[J-162-2001]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

JEANNETTE F. GRONER AND WIESLAW T. NIEMOCZYNSKI,	:	No. 91 MAP 2001
Appellees	:	Appeal from the Order of the Commonwealth Court entered 12-8-2000 at No. 836 CD 2000, affirming the Order of the Court of Common Pleas of Monroe County, Civil Division, entered 03-13-2000 at No. 7456 CV 1998.
v.	:	
MONROE COUNTY BOARD OF ASSESSMENT APPEALS,	:	SUBMITTED: November 14, 2001
Appellant	:	

OPINION

MR. JUSTICE EAKIN **Decided: August 22, 2002**

The Monroe County Board of Assessment Appeals contests the Commonwealth Court order affirming the trial court's reversal of the increased assessment of appellees' premises. We granted allowance of appeal to determine whether the Tax Assessor's actions constituted an illegal spot reassessment.

Groner owns a commercial property in Stroudsburg, Monroe County. Niemoczynski's lease with Groner obligates him to pay real estate taxes on the property. In February 1998, appellees converted the premises from a women's apparel shop to a brokerage office; renovations of the first floor included removal of dressing rooms, storage rooms, counters, carpeting, lighting, shelving and hanging fixtures, plus rewiring and installation of partition walls to create three offices. The renovations cost about $58,000. Before the renovation, the property's fair market value was $136,200; its base assessment

was $18,000. Alerted by appellees' building permit, the Monroe County Tax Assessor raised the assessment value to $176,148, and notified appellees that the assessment had increased by 55%. Appellees appealed to the Board, which affirmed the assessor's determination. Appellees appealed to the trial court, which heard the matter de novo, granted the appeal, and reduced the property's fair market value and assessment to the prior amounts. The Commonwealth Court affirmed the decision of the learned trial court.

The Board asserts it had express statutory authorization to reassess appellees' property based on the cost of the renovations. Appellees counter the renovations were only cosmetic, converting the property from one use to another, but not increasing its value. They further assert the Tax Assessor viewed the grant of a building permit as an open door to investigate the renovations and engage in an illegal spot reassessment based on the value of the business within the property. A spot reassessment is "[t]he reassessment of a property or properties that is not conducted as part of a countywide revised reassessment and which creates, sustains or increases disproportionality among properties' assessed values." 72 P.S. § 5342.1.[1]

When reviewing tax assessment matters, we must determine whether the trial court abused its discretion, committed an error of law, or reached a conclusion not supported by substantial evidence. Westinghouse Electric Corp. v. Bd. of Assessment, 652 A.2d 1306, 1309 (Pa. 1995). When tax assessment appeals are heard before trial courts,

> [t]he procedure requires that the taxing authority first present its assessment record into evidence. Such presentation makes out a prima facie case for the validity of the assessment in the sense that it fixes the time when the burden of coming forward with evidence shifts to the taxpayer. If the taxpayer fails to respond with credible, relevant evidence, then the taxing

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[1] The definitions in § 5342.1 (relating to assessments in counties of the Second Class A and Third Class) apply to Monroe County, a county of the Fifth Class, under 72 P.S. § 5020-104 (providing for the application of the General County Assessment Law in all counties).

> body prevails. But once the taxpayer produces sufficient proof to overcome its initially allotted status, the prima facie significance of the Board's assessment figure has served its procedural purpose, and its value as an evidentiary device is ended. Thereafter, such record, of itself, loses the weight previously accorded to it and may not then influence the court's determination of the assessment's correctness.
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> [T]he taxpayer still carries the burden of persuading the court of the merits of his appeal, but that burden is not increased by the presence of the assessment record in evidence.
>
> Of course, the taxing authority always has the right to rebut the owner's evidence and in such a case the weight to be given to all the evidence is always for the court to determine. The taxing authority cannot, however, rely solely on its assessment record in the face of countervailing evidence unless it is willing to run the risk of having the owner's proof believed by the court.

Deitch Co. v. Bd. of Property Assessment, 209 A.2d 397, 402 (Pa. 1965) (citations omitted).[2]

The Board relied on § 602a of the Fourth to Eighth Class County Assessment Law in establishing its prima facie case, which provides:

> The board may change the assessed valuation on real property when (i) a parcel of land is divided and conveyed away in smaller parcels, or (ii) when the economy of the county or any portion thereof has depreciated or appreciated to such extent that real estate values generally in that area are affected, and (iii) when improvements are made to real property or existing improvements are removed from real property or are destroyed.

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[2] The dissent suggests "the taxpayers here simply failed to create an adequate record to rebut the taxing authority's prima facie case for reassessment." Slip Op., at 1 (Saylor, J., dissenting). If the taxing authority had been authorized to change the original assessment, then the dissent would be correct; once the taxing body established the new figure, the burden shifted to the taxpayer, and in the absence of evidence that the new firgure is wrong, the taxpayer loses. However, this assumes the taxing body was authorized to reassess in the first place. The Board cannot put an unauthorized reassessment figure into evidence and win simply because the taxpayer challenges the authority to reassess, rather than rebutting the new figure itself. Because these renovations do not constitute an improvement, the reassessment was not permissible; therefore, the taxpayers did not have to rebut the taxing authority's new figure.

> The painting of a building or the normal regular repairs to a building aggregating one thousand dollars ($1,000) or less in value annually shall not be deemed cause for a change in valuation.

72 P.S. § 5453.602a.[3]

The basis for the Board's prima facie case is the cost of the renovations. The Tax Assessor admits the building permit tipped him off to the possible need for a reassessment. He conceded at trial that none of the renovations changed the outer shell of the building, increased the heated square footage, or enhanced or changed any mechanical system. Nonetheless, because the cost of the renovations exceeded $1,000, appellant argues the property now falls within § 602a, such that failure to reassess would result in inequity because taxation within the county would no longer be uniform.

While § 602a specifically provides three circumstances when a property may be reassessed, this case focuses on whether the renovations to the building constitute "improvements."[4] If these renovations did not constitute "improvements," this was an impermissible reassessment.

Not every bit of work done to change a building constitutes an improvement. "Improvement" has been defined as a "permanent addition to or betterment of real property that enhances its capital value and that involves the expenditure of labor or money and is

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[3] This amount was increased to $2,500 by Act of October 11, 2000, P.L. 533, amending, 72 P.S. § 5453.602a.

[4] A reassessment is also permissible when a county-wide reassessment is undertaken or to correct a mathematical or clerical error. See Althouse v. County of Monroe, 633 A.2d 1267 (Pa. Cmwlth. 1993).

designed to make the property more useful or valuable as distinguished from ordinary repairs." Spahr-Alder Group v. Zoning Board of Adjustment of Pittsburgh, 581 A.2d 1002, 1004 (Pa. Cmwlth. 1990). Here, the renovations exceeded $1,000 set forth in § 602a, but that figure is a floor, not a ceiling. That is, costs under $1,000 annually "shall not" be the cause of revaluing the property. However, the statute does not say that expenses over $1,000 are improvements per se. Indeed, $1,000 in today's world might be consumed by common repairs such as replacing a water heater, air conditioner, or carpet, none of which enhance the capital value of a building.

We conclude the renovations completed by appellees do not constitute an improvement to the property; therefore, the Board did not have the authority to reassess the property under § 602a. We affirm the Commonwealth Court's order upholding the return of the property's fair market value and assessment to prior amounts.

Order affirmed.

Mr. Justice Saylor files a dissenting opinion in which Mr. Justice Nigro joins.