

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

DAVID A. EMAMI, )  
 )  
 Plaintiff, ) TC-MD 020533C  
 )  
 v. )  
 )  
 LINCOLN COUNTY ASSESSOR, )  
 )  
 Defendant. ) **DECISION**

This appeal involves the value of a residence in Lincoln City for the 2001-02 tax year. Trial was held January 16, 2003, at 1:30 p.m. Plaintiff was represented by W. Scott Phinney, a Lake Oswego attorney. Defendant was represented by Charlie Gross, an appraiser with the Lincoln County Assessor's Office.

**STATEMENT OF FACTS**

The subject property is a 3,800 square foot oceanfront home situated on a 1.43 acre lot in a gated community that abuts a casino. The home was built in 1993 and is carried in the assessor's records as a class 6 structure. It is identified as assessor's Account R503264. Plaintiff purchased the home on October 15, 2001, for \$515,000. All of the household furnishings were included in the sale.

The home has a stucco exterior and suffers from water intrusion which has impacted the external plywood sheathing (under the stucco) and the stud walls. At the time of the purchase, Plaintiff was aware of the dry rot and water problems. Plaintiff testified that he based the purchase price on a report estimating repairs were needed to 30 percent of the exterior of the home at a cost of \$362,782. (Ptf's Ex 6-1 and 6-2.) According to the testimony, at the time of his purchase Plaintiff intended to demolish the home several years after acquisition when he could afford to rebuild the home with the

same footprint. The cost of demolition is estimated at \$35,000. In essence, Plaintiff considered he was buying a large oceanfront lot with a foundation that could be used to construct a new home with the same floor plan, plus personal property Plaintiff estimates to be worth approximately \$130,000. In response to a questionnaire from the assessor, the seller estimated the value of the personal property to be \$30,000.

Plaintiff has had some work done to the home since his purchase. Plaintiff hired a contractor to replace the beams on the front of the home because of extensive dry rot and repainted the home himself with the assistance of “a couple of employees.”

The property was valued by the assessor as of January 1, 2001, at \$752,740, with the land valued at \$352,670 and the improvement valued at \$400,070. Plaintiff appealed to the county board of property tax appeals (board) and the board sustained the assessor's value. Plaintiff seeks a reduction to \$350,000. Plaintiff arrives at that value by subtracting from the \$515,000 purchase price, the estimated value of the personal property and the cost of demolition.

In its appraisal, Defendant requests that the value be reduced to \$476,900, based on the purchase price, adjusted for time, less the value of the personal property, as estimated by the seller at \$30,000. (Def's Exs C & E). Defendant submitted a residential sales comparison grid which sets forth an estimated value based on three comparable sales. (Def's Ex G.) Defendant's value estimate under that approach is \$505,000, with substantial adjustments for “condition” to account for the dry rot problems impacting the exterior of the home. Defendant used Plaintiff's repair estimate of \$362,782 as a guide for those adjustments.

### **COURT'S ANALYSIS**

The issue is the real market value of Plaintiff's home. Real market value is defined

by statute as:

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“\* \* \* the amount in cash that could reasonably be expected to be paid by an informed buyer to an informed seller, each acting without compulsion in an arm’s length transaction occurring as of the assessment date for the tax year.”

ORS 308.205.<sup>1</sup> The applicable assessment date is January 1, 2001.

The court accepts the purchase price as persuasive evidence of the value of the subject property. *Kem v. Dept. of Rev.*, 267 Or 111, 114, 514 P2d 1335 (1973).

Plaintiff’s purchase in October 2001 was ten months after the assessment date, and Plaintiff first viewed the home in May. The parties were knowledgeable and willing market participants and both buyer and seller were aware of the dry rot problems. Plaintiff paid \$515,000, but the sale included the interior furnishings. The question, then, is how much the personal property was worth. The burden of proof is a preponderance of the evidence and rests with the Plaintiff. ORS 305.427. “Preponderance of the evidence means the greater weight of evidence, the more convincing evidence.” *Feves v. Dept. of Revenue*, 4 OTR 302, 312 (1971), citing *McPherson v. Cochran*, 243 Or 399, 404, 414 P2d 321 (1966).

Plaintiff estimates the value of the personal property acquired with the home to be \$130,000 based on his opinion of the amount that would be obtained if the property were sold at auction. Plaintiff submitted a three-page document listing items of personal property that he contends were included in the sale of the home. Plaintiff denied Defendant an interior inspection of the home to verify the existence and condition of the items reported and so there is not consensus on what personal property Plaintiff acquired.

