

STATE OF MICHIGAN
COURT OF APPEALS

WILDWOOD BEVERAGE, INC.,

Plaintiff-Appellant,

v

CITY OF ROYAL OAK,

Defendant-Appellee.

UNPUBLISHED

September 20, 1996

No. 187581

LC No. 002147571

Before: Cavanagh, P.J., and Murphy and C.W. Simon, Jr.,* JJ.

PER CURIAM.

Plaintiff appeals as of right a judgment of the Michigan Tax Tribunal, Small Claims Division, that affirmed the 1994 assessment on plaintiff's commercial personal property. We remand.

The personal property consists of used fast-food restaurant equipment, located at a Wendy's restaurant in Royal Oak. The majority of the personal property assessed was purchased by plaintiff from Wendy's International in 1987, as part of a package deal involving used fast-food restaurant equipment located at thirteen different Wendy's restaurant sites.

Plaintiff first argues that the tribunal adopted a wrong principle when it applied defendant's cost-less-depreciation method as supported by a market methodology to determine the true cash value of the property because there was no evidence presented at the small claims hearing to adopt such an approach. When fraud is not alleged, this Court's review of a decision of the tax tribunal is limited to determining whether the tribunal committed an error of law or applied a wrong principle. *Jones & Laughlin Steel Corp v Warren*, 193 Mich App 348, 352; 483 NW2d 416 (1992). We review the tribunal's findings of fact to determine whether they are supported by competent, material, and substantial evidence. *Id.* The tribunal must make its own findings of fact and arrive at a legally supportable true cash value. *Id.* at 355. The tribunal may not simply accept a defendant's assessment when the plaintiff had failed to meet its burden of proof. *Id.*

Here, the tribunal stated that the reason that it selected defendant's valuation method was because plaintiff had not overcome the assessment's presumption of correctness. The tribunal did not state why it believed that the assessment reflected a true cash value of the property, did not make its

own findings of fact regarding the assessment, and did not independently determine a legally supportable true cash value. Thus, we find it necessary to remand this case for additional findings. On remand, the tribunal shall make an independent determination of true cash value that is supported by findings of fact. *Id.* at 356.

Plaintiff next argues that the tribunal adopted a wrong principle in refusing to consider its allocated purchase price or Wendy's International's purchase price in valuing the property. Because the tribunal's rejection of plaintiff's allocated purchase price was a factual determination based on the lack of credibility of this evidence, this Court is bound by the tribunal's rejection of plaintiff's evidence. *Consolidated Aluminum Corp, Inc v Richmond Twp*, 88 Mich App 229, 231-232; 276 NW2d 566 (1979). However, we are unable to determine what value the tribunal used as a starting point for valuing the property. Accordingly, on remand the tribunal should, in its findings of fact that support its independent determination of true cash value, note what cost numbers it used as a starting point for valuing the property.

Finally, plaintiff argues that the tribunal erred as a matter of law when it found that *Fuller Ave Burger King v Grand Rapids*, 7 MTT 49 (1991), was not controlling. We agree with the tribunal's finding that plaintiff did not present sufficient evidence to invoke reliance on *Fuller*. Moreover, we note that in light of the State Tax Commission Bulletin No. 6-1992, the holding in *Fuller* that the personal property of a fast-food restaurant may be properly subjected to short-lived multipliers appears questionable at best.

Remanded to the small claims division for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ William B. Murphy
/s/ Charles W. Simon, Jr.