, art 6, § 28; *Continental Cablevision of Michigan, Inc, v City of Roseville*, 430 Mich 727, 735; 425 NW2d 53 (1988). "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence." *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

In an appeal to the MTT, the petitioner has the burden of proof to establish the true cash value of the property. MCL 205.737(3); *Prof Plaza, LLC v Detroit*, 250 Mich App 473, 475; 647 NW2d 529 (2002). "The Tax Tribunal has a duty to make its own, independent determination of true cash value. The Tax Tribunal is not bound to accept the parties' theories of valuation. It may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination of true cash value." *Great Lakes Div of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 389-390; 576 NW2d 667 (1998) (internal

citations omitted). Further, the MTT may not merely affirm a party's valuation theory without providing an explanation why the valuation accurately reflected the true cash value of the subject property. *Jones & Laughlin Steel Corp*, 193 Mich App at 355-356.

However, the burden of proof in a tax matter encompasses two concepts: "(1) the burden of persuasion, which does not shift during the course of the hearing, and (2) the burden of going forward with the evidence, which may shift to the opposing party." *Great Lakes Div of Nat'l Steel Corp*, 227 Mich App at 408-409. The MTT's duty to make its own independent determination of true cash value arises only when the plaintiff has met its burden of going forward with the evidence. See *Id.* at 410.

In this case, petitioner brought no evidence at all of the property's TCV for tax year 2006. This is in contrast to the cases cited by petitioner, most notably *Javens v City of Berkley*, unpublished opinion per curiam of the Court of Appeals, issued August 15, 2000 (Docket Nos. 211709, 211774). In *Javens*, the MTT concluded that the petitioners had failed to meet their burden of proof and so the assessment could simply be accepted without analysis. This Court reversed that decision because the petitioners had presented evidence of the property's TCV; despite the MTT's finding that the evidence was not credible, the petitioners had nonetheless met their burden of going forward, thus triggering the requirement that the MTT make its own independent determination of the TCV. That is not the case here. Petitioner's appraisal addressed only tax year 2005.

Petitioner argues that the MTT could have extrapolated the 2006 value from the 2005 figure. But petitioner's counsel did not argue that below. Counsel did provide some calculations for 2006 in his post-hearing brief; however, neither petitioner nor its counsel was qualified as an appraiser and there is no evidence that petitioner's manipulation of the figures is valid. Nor does petitioner explain whether the 2006 value should be extrapolated up or down from the 2005 figure, and by how much. Petitioner is basically in the position of a plaintiff who has failed to bring any evidence supporting its position. Unlike the petitioner in *Javens*, petitioner has not met his burden of going forward with the evidence. Therefore, the MTT did not err in accepting the figure on the property record card as valid. Because the MTT was not required to conduct its own determination of the property's TCV for tax year 2006, its acceptance of the cost-depreciation approach apparently used to calculate the TCV on the property record card was not erroneous.

Petitioner also argues that the MTT erred in excluding the testimony of the property maintenance manager about the repair and maintenance projects that needed to be done, which was offered to counter respondent's expert's testimony. A trial court's decision to admit evidence is within its sound discretion and will not be disturbed absent an abuse of discretion. *Chmielewski v Xermac, Inc*, 457 Mich 593, 614; 580 NW2d 817 (1998). An abuse of discretion occurs when the outcome of the decision falls outside the principled range of outcomes. *Radeljak v Daimler-Chrysler Corp*, 475 Mich 598, 603; 719 NW2d 40 (2006).

We conclude that the MTT's decision to exclude the lay witness's testimony was within the principled range of outcomes. It was clear that the property maintenance manager was going to testify about what projects needed to be done on the property. Petitioner intended this to rebut the testimony of respondent's expert that the building was in normal condition for its age. But petitioner's expert witness had already testified on that subject and petitioner's appraisal,

including a list of deferred maintenance items, was part of the record. The evidence supported petitioner's case-in-chief, rather than rebutting respondent's expert's testimony. Therefore, the MTT did not abuse its discretion in not permitting the testimony of petitioner's lay witness.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Joel P. Hoekstra
/s/ Elizabeth L. Gleicher