TAX COURT OF NEW JERSEY

Kathi F. Fiamingo
Judge

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NOT FOR PUBLICATION WITHOUT APPROVAL OF
THE TAX COURT COMMITTEE ON OPINIONS

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Re: Borough of Bergenfield v. Simon & Rada Itskov
Docket Nos. 018778-2013

Counsel:

This letter constitutes the court's opinion after trial in the above-referenced matter challenging the judgement of the Bergen County Board of Taxation reducing the 2013 tax year assessment on plaintiff's single-family duplex style property. The plaintiff has failed to meet its burden of persuading the court that the judgement of the Bergen County Board of Taxation is erroneous. The complaint is dismissed and the judgment of the Bergen County Board of Taxation is affirmed.

I. Procedural History and Factual Findings

The court makes the following findings of fact and conclusions of law based on the evidence and testimony offered at trial in this matter.

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The subject property is a single-family duplex style home located at 146 Grove Street, in the Borough of Bergenfield and consists of 1,644 square feet, with three bedrooms, two and one-half baths and a one-car garage. The property was built in 1983. The lot size is 7,442 square feet.

The property is identified on the tax map of the Borough of Bergenfield as Block 191, Lot 37.02 (the "subject property.") For the 2013 tax year the subject property was assessed as follows:

Land:	$ 150,800
Improvements	132,900
Total	$ 283,700

The average ratio of assessed to true value, commonly referred to as the Chapter 123 ratio, for the Borough of Bergenfield ("plaintiff") for the 2013 tax year was 99.66. When the average ratio is applied to the assessment, the implied equalized value of the subject property was $284,668.

Defendant timely appealed the assessment to the Bergen County Tax Board ("BCTB") which reduced the assessment to $265,800. Again applying the ratio to the BCTB judgment, the implied equalized value of the subject property was $266,707. [1]

Plaintiff appealed the BCTB judgment. The defendant did not file a Counterclaim. The matter was tried to conclusion before this court. At trial, plaintiff offered the testimony of a State of New Jersey certified general real estate appraiser, who was accepted without objection as an expert in the field of real estate valuation (the "plaintiff's expert.") Defendant did not offer the testimony of an expert or any fact witness.

Plaintiff's expert employed the comparable sales approach to value the property and reached an opinion of value of $300,000.

[1] See, N.J.S.A. 54:3-22(d) - "If the average ratio is below the county percentage level and the ratio of the assessed value of the subject property to its true value exceeds the county percentage level, the county board of taxation shall reduce the taxable value of the property by applying the average ratio to the true value of the property."

II. Plaintiff's Valuation Evidence

Plaintiff's expert examined four comparable sales: two duplex style single-family homes located in the Borough and two townhouse units located in the municipality of New Milford.

Comparable Sale One was a duplex style single-family home located at 330 East Main Street, Bergenfield, containing 1,744 square feet with three bedrooms and two and one-half baths and a one-car garage. It contained an unfinished basement of 824 square feet and a fireplace. The property is located on a lot containing 5,000 square feet. It was built in 1983 and sold on April 23, 2012 for $275,000. The expert made the following adjustments to Comparable Sale One:

Adjustment	Amount
Location – Traffic (5%)	$13,750
Lot Size ($4.50/SF)	$10,989
Condition/Quality (5%)	$13,750
Total Living Area ($50/SF)	($ 5,000)
Basement ($20/SF)	($16,480)
Fireplace ($5,000)	($ 5,000)
Total Adjustments	$12,009
Adjusted Sales Price	$287,000

Comparable Sale Two was a townhouse located at 9 Canterbury Lane, New Milford, containing 1,688 square feet. It featured two bedrooms and two and one-half baths with a two-car garage. It was built in 1986 and had a 371 square foot finished basement, a deck and fireplace. It sold on May 9, 2012 for $303,000. The following adjustments were made by the expert:

Adjustment	Amount
Style (Townshouse) (5%)	$15,150
Condition/Quality (5%)	$15,150
Total Living Area ($50/SF)	($ 2,200)
Basement ($20/SF)	($ 7,420)
Basement Finish ($10/SF)	($ 3,710)
Garage ($5,000)	($ 5,000)
Fireplace ($5,000)	($ 5,000)
Total Adjustments	$ 6,970
Adjusted Sales Price	$310,000

