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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY

Mala Narayanan
JUDGE

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December 24, 2012

BY E-MAIL AND FIRST-CLASS MAIL
Matthew S. R. Tuck, Pro-Se
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Re: Matthew Tuck v. Township of West Caldwell
Block 3307 Lot 4
Docket No. 012017-2011

Dear Mr. Tuck and Counsel:

This is the court's opinion in connection with plaintiff's email of November 2, 2012, treated as a timely, but deficient, motion for reconsideration of this court's judgment dated October 12, 2012. For reasons more fully explained below, plaintiff's motion is denied.

PROCEDURAL HISTORY

Plaintiff owns real property located in defendant township ("West Caldwell"). The property ("Subject") is designated as Block 3307, Lot 4, with a street address of 325 Passaic Avenue, West Caldwell. For tax year 2011, pursuant to a revaluation, West

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Caldwell assessed the Subject at $609,500 (for land and improvements). Plaintiff appealed to the Essex County Board of Taxation ("County Board"). The County Board reduced the assessment to $580,000 (for land and improvements).

On or about July 25, 2011, plaintiff timely appealed to the Tax Court maintaining that the assessment should further lowered. West Caldwell timely counterclaimed, claiming that the original assessment of $609,500 was deficient.

At trial, plaintiff provided three comparable sales in close physical proximity to the Subject, and to which he made several adjustments. After considering the extensive adjustments made to the comparable sales, in addition to the lack of market data, this court rejected the comparables. The court also rejected West Caldwell's expert's three comparable sales as being of little probative value. As both parties failed to provide probative evidence of the Subject's value or that the County Board's judgment was incorrect, the Clerk of the Tax Court was directed to enter a judgment affirming the County Board's determination. The court's opinion in this regard was dated August 10, 2012, and was sent to both parties by e-mail and first-class mail.[1] The Tax Court Clerk entered a judgment on October 12, 2012.

On November 2, 2012, this court received an e-mail from plaintiff seeking reconsideration of this court's judgment and stating reasons to support his position. That e-mail also noted that plaintiff received the judgment "9 days ago." Plaintiff did not copy his adversary on the e-mail.

On November 20, 2012, plaintiff requested the court for a status of his reconsideration motion because he was concerned that he may miss the 45-day deadline

[1] Thereafter, several e-mail exchanges occurred between the court and plaintiff addressing plaintiff's claim that he never received the court's mailed opinion.

for filing an appeal to the Appellate Division of the New Jersey Superior Court. Plaintiff did not copy his adversary on this e-mail.

By email of November 26, 2012, the undersigned Judge's Law Clerk then responded to plaintiff stating that the e-mail:

> [did] not comply with the general motion filing rule (Rule 1:6-2(a), such as a Notice of Motion and a form of proposed Order), but more importantly, does not appear to have been copied or served upon the attorney for your adversary, the Township of West Caldwell.
>
> Under the circumstances, the court will deem your e-mail of November 2, 2012 as a timely, but defective motion, for reconsideration.
>
> Please cure the defect by promptly serving your email of November 2, 2012 upon your adversary no later than November 30, 2012, so that your adversary has an opportunity to respond to your contentions.
>
> . . .
>
> . . . Other than your response to West Caldwell's opposition, no other e-mails or papers can be filed unless you seek permission to do so.

The court also set December 21, 2012 as a return date for plaintiff's motion. Plaintiff promptly, by e-mail of November 26, 2012, "served" West Caldwell by forwarding his November 2, 2012 email to his adversary. West Caldwell duly opposed the motion on grounds of it being untimely, as well as because it has no substantive merits.

CONCLUSIONS OF LAW

A. Standards for Reconsideration

A motion for rehearing or reconsideration is governed by R. 4:49-2. See also R. 8:10 (R. 4:49-2 applies to Tax Court matters). The rule requires that a formal motion be served not later than twenty (20) days after service of the judgment or order. The rule also requires that the motion "state with specificity the basis on which it is made, including a statement of the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred." Ibid.

A motion for rehearing or reconsideration is granted sparingly. Thus, such a motion will be granted "only for those cases which fall into that narrow corridor in which either, (1) the Court has expressed its decision based upon a palpably incorrect or irrational basis, or (2) it is obvious that the Court either did not consider, or failed to appreciate the significance of probative, competent evidence . . . ." D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Despite this restrictive scope, a court may, "in the interest of justice" consider any "evidence" that the litigant claims is "new or additional . . . which it could not have provided" during the initial hearing. Id. at 401.

Nonetheless, consideration of a motion is at the court's "sound discretion." Ibid. "[R]epetitive bites at the apple" should not be tolerated or "the core will swiftly sour." Ibid. Therefore, a court should "be sensitive and scrupulous in its analysis of the issues in a motion for reconsideration." Id. at 402. In this connection, the movant must "initially" show that the trial court "acted in an arbitrary, capricious, or unreasonable manner, before the Court should engage in the actual reconsideration process. Id. at 401.

B. Timeliness of Plaintiff's Motion

The court rejects west Caldwell's argument that plaintiff's motion was untimely. West Caldwell claims that since plaintiff's motion is more than three months after this court's "final judgment" which was contained in the court's opinion of August 10, 2012.

However, the court's opinion affirmed the judgment of the County Board and directed the clerk of the Tax Court to enter a judgment in this regard. The court did not issue or enter a separate Order in this regard. The Tax Court's clerk entered a judgment on October 12, 2012.

Plaintiff moved for reconsideration on November 2, 2012, which was nine days after he had received the judgment. Although the motion did not comply with the formalities of the Court Rule, the court deemed it timely because it was within 20 days "after service of the judgment" under R. 4:49-2.

