NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3437-05T1

JOHN M. SEWELL,

Plaintiff-Appellant,

v.

CITY OF MARGATE,

Defendant-Respondent.

Telephonically argued November 16, 2006 -
Decided January 22, 2007

Before Judges Skillman and Grall.

On appeal from the Tax Court of New Jersey,
Docket No. 5979-2005.

John M. Sewell, appellant, argued the cause
pro se.

Hank N. Rovillard argued the cause for
respondent (Rovillard & Blee, attorneys;
Mr. Rovillard, on the brief).

PER CURIAM

Plaintiff John M. Sewell appeals from a decision of the Tax Court increasing the assessed value of his real property. The final order was entered following a trial on a petition by Sewell and a cross-petition by the City of Margate for review of the assessment after it was approved by the Atlantic County

Board of Taxation. Because we are unable to determine whether the Tax Court determined that the evidence was adequate to overcome the presumption of validity that is afforded a tax assessment, we remand.

Sewell purchased the property at issue in 1991 for $40,000. In 2004, the City revalued all property for the 2005 tax year. The valuation date was October 1, 2004. Sewell's property, which includes an eighty-year-old, three-bedroom, two-bath, two-story residence of 1,990 square feet, was assessed at $360,000. Feeling aggrieved by the assessed valuation of his property, Sewell appealed to the Atlantic County Board of Taxation, as authorized by N.J.S.A. 54:3-21. The Board approved the assessed value. As authorized by N.J.S.A. 54:3-26b, Sewell sought review by the Tax Court and the City filed a cross-appeal.

The trial on the petition and cross-petition was conducted on December 21, 2005. Sewell submitted evidence of the price at which five properties that he deemed comparable to his had sold. The sale prices ranged between a high of $226,000 and a low of $152,500. Three of the properties were sold in 2000, one in 2001 and one in 2002. He also submitted evidence that under calculations used by the Federal Office of Housing Enterprise Oversight (FOHEO), his property would be valued at $79,423.63 or $198,757.64, depending upon whether the value was calculated

based on the date and price of purchase or the date and value of the last assessment.

At the conclusion of Sewell's case, the City moved to dismiss his petition on the ground that he had not provided sufficient competent evidence to overcome the presumption of validity. See R. 4:37-2(b). Viewing the evidence in the light most favorable to Sewell, the judge concluded that there was inadequate evidence of basis for the FOHEO calculation to permit him to rely upon that evidence. He found the evidence of comparable sales Sewell introduced unpersuasive because of the date of the sales and absence of any comparison between those properties and the Sewell property. The judge concluded that he "could not find evidence which is definite, positive, and certain as to quantity and quality to disturb the County Board judgment." Nonetheless, the judge denied the motion to dismiss on the ground that "if it is at all possible for a . . . factfinder[,] other than someone such as myself, to find that the property was over-assessed, no matter how flawed or faulty their reasoning," the law precludes dismissal of the case.

The City presented the testimony of a certified general appraiser, whom the judge accepted as a valuation expert. The expert valued Sewell's property at $410,000. Using a sales comparison approach to valuation, the expert identified five

comparable properties that were sold between March and December 2004. The highest sale price was $585,000; the lowest was $400,000. The expert placed greatest weight on the highest valued comparable property because it was adjacent to Sewell's lot. Sewell challenged the validity of any comparison between his home and the home of his neighbor on the ground that the neighbor had undertaken a substantial renovation and remodeling project before selling the property.

The judge rejected the expert's valuation to the extent that it was based on the property adjacent to Sewell's, but concluded that two of the comparable sales were sufficient to permit a determination of value. The judge accepted the expert's lowest comparable value, $385,710, and rounded that value to $385,700. This appeal followed.

Sewell challenges the property tax system in general, his initial assessment and the order increasing his assessment. Because the judge's decision on Sewell's petition for a reduction in his assessment is supported by the record and because Sewell's general challenges to the property tax system and assessments in Atlantic County lack sufficient merit to warrant discussion in a written opinion, Rule 2:11-3(e)(1)(A), (E), we address only Sewell's claim that the judge's decision to increase his assessment was arbitrary.