Comparable Sale Three was a townhouse located at 58 Canterbury Lane, New Milford, containing 1,688 square feet. It featured two bedrooms and two and one-half baths with a two-car garage. It was built in 1986 and had a 371 square foot finished basement, a deck and fireplace. It sold on July 29, 2011 for $315,000. The following adjustments were made by the expert:

Adjustment	Amount
Style (Townshouse) (5%)	$15,750
Condition/Quality (5%)	$15,750
Total Living Area ($50/SF)	($ 2,200)
Basement ($20/SF)	($ 7,420)
Basement Finish ($10/SF)	($ 3,710)
Garage ($5,000)	($ 5,000)
Fireplace ($5,000)	($ 5,000)
Total Adjustments	$8,170
Adjusted Sales Price	$323,200

Comparable Sale Four was a duplex style single-family home located at 147 Grove Street in the Borough, containing 1,644 square feet with three bedrooms and one and one-half baths, a one-car garage and a deck. The comparable sale had hot water baseboard heat (as compared to the hot water radiator heat at the subject property.) The property is located on a lot containing 5,008 square feet. It was built in 1983 and sold on June 30, 2010 for $294,000. Comparable Sale Four is located across the street from the subject property and was built by the same developer at the same time as the subject property. The expert made the following adjustments:

Adjustment	Amount
Lot Size ($4.50/SF)	$10,953
Condition/Quality (5%)	$14,700
Bathroom ($15,000)	$15,000
Deck ($2,000)	$ 2,000
Hot water BB heat ($5,000)	$ 5,000
Total Adjustments	$47,653
Adjusted Sales Price	$341,700

Based on the comparable sales, the expert concluded a fair market value for the subject property as of the valuation date of $300,000.

Plaintiff's expert testified that he deemed the location of Comparable Sale One inferior to that of the subject property because it was located on a busy street. He adjusted by making a 5% adjustment, which he believed was reasonable based on his experience and expertise. He noted that the revaluation company made a 10% adjustment on the property record card to account for traffic, but he believed that 5% was reasonable. He had no paired sales analysis or other documentation upon which he based his adjustment.

The lot size adjustment was based on a land extraction study which the plaintiff's expert testified he conducted but which was not included in his report ansd about which no specifics were provided.

Plaintiff's expert testified that he did no interior inspections of the subject property or any of the comparable sale properties, however, he deemed a 5% condition adjustment was required for each comparable sale's inferior condition. His determination of condition was based solely on an exterior inspection of each of the properties and a review of the property record cards. The expert testified that his adjustment of 5% was based on a "paired sales" analysis, the specifics of which were not disclosed.

The expert further testified that he made a 5% adjustment to Comparable Sales Two and Three to account for the fact that they were a townhouse "style" of ownership as compared to the subject property's style of ownership. He testified that he believed the townhouse style of ownership was inferior to that of the duplex ownership and thus he made a 5% downward adjustment. The expert provided no documentation to support the conclusion that Townhouse ownership is inferior to the ownership of a duplex style home or the amount of the adjustment.

On cross examination the expert indicated that both Comparable Sales Two and Three were located in the same Townhouse development, but he did not have any information regarding the terms of ownership of the Homeowner's Associations or the overall size of the development. He noted that each unit was in a building containing 6 townhouse units. He indicated that he believed the adjustment was required because Comparable Sales Two and Three did not have the same amenities as the subject property which was located on a private lot. Comparable Sales Two and Three, being part of a townhouse development, were part of a large tract with common elements which were shared with other units in the complex. Due to the paucity of sales of duplex properties in Bergenfield, he utilized the townhouse sales to make comparisons.

The expert testified that he made adjustments for the amenities of the basement finishes, bathrooms and living area based upon Marshall & Swift cost tables, which were included in his report. In doing the Marshall & Swift comparisons he deemed the subject property to be of average construction. He testified that the Marshall & Swift cost estimates and an "extraction study" he conducted suggested an adjustment in excess of $50 per square foot for gross living area, however, because the subject property was a "duplex" style of home, he believed that the lesser amount of $50 per square foot was reasonable. The expert did not provide any information regarding the extraction study or any explanation of why a reduction was necessitated because of the duplex style of the subject property, or how he determined the amount of that reduction.