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<sup>1</sup> All references to the Oregon Revised Statutes (ORS) are to 1999.

Plaintiff's list includes two Picasso vases, numerous paintings, including two original oils, designer furniture, Tiffany & Co. wine glasses, a big screen TV and a surround sound system, an antique Italian mirror, Persian rugs, numerous pieces of antique furniture, and two fossils said to be worth more than \$4,000 each. Defendant insists that the seller's \$30,000 estimate is a better indicator of the value, presumably because of the perceived motivations of the two. In reply, Plaintiff testified he was told by the seller that the \$30,000 estimate was based on advice the seller received from his attorney, who is representing the seller in a lawsuit against the developer for the dry rot problems. The relevance of that information is questionable.<sup>2</sup> Moreover, the evidence conflicts and none of it is particularly persuasive because neither the seller nor the buyer have been shown to be qualified to render an opinion of value.

Finally, Plaintiff notes that the contents of the home are insured for \$643,300. (Ptf's Ex 4-1.) Plaintiff's counsel stated the policy was based on an appraisal made for the insurer but asserted that the insurer refused to provide a copy of the report because personal property appraisals were competitive and secretive. The court finds unpersuasive the insured value because there is no information by which to gauge it. Plaintiff was aware that the value of the personal property was the significant variable but chose not to commission an appraisal or at least a reliable, independent value estimate.

Other market data is helpful in determining the value of the personal property. For example, another prospective buyer withdrew an \$800,000 offer months before Plaintiff bought the property for \$515,000. And, the home next door, which was built by the same

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<sup>2</sup> The dry rot affects the home. Because the personal property is subtracted from the sale price to determine the diminished, "as-is" value of the home, the more the furniture is worth, the less the house is worth, and thus the greater the loss in value of the home. The seller would therefore benefit from an inflated personal property value. Of course, other factors may come into play.

developer and is essentially identical to the subject, sold in March 1997 for \$800,000. The two homes are on equal size oceanfront lots with practically identical views and beachfront access. Defendant's trended value for that sale is \$860,317 as of January 1, 2001. This suggests that the subject property (exclusive of the personal property) would have a market value of at least \$850,000 were it not for the dry rot problems. Subtracting Plaintiff's estimated cost-to-cure of roughly \$365,000 suggests an as-is value for the home of approximately \$485,000. Defendant estimates the value of the subject at \$476,900. Subtracting those numbers from the purchase price of \$515,000 indicates a range of value for the personal property of \$30,000 to \$38,100, which tends to support the seller's estimate. Plaintiff contends the \$362,782 repair estimate should be doubled because it is based on an assumption of damage to 30 percent of the structure and subsequent investigation reveals the damage could affect as much as 60 percent of the home. However, the question is not what it might ultimately cost to make the repairs but rather what was known or reasonably ascertainable on the assessment date. At that time the available information suggested repairs would be needed to 30 percent of the home. The fact that the problem may extend to 60 percent of the home, an assertion not supported by independent corroborating evidence, is immaterial if not anticipated on the assessment date.

As a final matter, the court rejects the subtraction (by Plaintiff) of demolition costs from the purchase price because Plaintiff planned to raze the structure when he acquired the home and Plaintiff must therefore have believed that the residual real property (land, foundation and on-site developments) was worth the amount paid less the value of the personal property. In other words, the cost of demolition was factored into the purchase price.

## CONCLUSION

The parties agree that the current roll value, as set by the assessor and sustained by the board, is excessive. Plaintiff's request for a reduction in value to \$350,000 is not supported by a preponderance of the evidence. Defendant has estimated the value of the real property at \$476,900. That value is within the range of values plead by the parties and, based on Plaintiff's \$515,000 purchase price, would indicate a residual personal property value (although not directly in issue) of \$38,100, which is supported by the evidence. Accordingly, the court concludes that the value of the subject property is \$476,900. Now, therefore,

IT IS THE DECISION OF THIS COURT that the value of the subject property as of January 1, 2001, was \$476,900.

Dated this \_\_\_\_\_ day of March, 2003.

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DAN ROBINSON  
MAGISTRATE

**IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, FOURTH FLOOR, 1241 STATE ST., SALEM, OR 97301-2563. YOUR COMPLAINT MUST BE SUBMITTED WITHIN 60 DAYS AFTER THE DATE OF THE DECISION OR THIS DECISION BECOMES FINAL AND CANNOT BE CHANGED.**

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE DAN ROBINSON ON MARCH 26, 2003. THE COURT FILED THIS DOCUMENT ON MARCH 26, 2003.**