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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2262-09T1

TEALAND LIMITED PARTNERSHIP,

Plaintiff-Respondent,

v.

ENGLEWOOD CLIFFS BOROUGH,

Defendant-Appellant.

March 10, 2011

Argued November 1, 2010 - Decided

Before Judges Rodríguez, Grall and
C.L. Miniman.

On appeal from the Tax Court of New
Jersey, Docket Nos. 2093-2004, 4039-2005
and 0796-2006.

Steven D. Muhlstock argued the cause
for appellant (Gittleman, Muhlstock &
Chewcaskie, L.L.P., attorneys; Mr.
Muhlstock, on the brief).

Nathan P. Wolf argued the cause for respondent (Law Office of Nathan P. Wolf, L.L.C. and Raymond A. Koski & Associates, P.C., attorneys; Mr. Wolf and Raymond A. Koski, on the brief).

PER CURIAM

Defendant Englewood Cliffs Borough appeals an order of the Tax Court reducing the 2004, 2005 and 2006 tax assessments on a commercial property owned by plaintiff Tealand Limited Partnership and occupied by Lipton Tea. The Borough seeks a remand for recalculation. It claims error on one component — "cost new." According to the Borough, in that respect, the judge relied on a net opinion as to "cost new," failed to state factual findings and legal conclusions explaining why he deemed Tealand's expert superior to the Borough's, and, relying on that expert, reached a determination on "cost new" without "adequate, substantial or credible evidence."¹

Tealand's commercial property has an area slightly in excess of twenty-nine acres on which there are several connected buildings erected at various times, including offices, laboratories, a cafeteria, a company store, kitchens, a plant for production of "pilot" products and space occupied by corridors and areas needed for shipping, receiving and mechanicals. Amenities such as heating, air conditioning, floor covering and interior structure vary with the use of the space. For example, some sections are open office space divided only by modular partitions and others have enclosed offices.

The assessment Tealand challenged is \$74,285,000 for all three tax years. Tealand's expert, Anthony J. Rinaldi, appraised the property's total fair market value at about \$30,000,000 less for each of the three tax years — \$41,500,000, \$42,000,000 and \$43,000,000. He used a cost approach and lowered the value so derived by about \$2,000,000 based on a sales comparison approach. The Borough's expert, John F. Cattanach, also used a cost approach and reached a value about \$10,000,000 higher than the original assessments — \$83,220,000, \$91,589,000 and \$96,657,000. Cattanach considered the sales comparison and economic approaches, but unlike Rinaldi, he relied solely on the cost approach.

One component of the cost approach applied by both experts accounts for "cost new," and, as noted above, that is the component that underlies all of the claims raised by the Borough on this appeal. Relative to "cost new," there is a difference in excess of \$15,000,000 in the experts' appraisals. Cattanach used a "calculator cost" approach, and Rinaldi used a "segregated cost" method.

The following description of the method Rinaldi employed is found in a trial exhibit published by Marshall Valuation Service by Marshall & Swift, L.P. and introduced into evidence by the Borough.

The Segregated Cost method is designed to enable the appraiser to give separate consideration to all of the major construction assemblies or systems (groups or components) of a building with a minimum of time-consuming counting and measuring, and to systematically arrive at a reliable replacement cost in a reasonably short time.

Use of this method does require a greater degree of understanding of both building construction techniques and the overall cost relationships between occupancies, classes and quality levels, as well as the basic differences resulting from quantity, material grade or workmanship affecting each component's rating range.

The costs of many parts of a building, such as floor, ceiling and lighting, change directly as the floor area of the

building increases. Other building costs vary with relation to parameters other than floor area; however, most costs can be related to floor area, wall area, roof area or sometimes an individual count of unit installations. To facilitate the application of these individualized costs, they are grouped so that all costs related to floor area can be added together and applied to the total floor area. All wall area costs can be added together and applied to the wall area, and all roof costs applied to the ground floor or roofed area.

A breakdown of the components whose costs correspond to the major areas follows:

FLOOR AREA

Site Preparation Floor Cover Sprinklers

Foundation Ceiling Heating,

Cooling and

Ventilating

Frame Interior Electrical

Construction

Floor Structure Plumbing

OUTSIDE WALL

Wall Wall Storefronts Ornamentation

ROOF

Roof Structure Roof Trusses Roof Cover

A general discussion of these major components can be found in Section

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A separate section is included for buildings in each of eight major cost-related

groups . . . classified by type of occupancy so that the user will find the section pertaining to his subject property largely self contained. . . .