On cross examination, it was revealed the Comparable Sale Four was marked "NU 26", meaning that the Assessor had determined that the sale was not an arms-length transaction and should not be included in the Director's ratio. The expert testified that he deemed the sale usable after reviewing the MLS, the deed and confirming the transaction with the assessor. However, he did not confirm the details of the transaction with any of the participants.

While acknowledging that the sale was somewhat remote in time, having occurred more than two years before the valuation date, and was marked NU 26, nonetheless he felt that the sale was usable.

Cross examination further revealed that the property record card reflected that Comparable Sale Four had two full and one-half baths and that the adjustment made for baths was in error. As a result, the adjusted value for Comparable Sale Four was corrected by the expert to $326,700.

Despite the fact that Comparable Sale Four was built at the same time and by the same builder as the subject property, the expert deemed its condition inferior to that of the subject property. He could not recall specifically why he deemed Comparable Sale Four was in inferior condition to the subject property. Effective cross examination revealed that the MLS did not support the classification of Comparable Sales One or Two as inferior to the subject property.

II. Conclusions of Law

At the close of the plaintiff's case, defendant made a motion to dismiss under R. 4:37-2(b), for plaintiff's failure to overcome the presumption of correctness.

When confronted with a motion under R. 4:37-2(b), the court must be mindful of the principle that "original assessments and judgments of county boards of taxation are entitled to a presumption of validity." MSGW Real Estate Fund, LLC v. Borough of Mountain Lakes, 18 N.J. Tax 364, 373 (Tax 1998). The presumption "attaches to the quantum of the tax assessment. Based on this presumption, the appealing taxpayer has the burden of proving that the assessment is erroneous." Pantasote Co. v Passaic, 100 N.J. 408, 413 (citing Riverview Gardens v. North Arlington Borough, 9 N.J. 167, 174 (1952)). The "presumption is not simply an evidentiary presumption serving only as a mechanism to allocate the burden of proof. It is, rather, a construct that expresses the view that in tax matters, it is to be presumed that governmental authority has

been exercised correctly and in accordance with law." MSGW Real Estate Fund, LLC, supra, 18 N.J. Tax at 374 (citing Powder Mill, I Assocs. v. Hamilton Township, 3 N.J. Tax 439 (Tax 1981)). "The presumption of correctness…stands, until sufficient competent evidence to the contrary is adduced." Little Egg Harbor Township v. Bonsangue, 316 N.J. Super. 271, 285-86 (App. Div. 1998). A taxpayer can only rebut the presumption by introducing "cogent evidence" of true value. That is, evidence "definite, positive and certain in quality and quantity." MSGW Real Estate Fund, LLC, supra, 18 N.J. Tax at 413 (quoting Aetna Life Ins. Co. v. Newark, 10 N.J. 99 (1952)). Therefore, at the close of plaintiffs' proofs, the court must be presented with evidence which raises a "debatable question as to the validity of the assessment." MSGW Real Estate Fund, LLC, supra, 18 N.J. Tax at 376.

The court, in evaluating whether the evidence presented meets the "cogent evidence" standard, "must accept such evidence as true and accord the plaintiff all legitimate inferences which can be deduced from the evidence." Id. at 376 (citing Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520 (1995)). However, the evidence presented, when viewed under the Brill standard "must be 'sufficient to determine the value of the property under appeal, thereby establishing the existence of a debatable question as to the correctness of the assessment.'" West Colonial Enters, LLC v. City of East Orange, 20 N.J. Tax 576, 579 (Tax 2003)(quoting Lenal Props., Inc. v. City of Jersey City, 18 N.J. Tax 405, 408 (Tax 1999), aff'd, 18 N.J. Tax 658 (App. Div. 2000), certif. denied, 165 N.J. 488 (2000)).

Based on those standards, the court finds that plaintiff's expert provided evidence sufficient to overcome the presumption of correctness.

