

STATE OF MICHIGAN  
COURT OF APPEALS

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618 SOUTH MAIN, LLC,

Petitioner-Appellant,

v

CITY OF ANN ARBOR,

Respondent-Appellee.

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UNPUBLISHED  
January 11, 2018

No. 336862  
Tax Tribunal  
LC No. 15-002302-TT

Before: O'CONNELL, P.J., and HOEKSTRA and SWARTZLE, JJ.

PER CURIAM.

Petitioner, 618 South Main, LLC (“618”), appeals as of right an order of dismissal issued by the Michigan Tax Tribunal (MTT) on December 29, 2016. The MTT dismissed the case because 618 did not file a valuation disclosure and did not identify its valuation witness until after the scheduled due date. We affirm.

I. BACKGROUND

618 filed a petition with the MTT in May 2015 challenging the true cash value and taxable value for tax year 2015 of real commercial property at 618 South Main Street in Ann Arbor. 618 did not answer the question of whether the challenged taxable value involved the value of an addition or a loss. Respondent, City of Ann Arbor, answered the petition, standing by the values identified by the Board of Review.

In March 2016, the MTT issued a notice placing the case on a prehearing call for a two-week period beginning December 16, 2016. The notice informed the parties that they were required to submit a valuation disclosure by October 18, 2016, or written notice that no valuation disclosure was required within 21 days of the notice. The notice also described the bounds of pre-valuation disclosure discovery scheduled to close on October 18, 2016, and post-valuation disclosure discovery scheduled to close on December 16, 2016.

In May 2016, 618 filed a motion to amend the petition to add a challenge to the assessment of the property’s true cash value and taxable value for tax year 2016. The City did not respond, and the MTT granted this motion.

On October 18, 2016, 618 filed a prehearing statement in which it answered “[n]one” in response to a request for a description of “any additions or losses to the subject property.” 618

asserted that neither party had filed its valuation disclosures and proposed Kevin Kernen as an expert witness to testify about the value of the subject property.

That day, the City also filed its prehearing statement, its valuation disclosure, and a motion to withhold the disclosure until 618 filed and exchanged its disclosure. In its prehearing statement, the City defended its assessment of the property based on the value of the additions. 618 did not respond to the City's motion to withhold, and the MTT granted it.

In November 2016, the MTT issued a notice scheduling a prehearing conference for December 20, 2016. The scheduling notice warned the parties that the MTT would only consider documentation filed before the conference. The notice further stated that the conference would begin with a show cause hearing because 618 had not filed a valuation disclosure.

618 filed an amended prehearing statement and valuation disclosure evidence on December 14, 2016. In the amended prehearing statement, 618 substituted Donald Wieme to testify as an expert witness about the value of the property. 618's valuation disclosure evidence consisted of a report prepared by Wieme to verify the cost of construction calculated by the assessor. Wieme noted that he could not verify the cost of improvement that 618 also requested because 618 had not provided him with any site-specific information, but he developed an estimate based on the Marshall and Swift Valuation Cost Manual.

After the prehearing conference, on December 20, 2016, 618 filed a letter responding to the MTT's statement at the prehearing conference that it intended to dismiss the petition. 618 stated that the issue concerned the true cash value of the new construction, defined as an addition, and noted the submission of Wieme's calculation. In the letter, 618 also explained that it notified the City of its position in November 2016 via two memoranda proposing settlement. Therefore, 618 requested that the MTT accept the evidence submitted.

The MTT dismissed the petition on December 29, 2016, because of 618's failure to file or exchange its valuation disclosure on time. The MTT stated that the valuation disclosure evidence consisted only of a replacement cost calculation without addressing the value of the land or improvements on the land. The MTT concluded that 618 failed to show good cause why it filed the valuation disclosure late. The MTT further found that 618 did not articulate its claim until December 14, 2016, in its supplemental filing, thereby failing to put the City on notice of the issue in the case. Consequently, the MTT refused to permit 618 to amend the petition.

618 filed a motion for reconsideration, which the MTT denied in January 2017. The MTT applied the factors in *Grimm v Dep't of Treasury*, 291 Mich App 140, 149; 810 NW2d 65 (2010), to conclude that dismissal was proper. The MTT found no evidence that 618's failure to file the valuation disclosure was accidental. The MTT concluded that 618's handling of the case was prejudicial to the City. The MTT also remarked that 618's attempt to cure the filing defect only came after the prehearing conference despite how long the case had been pending. The MTT concluded that a lesser sanction than dismissal was not warranted.

## II. STANDARD OF REVIEW

This Court's review of an MTT decision "is typically limited to whether the decision was authorized by law and whether the tribunal's findings were supported by competent, material,

and substantial evidence on the whole record.” *Prof Plaza, LLC v Detroit*, 250 Mich App 473, 474; 647 NW2d 529 (2002). This Court review’s an MTT decision “to dismiss a petition for failure to comply with its rules or orders” for an abuse of discretion. *Grimm*, 291 Mich App at 149. The MTT does not abuse its discretion if its decision is a “reasonable and principled outcome[.]” *Id.*

### III. DISCUSSION

618 first argues that a valuation disclosure was not necessary because 618 decided to challenge taxable value only, not true cash value, and because the City had the evidence 618 intended to rely on to prove its case. 618 did not argue to the MTT that it was not required to file a valuation disclosure, and 618 eventually filed a valuation disclosure. Therefore, 618 has waived this argument. See *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008) (requiring a litigant to “preserve an issue for appellate review by raising it in the trial court”).

