

STATE OF MICHIGAN
COURT OF APPEALS

CHAND PROFESSIONAL PROPERTIES, INC.,

Petitioner-Appellant,

v

CITY OF SOUTHFIELD,

Respondent-Appellee.

UNPUBLISHED
November 17, 2015

No. 323268
Tax Tribunal
LC No. 00-439143

Before: METER, P.J., and BORRELLO and BECKERING, JJ.

PER CURIAM.

Petitioner Chand Professional Properties, Inc. (Chand), appeals as of right from a final opinion and judgment of the Michigan Tax Tribunal rejecting its contention that the true cash value (TCV) of certain real property was \$650,000 for the 2012 tax year. We affirm.

In May 2012, Platinum Enterprises, which owned the property at the time, filed a petition contesting the 2012 tax assessment. In June 2012, Chand purchased the property for approximately \$1.4 million. On May 25, 2013, Chand filed a motion to amend the original petition in order to contest the 2013 tax assessment in addition to the 2012 assessment. On July 5, 2013, the tribunal denied the motion to amend, noting respondent Southfield's argument that there had been no order of "substitution of petitioner" and concluding that Chand "is not a party in this case." The tribunal noted that the motion was "not properly pending."

On July 17, 2013, Chand filed a motion to be recognized as the petitioner. On August 15, 2013, the tribunal ordered the correction of a typographical error in the prior order but further stated that "it has no evidence supporting the transfer of interest Chand references in its Motion to Substitute Petitioner. As such, the Tribunal lacks proof that Chand is a party-in-interest in the above-captioned case." The tribunal gave Chand 21 days to submit "documentation evidencing that it is a party-in-interest in the above-captioned case, including documentation of the transfer of interest that allegedly occurred June 28, 2012." In conjunction with a motion for reconsideration, Chand submitted various documents, including a document indicating that the 2013 assessment had been sent to it by Southfield.

On September 17, 2013, the tribunal granted Chand's "Motion to Substitute Petitioner" but denied the motion to amend the petition to include the 2013 tax year, stating that Chand had failed to demonstrate any palpable error committed by the tribunal with respect to the motion to amend.

Chand argues that the tribunal erred in disallowing the amendment to include the 2013 tax year.

“This Court’s review of a decision by the Tribunal is limited. We must accept the Tribunal’s factual findings if ‘competent, material, and substantial evidence on the whole record’ supports them. Substantial evidence supports the Tribunal’s findings if a reasonable person would accept the evidence as sufficient to support the conclusion.” *Pontiac Country Club v Waterford Twp*, 299 Mich App 427, 434; 830 NW2d 785 (2013) (citation omitted). “This Court’s review of Tax Tribunal decisions, in the absence of fraud, is limited to whether the tribunal made an error of law or adopted a wrong principle.” *Dow Chemical Co v Dep’t of Treasury*, 185 Mich App 458, 462; 462 NW2d 765 (1990).

With regard to motions to amend petitions, this Court has emphasized that decisions regarding such motions are within the discretion of the tribunal and will not be overturned absent a clear abuse of discretion. *Turner v Lansing Twp*, 108 Mich App 103, 112; 310 NW2d 287 (1981).

We cannot find a clear abuse of discretion on this record. The tribunal correctly concluded that Chand attempted to amend the petition when it had not even demonstrated its interest in the case to the tribunal and was not a party to the case. Chand admits that it received the 2013 assessment of the property in March 2013. Despite this fact, Chand failed to first file a motion to substitute petitioners before filing its motion to amend in May 2013 and then failed to submit proper documentation when it subsequently did file that motion. Given Chand’s dilatory actions, the tribunal properly exercised its discretion in denying the motion to amend.

Chand next argues that the tribunal erred in disallowing the deposition of Southfield’s assessor, David Tijerina.

Chand filed the motion for deposition on February 27, 2014. Chand stated that “it is essential to be able to cross[-]examine the assessor as to his calculation of true cash value for the subject parcel” and asked the tribunal to “issue [an] order compelling Mr. Tijerina’s deposition, on or before March 14, 2014” The tribunal denied the deposition request without elaboration.

Mich Admin Code, R 792.10241, states that “the tribunal, *in its discretion*, may order the taking of depositions” (emphasis added). The tribunal record includes a document labeled “Notice of March 1-15, 2014 Prehearing General Call and Order of Procedure.” This document indicated that “‘Pre-Valuation Disclosure’ discovery is CLOSED on **12/30/2013**. ‘Pre-Valuation Disclosure’ discovery will not be permitted beyond this date except upon a finding of good cause by the Tribunal.” The document further indicated that “‘Post-Valuation Disclosure’ discovery is CLOSED on **03/01/2014**. ‘Post-Valuation Disclosure’ discovery will not be permitted beyond this date except upon a finding of good cause by the Tribunal.”

Chand filed its motion to depose Tijerina on Thursday, February 27, 2014. It was not realistic for the deposition to have occurred before the close of discovery on Saturday, March 1, 2014, and Chand offered no “good cause” for the late deposition request. As such, the tribunal acted within its reasonable discretion in denying the deposition request.