This court will not disturb the findings of the Tax Court unless they are "plainly arbitrary" because unsupported by the record or inconsistent with controlling legal principles. Lenal Props., Inc. v. Jersey City, 18 N.J. Tax 658, 660 (App. Div.) (quoting Glenpointe Assocs. v. Twp. of Teaneck, 241 N.J. Super. 37, 46 (App. Div.), certif. denied, 122 N.J. 391 (1990)), certif. denied, 165 N.J. 488 (2000); see, e.g., Twp. of Monroe v. Gasko, 182 N.J. 613 (2005).

While we give deference to the Tax Court's special expertise, it is well-settled that the court is required to afford the municipality's original tax assessment a presumption of validity. Pantasote Co. v. City of Passaic, 100 N.J. 408, 412 (1985). "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. The presumption in favor of the taxing authority can be rebutted only by cogent evidence . . . ." Id. at 413 (internal citations omitted). In order to overcome the presumption, the "evidence must be 'definite, positive and certain in quality and quantity to overcome the presumption.'" Ibid. (quoting Aetna Life Ins. Co. v. Newark, 10 N.J. 99, 105 (1952)). "[T]he presumption is not simply an evidentiary presumption serving only as a mechanism to allocate the burden of proof. It . . . expresses

the view that in tax matters it is to be presumed that governmental authority has been exercised correctly and in accordance with law." Ibid.

Because an assessment is presumed valid, it is necessary for the Tax Court to determine true value "[o]nly if it finds that the presumption has been overcome by cogent evidence, or there are sufficient collateral grounds, such as an assessment totally unrelated to true value or one derived from a patently arbitrary and capricious assessment methodology . . . ." Id. at 417. Even where the Tax Court denies a motion to dismiss at the close of the plaintiff's case, the plaintiff, "[l]ike the plaintiff in a jury trial whose proofs are sufficient to withstand a motion to dismiss, see Rule 4:37-2(b), . . . still [must] persuade the factfinder to accept its proofs." Ford Motor Co. v. Twp. of Edison, 127 N.J. 290, 314-15 (1992) (noting that even when the presumption is overcome "at the close of plaintiff's case-in-chief, the burden of proof remain[s] on the taxpayer throughout the entire case"). "When an original assessment is unreliable, the Tax Court may not invoke its presumptive correctness and must establish value . . . ." Id. at 313. But, when a judge concludes, based on all of the evidence, that the assessment was not "so far removed from the putative true value of the property" to lose its "protective

presumption of validity," it is not error to impose the original assessment on determining that there is no "'strong indication . . . that the quantum of the assessment was far wide of the mark of true value . . . .'" Id. at 314 (quoting Pantasote, supra, 100 N.J. at 414-15) (internal quotations omitted)).

In this case, the judge denied defendant's Rule 4:37-2(b) motion only because he concluded that he was required to do so when "it is at all possible for a . . . factfinder[,] other than someone such as myself, to find that the property was over-assessed, no matter how flawed or faulty their reasoning." Rule 4:37-2(b) requires a denial of a motion to dismiss, however, "if the evidence, together with the legitimate inferences therefrom, could sustain a judgment in plaintiff's favor." The question is whether a "rational," not an "irrational," factfinder who is properly instructed on the law could return a judgment in the favor of plaintiff. See Pitts v. Newark Bd. of Educ., 337 N.J. Super. 331, 340 (App. Div. 2001).

In this case, the judge did not find the evidence adequate to establish that the valuation set by the City and approved by the County was so wide of the mark as to warrant a judicial determination of value. The judge did not make that finding when denying defendant's motion to dismiss or at the close of the case. In the absence of such a finding the presumption of

validity was not overcome and the original assessment should not have been disturbed. Compare MSGW Real Estate Fund, LLC v. Mountain Lakes, 18 N.J. Tax 364 (1998) (suggesting, in dicta, that the denial of a motion pursuant to Rule 4:37-2(b) eradicates the presumption in every case) with Ford Motor Co., supra, 127 N.J. at 314 (discussed above).

Accordingly, we reverse and remand for entry of an order reinstating the original assessment.