

STATE OF MICHIGAN
COURT OF APPEALS

BRIDGEWATER INTERIORS,
Plaintiff-Appellee,

UNPUBLISHED
November 25, 2003

v

CITY OF DETROIT,
Defendant-Appellant.

No. 241136
Tax Tribunal
LC No. 00-288416

Before: Gage, P.J., and White and Cooper, JJ.

PER CURIAM.

Defendant City of Detroit appeals by right from the Tax Tribunal’s order denying entry of plaintiff’s and defendant’s stipulated consent judgment. Plaintiff and defendant stipulated to adjust plaintiff’s taxes after defendant assessed plaintiff’s property at the ad valorem tax rate when it should have been assessed at the Renaissance Zone tax rate. The Tax Tribunal refused to enter the stipulation, reasoning that there was no clerical error or mutual mistake. When defendant moved for reconsideration, the Tax Tribunal then held that the motion was untimely. We reverse and remand for entry of the parties’ stipulated consent judgment.

This Court decides matters of statutory construction de novo. *Danse Corp v City of Madison Heights*, 466 Mich 175, 178; 644 NW2d 721 (2002), citing *Lincoln v General Motors Corp*, 461 Mich 483, 489; 607 NW2d 73 (2000). Where fraud is not alleged, “review of a Tax Tribunal decision is ‘limited to determining whether the tribunal erred in applying the law or adopted a wrong principle.’” *Id.*, quoting *Michigan Bell Telephone Co v Treasury Dep’t*, 445 Mich 470, 476; 518 NW2d 808 (1994). “Factual findings are conclusive if supported by competent, material, and substantial evidence on the whole record.” *Id.*, quoting *Michigan Bell, supra* at 476.

The parties sought to enter a stipulated consent judgment under MCL 211.53a, which provides:

Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a clerical error or mutual mistake of fact made by the assessing officer and the taxpayer may recover the excess so paid, without interest, if suit is commenced within 3 years from the date of payment, notwithstanding that the payment was not made under protest. [MCL 211.53a.]

MCL 211.53b outlines the procedure to be followed:

If there has been a clerical error or a mutual mistake of fact relative to the correct assessment figures, the rate of taxation, or the mathematical computation relating to the assessing of taxes, the clerical error or mutual mistake of fact shall be verified by the local assessing officer and approved by the board of review [Id.]

Here, the tribunal found that the parties' failure to assess plaintiff's property at the Renaissance Zone tax rate was not a clerical error or mutual mistake. We disagree.

In refusing to enter the parties' stipulation, the Tax Tribunal relied on this Court's decision in *Int'l Place Apartments-IV v Ypsilanti Twp*, 216 Mich App 104; 548 NW2d 668 (1996). In *Int'l Place Apartments*, this Court examined whether the Tax Tribunal could correct the defendant township's underassessment of the plaintiff's property. The township incorrectly assessed the taxpayer's property because the township misfiled a document showing major additions to the property. *Id.* at 106-107. The document was important to the assessment and should have been, but was not, examined before the property was assessed. *Id.* The additions to the property resulted in an ultimate assessment that was nearly a million dollars higher than the defendant's original assessment. *Id.* at 106.

When the defendant attempted to revise the assessment, the Tax Tribunal determined that the error was a mistake in judgment – not a clerical error – and refused to adjust the value. *Id.* at 107. This Court examined the plain meaning of the term “clerical error” by looking to dictionary definitions and the context in which the term appeared in the statute:

Black's Law Dictionary (6th ed), p 252, defines “clerical error” as generally “a mistake in writing or copying.” See also Webster's Third New International Dictionary, Unabridged Edition (1966) p 421; Webster's New Twentieth Century Dictionary, Unabridged Edition (1983), p 338. Furthermore, reading the statute in context, the reference to a clerical error or mutual mistake is directly referenced to use of the correct assessment figures, the taxation rate, and the mathematical computation relating to the assessment of taxes. MCL 211.53b; MSA 7.97(2). Thus, the statute itself refers to errors of a typographical, transpositional, or mathematical nature. [*Int'l Place Apartments, supra* at 109.]

This Court correctly noted that reading the statute in context, the reference to a clerical error or mutual mistake is directly referenced to use of the correct assessment figures, the taxation rate, and the mathematical computation relating to the assessment of taxes. *Id.* This Court, however, held that in that particular case, the defendant's mistake “was not limited to merely recording a number incorrectly on the assessment rolls or performing a mathematical error in arriving at the final assessment figure.” *Id.* Instead, the original assessment was accurate in the sense that it was what the assessor intended to record. *Id.* The mistake, this Court reasoned, was the assessor's failure to “consider all relevant facts.” *Id.* So because the defendant was requesting a “reappraisal or reevaluation,” this Court determined that the Tax

Tribunal correctly held it did not have jurisdiction to correct the mistake under MCL 211.53b. *Id.*

The present case is distinguishable. Here, the parties did not request a reappraisal or reevaluation of the property. Defendant did not fail to consider the relevant facts; rather, defendant mistakenly failed to indicate on its tax rolls that plaintiff should be taxed at a levy seven level because of its location in a Renaissance Zone. Thus, defendant levied at an incorrect rate of taxation and later sought to correct the rate. The plain language of MCL 211.53b and our interpretation of the statute in *Int'l Place Apartments* allow the Tax Tribunal to correct “the taxation rate . . . relating to the assessment of taxes.” *Int'l Place Apartments, supra* at 109. Thus, defendant’s failure to list plaintiff’s taxation rate as a levy seven was a clerical error in the rate of taxation that the Tax Tribunal had jurisdiction to change. MCL 211.53b.¹

Therefore, we find that the Tax Tribunal erred in its application of *Int'l Place Apartments*. Accordingly, we conclude that the tribunal’s finding that there was no clerical error was not supported by competent, material, and substantial evidence on the record. Thus, the tribunal’s order must be set aside. See *Danse Corp, supra* at 178; *Michigan Bell, supra* at 476.²

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Hilda R. Gage
/s/ Helene N. White
/s/ Jessica R. Cooper

¹ We note the Tax Tribunal’s decision in *Reaves-Prater v City of Detroit*, MTT Docket No 290083, entered May 15, 2002, which presented facts almost identical to the present case. In that case, the tribunal entered a stipulation and consent judgment, worded almost identically to that in the present case, finding that the order was necessary to “correct a mutual mistake of fact or clerical error.”

² We note that on appeal, the parties also argue that the Tax Tribunal erred in finding defendant’s motion for reconsideration untimely. However, there is no question regarding the timeliness of defendant’s appeal to this Court, as defendant’s appeal to this Court was filed within twenty-one days of the denial of its post-judgment motion, and the post-judgment motion was filed within the initial twenty-one-day appeal period required by this Court. See MCR 7.204. Further, in denying the motion for reconsideration, the tribunal fully addressed its decision to deny entry of the consent judgment. Therefore, we make no determination with regard to the timeliness of the motion for reconsideration in the tribunal.