STATE OF MICHIGAN

COURT OF APPEALS

LARENCE R. KOZMA and BETTY J. KOZMA, Plaintiffs-Appellants,	UNPUBLISHED November 8, 1996
v	No. 183405 LC No. 00209254
TOWNSHIP OF INDEPENDENCE, Defendant-Appellee.	

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

PER CURIAM.

Plaintiffs appeal as of right from a judgment of the Michigan Tax Tribunal revising the 1994 assessment of their residential property. We affirm.

Appellate review of Tax Tribunal decisions is limited to deciding if the tribunal's factual findings are supported by competent, material, and substantial evidence. In the absence of fraud, this Court reviews whether the Tax Tribunal made an error of law or adopted an incorrect legal principle. *Golf Concepts v Rochester Hills*, 217 Mich App 21, 24-25; 550 NW2d 803 (1996).

A taxpayer may challenge his property tax assessment in two situations: (1) when his property is assessed at more than fifty percent of its true cash value, and (2) when the property is not assessed in uniformity with other properties in the taxing district. *Brittany Park Apartments v Harrison Twp*, 104 Mich App 81, 88; 304 NW2d 488 (1981). In the present case, plaintiffs complain both that their property is assessed at more than fifty percent of its true cash value and that the ratio of their assessment to their property's true cash value is higher than that of other properties in the area.

We conclude that the tribunal's findings are supported by competent, material, and substantial evidence. Contrary to plaintiffs' argument, the burden of proof with regard to a property's true cash value is on the taxpayer. MCL 205.737(3); MSA 7.650(37)(3); *Oldenburg v Dryden Twp*, 198 Mich App 696, 698-699; 499 NW2d 416 (1993). Plaintiffs have not convinced us of the existence of any error requiring reversal.

Plaintiffs argue that defendant committed fraud by submitting a market appraisal that was so faulty as to be fraudulent. We find this claim to be without merit. First, although plaintiffs and the Tax Tribunal found the market analysis to be flawed, there is no evidence that defendant intended to pervert or conceal the truth. In addition, a claim of fraud cannot be sustained because neither plaintiffs nor the tribunal relied on the market analysis. See *Baker v Arbor Drugs, Inc*, 215 Mich App 198, 208; 544 NW2d 727 (1996).

Plaintiffs further assert that the tribunal erred in relying on the refinancing appraisals submitted by defendant. However, in a hearing in the small claims division of the Tax Tribunal, the hearing officer "may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs." 1981 AACS, R 205.1642(1). The refinancing appraisals fall under this definition. The cost-less-depreciation approach to valuation used by the hearing officer is one of the three methods of valuation approved by the Supreme Court. *Antisdale v City of Galesburg*, 420 Mich 265, 276 & n 1; 362 NW2d 632 (1984). The fact that the Tax Tribunal chose the cost approach over the market approach does not support plaintiffs' contention that the true cash value was ignored. See *id*.

Plaintiffs contend that their rights were violated because the tribunal used a different method of assessing the value of plaintiffs' property than the one applied to the rest of the district. We find no error. If a claim is based on lack of uniformity, the taxpayer must show that the ratio of assessed value to fair market value of his property is greater than the ratio of assessed value to the average fair market value in the taxing district. *Brittany Park Apartments*, *supra*. The tribunal found that while other properties in the area are underassessed, plaintiffs' property also is underassessed. This finding is supported by competent, material, and substantial evidence.

Plaintiffs also argue that defendant did not timely serve them with documents, and therefore the tribunal erred in relying on those documents. We find no error. Defendant's proof of service shows that the appraisal was hand-delivered to plaintiffs' home ten days prior to the hearing. Plaintiffs admit finding the appraisal in their home eight days before the hearing. Thus, there is no evidence that defendant failed to properly serve plaintiff with the appraisals. Moreover, plaintiffs have not indicated how they were prejudiced by defendant's action.

Affirmed.

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