C. Grounds for Reconsideration

Plaintiff's November 2, 2012 email seeks reconsideration of this court's August 10, 2012 opinion on the grounds of three alleged mistakes. However, none of them establish that the court's decision was arbitrary, capricious or irrational.

Plaintiff's first contention is that his "comparable sales analysis shows that his property is overvalued and cannot be disputed," and the court should simply have deleted the adjustments it had deemed to be questionable. This, per plaintiff, would result in the "comparable sales vale" of the Subject lower than the assessed value.

However, the "error" plaintiff attributes to the court is no more than a disagreement with this court's conclusions on why it deemed plaintiff's various adjustments to his comparable sales as not probative of the Subject's value. Plaintiff does not provide any new facts which were not in his possession before or during trial and thus, not presented to this court with respect to these adjustments. Nor has he shown that the court's rejection of the adjustments was arbitrary or irrational. Plaintiff's suggestion of how this court could have dealt with the comparable sales (i.e. by just "remov[ing]" the same) simply shows his disagreement of this court's decision as to why plaintiff's evidence was not probative, thus, his recourse is to appeal the court's decision to the Appellate Division.

Further, plaintiff's support for his argument lies in attacking West Caldwell's comparables as being locationally distant from the Subject, whereas his comparables were in much closer proximity. However, this is irrelevant. First, plaintiff has the burden of overcoming the presumptive correctness of an assessment by sufficient competent and probative evidence. The usefulness or otherwise of West Caldwell's comparables does not detract from his burden of proof. Second, the court did not give weight to West Caldwell's comparables in affirming the judgment of the County Board of Taxation.[2] Third, the court found that a comparable sale's proximity to the Subject is only one of many factors considered in a sales comparison analysis.[3]

Plaintiff's next argument is that this court factually erred in stating that he has occupied the Subject for "the last eighteen years or so" as stated in the opinion, and legally erred by using this fact to reject his request for a reduced assessment due to the Subject's proximity to a sewage plant. He also argues that regardless of his period of residency, his assessment was incorrect because all other properties "in [his] [b]lock are valued at more than $100,000 less than" the Subject which also had the smallest lot in the block.

However, even if plaintiff resided in the Subject for some period less than the 18 years, the error is irrelevant to the issue before the court: the fair market value of the Subject as of October 1, 2010. The court found that the plaintiff did not provide any market evidence or other proof to show that the "noxious smell" from the waste treatment

[2] The court noted that two of West Caldwell's comparables were in neighborhoods with "a higher socioeconomic stature and thus, the comparables were in an upscale residential neighborhood as compared to the Subject's." As such, the extensive adjustments made to the comparables rendered them to be of "questionable probative value"

[3] Citing to Appraisal Institute, The Appraisal of Real Estate, 301-02 (13th ed. 2008), the court's opinion noted that "comparable properties should be sought in a competitive market by considering" factors such as "property type, date of sale, size, physical condition, location, and land use constraints."

plant rendered the Subject uninhabitable. In this present motion, plaintiff has not provided any new or additional proof in this regard which was unavailable before or during trial, nor does he point to any controlling legal decisions the court overlooked in this regard.

Similarly, his contention that the other properties in his block are assessed at a much lower value than the Subject, does not merit reconsideration. Again, the court is not presented with any new or additional facts which it did not have during trial. Nor does plaintiff show whether, or how, the court ignored the controlling law in this aspect.

Plaintiff's final contention for reconsideration is that the court erred in calculating the Subject's gross livable area ("GLA"). He argues that the court's opinion stating that the Subject has stone walls only on the first floor, and not on the second, is incorrect factually, and the court's conclusion that the Subject's GLA should be calculated by measuring the Subject's exterior perimeter rather than measuring the interior perimeter is legally wrong. Again, whether or not the walls on each floor of the house are made of stone, or that the Subject's stone walls extend throughout the residence, does not change the court's legal analysis from that stated in its opinion, namely, that measuring the Subject from the outside perimeter is the generally accepted appraisal practice and method of calculating GLA, which achieves uniformity and consistency. The court used testimonial evidence and even considered plaintiff's e-mail argument (which was made after the trial was completed and without seeking permission from the court to supplement the record) in reaching its conclusion. Any disagreement plaintiff has with the court's analysis is not a reason for this court to re-visit its opinion because plaintiff is essentially presenting the same arguments as he had during and after trial.

Plaintiff's motion for reconsideration is nothing more than a repetition of their arguments already proffered to and considered by this court. He has not provided this court with any "controlling decisions which [he] believes the court has overlooked or as to which it has erred" pursuant to R. 4:49-2. Reconsideration is not to be used to "expand the record and reargue a motion." Capital Fin. Co. of Delaware Valley, Inc. v. Asterbadi, 398 N.J. Super. 299, 310 (App. Div.), certif. denied, 195 N.J. 521 (2008). Plaintiff's disagreement with this court's decision is not grounds for this court to reverse itself via reconsideration. As aptly pointed out:

> [a] litigant should not seek reconsideration merely because of dissatisfaction with a decision of the Court. Rather, the preferred course to be followed when one is disappointed with a judicial determination is to seek relief by means of either a motion for leave to appeal or, if the Order is final, by a notice of appeal.
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> [D'Atria, supra, 242 N.J. Super., at 401]

In sum, plaintiff has not met the standards of R. 4:49-2. The court finds no grounds on which to reconsider, amend or vacate the October 12, 2012 judgment. Therefore, plaintiff's motion for reconsideration is denied.

An Order and Final Judgment denying plaintiff's motion for reconsideration is enclosed.

Very truly yours

Mala Narayanan, J.T.C.