Accepting such evidence as true, and according plaintiff all legitimate inferences which can be deduced therefrom, a debatable question existed as to the correctness of the 2013 tax year

assessment on the subject property. MSGW Real Estate Fund, LLC v. Borough of Mountain Lakes, 18 N.J. Tax 364, 376 (Tax 1998). The expert's opinion of value was based on a comparable sales analysis, which is an accepted approach to valuing single-family homes. Plaintiff's expert relied on the sale of four comparable sales, examined public tax records, and applied several adjustments to each comparable sale, in order to reach an opinion of value for the subject property. Plaintiff's evidence was "sufficient to determine the value of the property under appeal, thereby establishing the existence of a debatable question as to the correctness of the assessment." Lenal Props., Inc. v. City of Jersey City, 18 N.J. Tax 405, 408 (Tax 1999), aff'd, 18 N.J. Tax 658 (App. Div. 2004), certif. denied, 165 N.J. 488 (2000). Hence, the defendant's motion to dismiss is denied.

However, concluding the presumption of validity has been overcome does not equate to a finding by the court that the judgment is erroneous. Once the presumption is overcome, "the court must then turn to a consideration of the evidence adduced on behalf of both parties and conclude the matter based on a fair preponderance of the evidence." Ford Motor Co. v. Township of Edison, 127 N.J. 290, 312 (1992). The plaintiff continues to bear the burden of persuading the court that the "judgment under review" is erroneous. Id. at 314 – 15.

For an expert's testimony to be of any value to the trier of fact, it must have a proper foundation. See Peer v. City of Newark, 71 N.J. Super. 12, 21 (App. Div. 1961), certif. denied, 36 N.J. 300 (1962). When "an expert offers an opinion without providing specific underlying reasons . . . he ceases to be an aid to the trier of fact." Jimenez v. GNOC, Corp., 286 N.J. Super. 533, 540 (App. Div. 1996). An expert witness is required to "give the why and wherefore of his expert opinion, not just a mere conclusion." Ibid. The weight to be afforded an expert's testimony relative to adjustments "depends upon the facts and reasoning which form the basis of the opinion.

An expert's conclusion can rise no higher than the data providing the foundation (citation omitted). If the bases for the adjustments are not made evident the court cannot extrapolate value." Inmar Associates v. Edison Township, 2 N.J. Tax 59, 66 (Tax 1980). "Without explanation as to the basis, the opinion of the expert is entitled to little weight in this regard." Dworman v. Tinton Falls, 1 N.J. Tax 445, 458 (Tax 1980) (citing to Passaic v. Gera Mills, 55 N.J. Super. 73 (App. Div. 1959), certif. denied, 30 N.J. 153 (1959)).

Accordingly, the court will evaluate and weigh the evidence presented to determine if the plaintiff has met the requisite burden of persuading a change in the assessment.

Plaintiff's expert's use of Comparable Sale Four is rejected. This sale was identified as "NU-26" for purposes of the Director of the Division of Taxation's annual assessment-sales ratio study. This designation applies to "[s]ales which for some reason other than specified in the enumerated categories [in prior subsections of N.J.A.C. 18:12-1.1] are not deemed to be a transaction between a willing buyer, not compelled to buy, and a willing seller, not compelled to sell." N.J.A.C. 18:12-1.1(a)(26). A transaction classified as non-usable may be considered "if after full investigation it clearly appears that the transaction was a sale between a willing buyer, not compelled to buy, and a willing seller, not compelled to sell, and that it meets all other requisites of a usable sale." N.J.A.C. 18:12-1.1(b). See Pepperidge Tree Realty Corp. v. Kinnelon Borough, 21 N.J. Tax 57, 67 (Tax 2003). Although the regulation does not result in the exclusion of the sale as evidence of true market value, it causes the court to pause and consider the terms and conditions of the sale. The court is obligated to evaluate the terms of sale of each property offered as evidence of market value, to ascertain if it was influenced by other conditions. "It is for the court to appraise the circumstances surrounding a sale to determine if there were special factors which affected the sale price without affecting the true value." Glen Wall Associates v. Township

of Wall, 99 N.J. 265, 282 (1985). See Whippany Assoc. v. Hanover Township, 1 N.J. Tax 325, 330 (Tax 1980); Ewing Township v. Suburban Square Associates, 7 N.J. Tax 263, 267 (Tax 1985); American Cyanamid Co. v. Wayne Township, 17 N.J. Tax 542, 580 (App. Div. 2000); AT&T Corp. v. Township of Morris, 19 N.J. Tax 319, 324 (Tax 2000).