By separating the costs into major occupancy groups, many of the factors which cause variations in costs are automatically considered, thus eliminating the necessity for detailed consideration of each component. For each component of the building, a range of costs representing a typical spread between low and high costs for that component within the occupancy group is given. The costs in this range are subdivided into four groups whose

midpoints are generally defined as [1) low cost, 2) average cost, 3) above average cost, and 4) high cost.]

The component costs of most buildings, both old and new, will fall within Columns 2 and 3. . . .

While it is true that a number of factors influence the cost of each component, buildings are fairly consistent in their quality throughout. Therefore, after the overall quality or cost level of the building is established in relation to the group and class (i.e., an average Class A hospital would not receive the same rating as an average Class C office building, or a 400,000-square-foot warehouse the same rating as a 4,000-square-foot facility, etc.) and the general rating is selected, that column is often appropriate for many of the Segregated Cost components. Exceptions may be those components, such as insulation, wall sheathing, heating and cooling and foundations, which can be directly affected by climate. See Section 85 for environmental mapping. For typical buildings, the procedure is quite simple:

1. Select the section best covering the occupancy of the building as designed.
2. Generally classify the building as to cost level by overall quality and complexity or massiveness for that occupancy as: low cost, average, above average or high cost.
3. Systematically describe each of the major components in order, considering whether that component is consistent with the general cost level of the building as a whole and with the occupancy in that section and its commonality, and enter the appropriate cost.
4. Total the unit costs belonging to each of the major area groups: total floor area, exterior wall area, wall ornamentation and roof area, and multiply each total by its area.
5. The sum of these amounts, modified by the multipliers for the number of stories, architects' fees, current cost and locality, plus any lump-sum additions for miscellaneous items, will be the total replacement or reproduction cost.

The publication includes a description of the method for selection of cost rating numbers. It explains:

It has already been pointed out that it is not necessary to consider specifically each factor which contributes to variances in costs for buildings. This is true since subdivision of buildings into occupancies and numerous individual descriptions automatically allows for most of the variations. However, one should keep in mind the major factors that influence the costs . . . in order that individual components may be up-rated or down-rated when necessary. The following tabulation of some of the items affecting the cost range for each of the major segregated components will serve as a guide. Moreover, the costs listed are not the highest nor the lowest which are found, but represent typical or normal costs within each rating class. . . .

Following that general instruction, the publication points to factors that may warrant adjustment of the cost rating in several cost categories — excavation, foundation, framing, floor structure and exterior walls.

During cross-examination, Rinaldi was questioned about specific elements of the premises relevant to adjustments in several cost categories. In the Borough's view, Rinaldi's answers showed that he rated excavation costs without knowing any of the elements. Similarly, the Borough asserts that Rinaldi could not answer any questions about elements pertinent to the costs of foundation, framing, floor, exterior walls and

roof.

It is true that Rinaldi could not answer some of the specific questions that were asked on cross-examination. For example, he did not know the depth of soil above the rock, the number of and distance between framing members, the number of windows, doors and skylights, the type of concrete floor, or the thickness and quality of roof sheathing, and he could not describe the gutters or the roof drainage system.

Rinaldi, however, explained that the fact that he could not give a specific response did not mean that he failed to consider it. Under his view of the segregated cost approach, where there is nothing that is not standard or nothing extraordinary warranting an adjustment, the details are immaterial. In addition, Rinaldi pointed out that with respect to the building's frame, which is a component primarily affected by load, he relied on what the building engineer told him — that the load was average.

In pertinent part, Rinaldi's report includes a description of the improvements. It details, for example, the frame construction of the three buildings, the area of the labs that are above and below ground level, the area of the pilot plant and the area devoted to mechanicals. With respect to each building, there is a description of the internal construction referencing features such as open areas and enclosed offices, asbestos in older areas, presence and absence of sprinkler systems, window quality and floor covering. Rinaldi's report also notes particular difficulties in excavation required for one of the buildings that increased construction costs and the obsolescent parking areas.

On behalf of the Borough, Cattanaach explained why he adopted the "calculator" approach to derive "cost new." He noted the detail an appraiser who utilized the segregated cost approach had to consider and the burdensome nature of that task. He testified that according to his understanding of the calculator method, it "encompasses the entire building based on the type of building you start with." The components of various types of buildings are built into the building type. He further noted that the calculator approach included cost reductions based on the size of the building that can be overlooked in the segregated cost approach because they are left to the subjective view of the appraiser. Cattanaach further indicated that he did not consider himself qualified to use the segregated cost approach.

