

STATE OF MICHIGAN
COURT OF APPEALS

LIBERTY PROPERTY LIMITED,

Petitioner-Appellant,

UNPUBLISHED
June 18, 2002

v

CITY OF SOUTHFIELD,

Respondent-Appellee.

No. 231323
Tax Tribunal
LC No. 00-266182

Before: Smolenski, P.J., and Neff and White, JJ.

WHITE, J. (*dissenting*).

I respectfully dissent. Petitioner's petition challenged the method respondent's assessor used to assess petitioner's property for 1998 and 1999, arguing that the method used was not the method used in evaluating all other property in the same classification in the jurisdiction, as required by MCL 211.27(5). Petitioner also asserted that the 1999 assessment, state equalized value, and assessed value and the tax levied were invalid, unlawful and operated as a fraud. Throughout the proceedings before the tax tribunal, petitioner argued that because it did not challenge the assessed value as being in excess of 50% of the true cash value, but rather, challenged the method of valuation as being nonuniform, it did not need to file a valuation disclosure. The presiding tribunal judge repeatedly rejected this argument.

As the case progressed, it became clear that petitioner's only argument was that respondent "chased the sale," and improperly based the 1998 assessment on the sale price, rather than using the method used in assessing all other Class A office building property in the jurisdiction, which was the formula set forth in MCL 211.27a. In its February 29, 2000 letter to the tribunal, petitioner abandoned any argument that the 1999 true cash value of the property was at issue.

As recognized by respondent in its motion for summary disposition, the issues presented by petitioner were legal ones. Petitioner argued that in making the adjustment to the 1998 taxable value after the 1997 sale, respondent violated MCL 211.27(5). In its motion for summary disposition, respondent argued that 1) it had applied a uniform method to all Class A office buildings and petitioner's assessment was the result of a general reappraisal of Class A office buildings together with the fact that the taxable value of the property became uncapped for 1998 as a result of the sale, 2) in any event, petitioner could not challenge the 1998 value because it failed to invoke the jurisdiction of the tribunal because it did not challenge the 1998 assessment in 1998, pursuant to MCL 205.735; 3) the 1999 and 2000 assessments were made strictly according to the statutory formula set forth in MCL 211.27a; and 4) to show that the

property was over-assessed, petitioner would have to show the true cash values for 1999 and 2000, and because petitioner had failed to file an evaluation disclosure, petitioner was precluded from calling witnesses to testify to the true cash value.

In response to the motion, petitioner argued that respondent correctly asserted that petitioner's case is based on the theory that respondent "chased the sale." Petitioner added "we also believe that the 1999 assessment is nothing more than that (1998) 'chased the sale' assessment, increased by inflation." Petitioner went on to challenge respondent's legal argument that having failed to timely challenge the 1998 assessment as not being the product of the same valuation method used for other property of the same classification, petitioner was barred from challenging the 1999 and 2000 assessments on that basis. Petitioner argued that it could still challenge the method of valuation for 1999 and 2000 on the basis that all other properties were assessed based on a 1998 assessment that was based on a 1997 assessment adjusted for inflation, plus an adjustment for 1999 and 2000, and petitioner's property was assessed based on an illegal 1998 assessment plus the inflation factor. Petitioner identified no other issues.

The presiding tribunal judge denied the motion by opinion dated September 11, stating:

The tribunal finds that whether the City of Southfield "chased a sale" is not a substantive issue, and while it may have an impact upon the assessed and taxable value of the subject property, there remains [sic] material issues of fact. Petitioner and Respondent have until September 28, 2000, to file valuation disclosures, with a motion to set aside default, pursuant to TTR 247.

The Tribunal concludes Petitioner in its Petition and in its Prehearing Statement has the issues of assessed and taxable values of the subject property. These issues remain to be determined, and require valuation disclosures;

On September 29, petitioner wrote the tax tribunal, stating in part:

Pursuant to the Tax Tribunal's February 22, 2000 Summary of prehearing Conference, as amended by the Tax Tribunal's August 8, 2000 order Amending Prehearing Summary, the only issues involved in this case are 1) whether the Respondent, in setting the 1998 assessment for the subject property violated MCL 211.27(5) by failing to assess the subject property using the same valuation method used to value all other property of the same classification in the assessing jurisdiction and 2) whether that violation of MCL 211.27(5) in 1998 was carried forward into the 1999 and subsequent assessments for the subject property. Neither of these issues involve the true cash value of the subject property. They involve the methodology used by the Respondent in establishing the 1998 and future assessments.

Petitioner went on to provide a "valuation disclosure" in narrative form describing the method used by respondent in valuing other property - - the method set forth in MCL 211.27a, and asserting, based on the mathematical computations, that that method was not used in valuing petitioner's property.

In its sua sponte order of dismissal the presiding judge stated:

With respect to Petitioner's contention that the property's true cash value is not at issue, Petitioner, in its petition at paragraph 12, alleges:

The 1999 assessment, state equalized value and taxable value imposed on Petitioner's property, and the taxes to be levied and collected thereon, are invalid and unlawful and operate as a fraud .

..

In the petition's prayer for relief, Petitioner further requests that the property's assessed and taxable values be revised for the 1999 tax year. As such, the value of the subject property is, in fact, at issue. Further, the "method" of arriving at the property's proper assessed and taxable values is a secondary issue that cannot be addressed without the valuation disclosure.

The presiding judge then dismissed the case because of inadequacies in the valuation disclosure contained in the September 29 letter, stating that petitioner cannot establish the property's true cash value, as required by MCL 205.737, and because petitioner did not comply with the September 7 order requiring that a motion to set aside default be filed.

Petitioner made clear that it was abandoning any argument that the 1999 and 2000 assessments did not accurately reflect the property's true cash value. Petitioner, in effect, conceded that the assessed value did not exceed 50% of the property's true cash value. Petitioner's sole argument was that the 1998 assessment violated the statute because the assessor used the sale price rather than applying the method used in valuing all other Class A office building property - - the formula set forth in 211.27a, and that the 1999 and 2000 assessments were tainted by that alleged illegality. Petitioner was entitled to frame its case as it wished, even if its position was legally unsound in light of 211.27a(3) and its only avenue for relief was to challenge the true cash value as excessive. I would hold that the tribunal erred in dismissing petitioner's legal arguments challenging the method of assessment for failure to file a valuation disclosure regarding the true cash value, and remand for a decision on petitioner's claims as framed by petitioner.

/s/ Helene N. White