Here, the expert testified that although Comparable Sale Four was deemed non-usable, he was of the opinion that it was a bona fide, arms-length transaction. The expert testified that he did not confirm the details of the transaction with any of the participants although he did place a call to the listing broker, who did not return his call. He based his conclusion that the transaction was arms-length transaction because the days on market indicated that it was adequately exposed to the market and the sales price was within $5,000 of the listing price and it didn't appear that there was any duress in the sale. He further testified that he spoke to the assessor about his NU-26 designation but that the assessor could not recall why he had marked it non-usable.

Although the expert concluded that the property had been adequately exposed to the market, he did not provide the court with any factual support or information concerning the property's exposure to the marketplace. Plaintiff's expert only offered the court his bare conclusion that Comparable Sale Four was adequately marketed. Furthermore, while the expert indicated that the sale price was within $5,000 of the listing price, indicating that there was no distress, there was no testimony that the listing price reflected fair market value such that the listing price held no element of distress or duress. Since the expert did not discuss the terms of the transactions with any of the participants, the motivations of the parties to the transaction are not known. The assessor marked the transaction unusable, yet was unable to provide any support for this designation. The court is not convinced that the transaction was an arms-length transaction

and is unable to conclusively establish if Comparable Sale Four reflected the true market value of the property. Thus Comparable Sale Four is rejected.

As to Comparable Sales Two and Three, plaintiff's expert provided no information on the homeowner's association of which these properties were a part, including what common elements may have existed. The court is unable to assess whether the ownership interests in the subject property, a duplex, are so similar to those of an ownership interest in a townhouse such that the comparison is appropriate. Although a duplex and a townhouse have the similarity of a shared common wall, there are substantial and distinct differences between the ownership rights (and obligations) between the two types of ownership, none of which were put before the court. Indeed, the expert acknowledged that there was a fundamental difference in the manner of ownership when he made an adjustment based on the "style" of ownership, however, he provided no objective basis for the amount of the adjustment (5%), or for his conclusion that the townhouse form of ownership was inferior to single-family style of ownership. Thus, Comparable Sales Two and Three are rejected.

There then remains Comparable Sale One. The court finds that the expert's adjustment to Comparable Sale One for location, based on traffic, lacks sufficient support and therefore is lacking in credibility. The expert acknowledged that the adjustment was based solely on his experience and expertise. There was no paired sales analysis or other factual basis to support the adjustment or the amount thereof.

Plaintiff's expert lot adjustment was based on a land extraction study which was not made a part of his report or his testimony. The court is unable to assess the credibility of the adjustment. Plaintiff's expert's adjustments based on condition are suspect because plaintiff's expert did not inspect the subject property. While he indicated that the condition adjustment was based on his

review of the MLS, the property record card and his "drive-by" inspection, cross examination revealed that the MLS did not support this conclusion. Furthermore, the expert testified that the amount of the adjustment, at 5%, was based on a paired sales analysis which, was not made a part of his report or his testimony.

In making the living area adjustment, the expert testified that the adjustment was supported by his extraction study and an analysis based on the Marshall & Swift cost estimates. The extraction study was not made part of the report or his testimony and thus the factual support thereof is not before the court. On cross examination, the expert acknowledged that the amount of the adjustment actually used by him was approximately 1/3 less than that supported by the Marshall & Swift cost calculator. He indicated that he believed that because the subject was a duplex, the living area adjustments should be slightly lower. He did not explain why this should be the case and did not provide any factual support for that conclusion.

Thus, the court is without any objective evidence to support the location, condition or living area adjustments and they are rejected. If the court accepts the remaining adjustments of ($16,480) for the finished basement and ($5,000) for the fireplace at Comparable Sale One, the adjusted sales price is $253,520. However, the court is hesitant to rely on a single sale as a basis to determine the value of the subject property, especially where, as here, the court has rejected fairly significant adjustments that plaintiff's expert deemed necessary for comparable sales purposes.

The court is mindful of its obligation to use its knowledge and expertise, in conjunction with the valuation data submitted in an effort to ascertain an appropriate value for the subject property. That value and tax assessment can only be deduced, however, when there is competent

evidence in the record to support that determination. The court finds that it does not have sufficient and competent evidence upon which to determine the value of the subject property.

III. Conclusion

The complaint is dismissed and the judgment of the BCBT is affirmed.

Very truly yours,

Kathi F. Fiamingo, J.T.C.