618 next challenges the MTT’s dismissal of the petition. This Court evaluates the following factors to decide whether the MTT abused its discretion by dismissing the petition:

- (1) whether the violation was wilful or accidental;
  - (2) the party’s history of refusing to comply with previous court orders;
  - (3) the prejudice to the opposing party;
  - (4) whether there exists a history of deliberate delay;
  - (5) the degree of compliance with other parts of the court’s orders;
  - (6) attempts to cure the defect;
  - and (7) whether a lesser sanction would better serve the interests of justice.
- [*Grimm*, 291 Mich App at 149 (quotation marks and citation omitted).]

The MTT should consider the relevant factors and determine the most appropriate sanction. *Id.* at 150.

First, the MTT did not err by concluding that the record contained no evidence that 618’s untimely filing was accidental. 618 did not argue otherwise, nor could it. 618 filed valuation disclosure evidence only when it faced dismissal, yet 618 provided no explanation for why it did not file the evidence before the deadline.

Next, the MTT did not err by determining that 618’s late filing and late identification of its valuation witness was prejudicial to the City. Our Supreme Court held that prejudice may result from an amendment if the party moving to amend the complaint “seeks to add a new claim or a new theory of recovery on the basis of the same set of facts, after discovery is closed, just before trial, and the opposing party shows that he did not have reasonable notice, from any source, that the moving party would rely on the new claim or theory at trial.” *Weymers v Khera*, 454 Mich 639, 659-660; 563 NW2d 647 (1997).

By the time 618 filed its disclosure, the discovery period was nearly over, depriving the City of the opportunity to test the evidence in discovery. Similarly, 618’s clarification of its legal argument about the true cash value and the value of the additions after the prehearing conference was inadequate to put the City on notice of the issue and to give the City an opportunity to prepare its defense. Although the City’s prehearing statement and response to 618’s motion for partial summary disposition show that the City knew that the taxable values

reflected an addition, it did not know the basis for 618's petition. The MTT could have extended discovery, but it was not required to, particularly because 618 did not explain the late filing.

Next, the MTT did not err by finding 618's attempt to cure the filing defect inadequate. 618 did not acknowledge the March 2016 notice designating the filing deadline and warning the parties that the failure to file a valuation disclosure on time will preclude its admission into evidence absent a showing of good cause. 618 did not attempt to show good cause and only filed a valuation disclosure when it faced dismissal. 618 did not explain why the MTT should have accepted its belated attempt to cure the defect simply because it made the attempt.

Additionally, the MTT properly found Wieme's report incomplete. A valuation disclosure is "documentary or other tangible evidence in a property tax contested case that a party relies upon in support of the party's contention as to the true cash value of the subject property or any portion thereof and contains the party's value conclusions and data, valuation methodology, analysis, or reasoning." Mich Admin Code, R 792.10237(1).

Wieme's report only verified the assessor's calculation. In addition, Wieme noted that he could only estimate the cost of the improvements to the property because he was not provided with site-specific data. Although questions about Wieme's report would be more appropriate for a deposition and a hearing, they highlight the inadequacy of the late valuation disclosure, further demonstrating 618's reluctance to file a valuation disclosure until dismissal was imminent. Thus, the MTT did not abuse its discretion by noting the insufficiency of the evidence or by finding 618's belated attempt to cure the defect inadequate.

For all of these reasons, the MTT did not abuse its discretion by dismissing the petition rather than imposing a lesser sanction. The procedural history also supports the MTT's decision not to impose a lesser sanction. 618 failed to articulate the nature of its challenge in the petitions and prehearing statements. The original scheduling notice warned that failure to file a valuation disclosure on time would preclude its admission into evidence. The notice scheduling the prehearing conference advised 618 that the conference would begin with a show cause hearing because 618 failed to file its valuation disclosure. Only after this hearing did 618 file its valuation disclosure. 618's repeated noncompliance shows that MTT acted within its discretion when it determined that a lesser sanction would not better serve the interests of justice.

618 argues that the MTT should have noticed that 618's original and amended petitions were incomplete when 618 failed to identify whether the taxable value implicated an addition or a loss and should have permitted 618 to amend the petitions. The MTT, however, primarily based its dismissal decision on 618's failure to file a timely valuation disclosure, as required by the prehearing notice. Furthermore, in its original and amended prehearing statements, 618 stated that there were no additions or losses, undermining 618's argument that the MTT should have permitted 618 to amend its petition. Finally, unlike *Prof Plaza*, 250 Mich App at 474, 618 filed nothing before the due date and only filed a valuation disclosure when it faced dismissal.

Likewise, the MTT did not misunderstand the issue, as 618 contends. 618 did not state its argument until the supplemental filing on December 20, 2016. In any event, the MTT ordered the parties to file a valuation disclosure, or explain why it was not necessary, by a certain date. 618 did neither. Absent from 618's arguments was an explanation for why it did not file the

disclosure on time. Thus, we conclude that the MTT did not abuse its discretion by dismissing 618's petition.

We affirm.

/s/ Peter D. O'Connell

/s/ Joel P. Hoekstra

/s/ Brock A. Swartzle