FILED
MAR 22 1979
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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EQUITABLE LIFE INSURANCE COMPANY OF IOWA,

Appellant,

vs.

BOARD OF REVIEW OF THE CITY OF DES MOINES, IOWA,

Appellee.

Filed March 22, 1979

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2-58356

Appeal from Polk District Court - John N. Hughes, Judge.

Plaintiff appeals from trial court decree determining value of plaintiff's property for taxation purposes. AFFIRMED AS MODIFIED.

John R. Mackaman and F. Richard Lyford of Dickinson, Throckmorton, Parker, Mannheimer & Raife, Des Moines, Iowa, for appellant.

Jeffrey E. Lamson and Allan A. Herrick of Herrick, Langdon, Belin, Harris, Langdon & Helmick, Des Moines, Iowa, for appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Plaintiff appeals from trial court decree determining de novo the assessed value of plaintiff's property for taxation purposes. Said decree was entered in an appeal proceeding authorized by sections 441.38, 441.39, The Code, 1975, with respect to action of the board of review.

On appeal plaintiff contends there was error in the method employed by the board of review of the City of Des Moines in reviewing and affirming the determiantion of the city assessor with respect to the value of plaintiff's property. Plaintiff also argues the valuation issue de novo and urges that this court find contrary to the board of review and the trial court concerning the fair market value of plaintiff's property.

I. Section 441.39, The Code provides, with respect to an appeal from the action of a local board of review:

> The court shall hear the appeal in equity and determine anew all questions arising before the board which relate to the liability of the property to assessment or the amount thereof. The court shall consider all of the evidence and there shall be no presumption as to the correctness of the valuation of assessment appealed from.

On appeal from the district court in a proceeding initiated pursuant to sections 441.38, 441.39, the scope of review to be exercised by the appellate court is also de novo. Northwestern Mut. Life Ins. Co. v. Board of Review, 225 N.W.2d 317, 319 (Iowa 1975). Because the trial court made independent findings as to the value of plaintiff's property and we are obliged to do the same, procedural errors, if any, by the board of review are not material to the results in this litigation. We therefore decline to consider plaintiff's arguments with respect to such matters, and move directly to consideration of the evidence of the value of the subject property presented in the district court.

II. The real property which is the subject of this litigation is a 50-year old, 19-story office building in downtown Des Moines. It is locally known as The Equitable Building. In the trial court, three expert valuation witnesses testified in support of the board of review's January, 1975 assessment of $4,454,940. Their opinions of value for the property at this time were $5,000,000, $4,900,000 and $4,500,000, respectively. Three expert valuation witnesses testified for the plaintiff. Their opinions of value for the same property in January, 1975 were $3,200,000, $3,000,000, and $2,920,000, respectively. The issue to be determined from this testimony is the fair and reasonable market value of The Equitable Building in January of 1975.

While it has been stated that credibility of witnesses is an issue in appeals of this type (see Northwestern Mut. Life Ins. Co. v. Board of Review, 225 N.W.2d 317, 319 (Iowa 1975)), the credibility of an array of expert witnesses of the type involved in this controversy must be judged primarily by the reasons given in support of their respective opinions. As stated in Wilson-Sinclair Co. v. Griggs, 211 N.W.2d 133, 142 (Iowa 1973):

> The acceptance or rejection of opinion evidence does not depend upon the expert's abstract qualifications alone. Bernal v. Bernhardt, 180 N.W.2d 437 (Iowa 1970). Such an opinion must necessarily be tested by the specific facts upon which it is based, stated by the witness or presented in a hypothetical question. Albrecht v. Rausch, 193 N.W.2d 492 (Iowa 1972). We have said an expert's opinion rises no higher than the level of evidence and logic on which it is predicated. In re Springer's Estate, 252 Iowa 1220, 110 N.W.2d 380 (1961). Even if uncontroverted, expert opinion testimony is not binding on the trier of fact; it may be accepted in whole, in part, or not at all. Olson v. Katz, 201 N.W.2d 478 (Iowa 1972).

In applying these considerations to the present case, we arrive at a somewhat different result than the trial court, which affirmed a $4,454,940 assessment based upon its independent findings of fact.

Except for plaintiff's witnesses, Frahm and Work, all six valuation witnesses used all of the traditional methods to value the property. These are comparable property (here the main focus was on the 1969 sale of The Des Moines Building), the cost approach (replacement cost of the building minus accrued depreciation), and income approach (capitalization of income to arrive at what an investor would pay for the building to receive a certain rate of return on the investment). Frahm and Work employed only the cost and income approaches, because they claim there were no comparable sales available for analysis. Our analysis of the evidence leads to the conclusion that there is, in fact, insufficient evidence of comparable sales to be of assistance on the valuation of the subject property. We therefore decline to give much significance to opinions based on comparable sales. We also conclude (and neither party strongly suggests the contrary) that the cost approach does not provide a realistic basis for determining the present value of this 50-year old building. We are thus forced to rely primarily upon the income approach, as testified to by the various expert witnesses in reaching our result. While we have chosen this approach somewhat by a process of elimination, we affirmatively find, based upon the record, that a hypothetical buyer of The Equitable Building would primarily wish to know what value this office building would have to him for the generation of income.

Based upon the income approach to valuation, the board's witnesses derived valuations of $4,350,000, $4,300,000 and $4,300,000, respectively. Plaintiff's witnesses, using the same approach, arrived at valuations of $3,050,000, $2,920,000 and $2,857,000, respectively. Plaintiff asserts that if the valuation of the board's witnesses are accepted the resulting return to an investor (after taxes and mortgage payments based upon those valuations) is too low to result in a likely opportunity for a sale at this price. To some extent, the board's witnesses tacitly support this contention by assuming that a buyer would have to make a special use of a substantial portion of the building for its own purposes such as has been done by the present owner. While we reject plaintiff's legal argument that this evidence is improperly based on "special value" contrary to section 441.21, The Code (see Maytag Co. v. Partridge, 210 N.W.2d 584, 590-91 (Iowa 1973)), we do conclude that it is unpersuasive with respect to the factual issues we must decide.

Without discussing all of the factors and theories used by the various witnesses in ascribing a value to the building, we find the values of the board's witnesses to be too high. Their estimate of the occupancy rates appear to be unrealisticly high and their estimates of mortgage interest rates appear to be unrealisticly low. Moreover, even if their assumptions as to income and mortgage interest are accepted, these assumptions produce (when taxes are adjusted to the value assigned) an extremely low cash flow. Taken as a whole, we conclude that the evidence more nearly supports a fair and reasonable market value of $3,900,000 for The Equitable Building in January of 1975. We therefore adopt said value as our adjudication of the correct assessed value. The decree of the trial court is modified so as to reflect this assessment and to direct appropriate correction of the official record as prescribed by section 441.39, The Code.

AFFIRMED AS MODIFIED.