Chand next takes issue with the alleged refusal to admit an appraisal (“the Comerica appraisal”), which indicated a TCV of \$900,000, into evidence. “This Court may review the tribunal’s rulings regarding evidentiary issues if they involve errors of law.” *Georgetown Place Coop v City of Taylor*, 226 Mich App 33, 50; 572 NW2d 232 (1997).

At trial, Chand’s attorney asked his expert witness regarding valuation, Michael Rende, to review the Comerica appraisal. Southfield’s attorney objected, stating that “this exhibit hasn’t been offered, hasn’t been authenticated, there’s no potential way for us to vet this document. [T]he witness would simply be speculating about the information that’s in the document” Chand’s attorney replied:

I believe this document has been authenticated by Mr. Chand, who indicated that he did receive the appraisal from the bank and that’s the basis upon which he was able to borrow \$720,000 rather than more. At some point in time, as is the familiar law, the Tribunal will be assessing the value of this property independently of what everybody testifies to. This is one of the appraisals that will be before it if it receives it. If it receives the appraisal, then I would like Mr. Rende to be able to comment on the appraisal itself, the comparables and the analysis. If the appraisal of the bank is not to be received, okay, I guess we’re in a different position. If it is not going to be offered by either side—I can offer it now and I take it it is going to be objected to.

The tribunal judge questioned the issue of authentication, noting that the person who authored the document was not available to authenticate it. The judge elicited from Rende that he had relied on some information in the appraisal but that he had “some concerns” about the document. The judge stated:

All right. So we have many things going on here. We don’t have the author of this report here today, that’s number one. Number two, Mr. Rende didn’t develop or communicate a formal appraisal review of this document, so that really leaves us at a dead end. There is no reasonable way for this document to be admitted.

In its final opinion and order, the tribunal stated the following regarding the Comerica appraisal:

Petitioner testified that the Comerica Bank valuation of the subject property was approximately \$900,000 just a couple months after Petitioner purchased the subject property. However, the Tribunal is unable to determine the credibility of that valuation since the bank appraisal was not offered for admission nor was the Tribunal able to question that appraiser to determine if the assignment type (i.e. scope of work) affected his or her opinion of value.

The tribunal also recognized that Chand’s “appraiser relied on information from the . . . bank appraisal. However, Mr. Rende had concerns over the . . . appraisal.”

Arguably, the tribunal misspoke in stating that the Comerica appraisal was not offered for admission, because the exchange that occurred at trial could be interpreted as an attempt by

Chand to admit the document. Nevertheless, we find no error of law with regard to the tribunal's failure to admit the appraisal, given that the author was not available as a witness and given that Chand's own expert witness expressed concerns about the appraisal.

Chand lastly argues that the tribunal erred in finding that \$1,472,500 (the price Chand paid for the property) was the proper TCV and \$736,250 was the proper taxable value (TV). Southfield alleged that the TCV of the property was \$1,727,360 and the TV was \$863,680. Chand alleged that the TCV was \$650,000 and the TV was \$325,000.

Chand spends many pages of its appellate brief detailing various purported reasons that the tribunal's valuation was erroneous, including an allegation that the tribunal judge was not as qualified to make valuation decisions as Chand's expert witness. However, Chand fails to properly acknowledge our limited standard of review. As noted, "[t]his Court's review of Tax Tribunal decisions, in the absence of fraud, is limited to whether the tribunal made an error of law or adopted a wrong principle." *Dow Chemical Co*, 185 Mich App at 462. "The taxpayer bears the burden of proof with respect to the true cash value of the property." *Georgetown Place Coop*, 226 Mich App at 43. "The tribunal is not required to accept the valuation figures or the approach to valuation advanced by either the taxpayer or the assessing unit. It is the duty of the tribunal to adopt that method which is most appropriate to the individual case as the particular facts may indicate." *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985). "Evidence of the selling price is relevant in determining the taxable value of property." *Professional Plaza LLC v Detroit*, 250 Mich App 473, 476; 647 NW2d 529 (2002).

MCL 211.27(1) defines "true cash value," in part, as "the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale."

A several-hour trial took place on May 5, 2014, and on July 31, 2014, the tribunal issued a very detailed opinion and judgment. The tribunal noted that Chand had used the sales-comparison and capitalization-of-income approaches to value, but it identified specific and multiple flaws in Chand's valuation methods. The tribunal then set forth various reasons for its conclusion that the purchase price for the property was commensurate with the market value, noting, for example, that the property had been "properly exposed to the market," that Chand "purchased the subject [property] substantially below the initial price offering," and that the tribunal was "not persuaded that [Chand] was unaware of the electric heating system in light of [Chand's] inspection of the subject building." The tribunal also analyzed a comparable sale in reaching its determination of the TCV.

The tribunal's analysis was detailed and thoughtful; its decision was based on competent, material, and substantial evidence; and we find no fraud, error of law, or adoption of a wrong legal principle. *Georgetown Place Coop*, 226 Mich App at 43.

Affirmed.

/s/ Patrick M. Meter
/s/ Stephen L. Borrello
/s/ Jane M. Beckering