The judge concluded that Rinaldi's segregated cost method for determining "cost new" was superior to Cattanaach's calculator approach. The judge reasoned that Rinaldi had made "a more detailed analysis of the actual construction" than Cattanaach. Recognizing disputes about the construction materials and construction process that Rinaldi considered, the judge noted that there was no evidence demonstrating he was in error. On that basis, the judge accepted Rinaldi's figure for "cost new," \$55,592,236, but adjusted it upward by a factor of three percent and reached a total of \$57,260,003 to account for a building area larger than Rinaldi utilized. Cattanaach's figure for "cost new" was higher, \$72,809,714.

There is no challenge to the judge's other determinations relevant to the assessments for the relevant three tax years, and there are no arguments pointing to or quantifying any adjustment in cost rating that Rinaldi failed to make. Accordingly, there is no reason to discuss those matters.

We reject the Borough's claim that the judge erred in relying on Rinaldi's opinion because it was a net opinion. "An expert's conclusion is considered to be a 'net opinion,' and thereby inadmissible, when it is a bare conclusion unsupported by factual evidence." Creanga v. Jardal, 185 N.J. 345, 360 (2005). Rinaldi's opinion cannot be characterized as a "bare conclusion." Indeed, his report and testimony disclose the facts upon which it was based, and the Borough's arguments to the contrary are without sufficient merit to warrant further discussion. R. 2:11-3(e)(1)(E).

The Borough's objection to the sufficiency of the evidence supporting the judge's adoption of Rinaldi's calculation of "cost new" is founded on its perception of the inadequacies in its evidential support. We see no basis for disturbing the judge's assessment.

The weight assignable to any expert opinion is a question for the finder of fact. LaBracio Fam. v. 1239 Roosevelt Ave., 340 N.J. Super. 155, 165 (App. Div. 2001). Expert opinion can be assigned the weight that the fact-finder deems appropriate in light of the facts and reasoning upon which the opinion is predicated. State v. Jenewicz, 193 N.J. 440, 446 (2008). In considering whether a judge of the Tax Court has

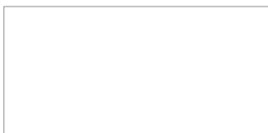
erroneously found adequate factual support to accept an expert's opinion, we must recognize that Tax Court judges have "special qualification[s], knowledge and experience." Ford Motor Co. v. Twp. of Edison, [127 N.J. 290](#), 311 (1992). Out of deference to that expertise, we reject the judge's factual findings only when they are "plainly arbitrary." Lenal Props., Inc. v. Jersey City, 18 N.J. Tax 658, 660 (App. Div.), certif. denied, [165 N.J. 488](#) (2000).

A judge must articulate reasons for choosing between contradictory expert opinions. See State v. M.J.K., [369 N.J. Super. 532](#), 549-52 (App. Div. 2004), appeal dismissed, [187 N.J. 74](#) (2005). Here, the judge gave a brief and general explanation of his reasons, but we cannot conclude that the judge abdicated his responsibility as a fact-finder by adopting an arbitrary formula in the face of a deficient expert opinion. See Parsini Custom Design Assocs., LLC v. City of Ocean City, [407 N.J. Super. 137](#), 144 (App. Div. 2009) (holding that conclusions where the judge resorted to an arbitrary formula of averaging competing expert appraisals did not represent a reasoned and considered valuation technique). Given the deference due, we cannot say that it was plainly arbitrary for the judge to prefer the approach to "cost new" that took the more detailed view of the components of these buildings. After all, the structures were built at different times and house a variety of uses that require different interior features.

The Borough's objections to the judge's reliance on Rinaldi's opinion largely focus on the expert's inability to answer questions posed on cross-examination. On review of the testimony and the evidence describing the "segregated cost" method, we conclude that the Borough overstates the significance of the answers Rinaldi did not provide and ignores Rinaldi's reasons for his inability to recite details. Rinaldi's explanation is not obviously inconsistent with the evidence of "segregated cost" method the Borough introduced into evidence; that description explains that the occupancy groups it employs eliminate the need for detailed consideration of each component. Thus, during cross-examination the Borough established what Rinaldi did not know, but there was no evidence demonstrating that the information would have resulted in a higher "cost new" if considered. As we understand the judge's decision, he found that the Borough failed to undermine the foundation of Rinaldi's opinion.

Finding nothing in the Borough's arguments that demonstrates the judge's reliance on Rinaldi's opinion of "cost new" was plainly arbitrary, we conclude that the determination based on that opinion is adequately supported by the record.

A



firmed.

¹ There is no claim that Tealand "failed to rebut the presumption of validity that attended the original assessment[s]." Pantasote Co. v. City of Passaic, [100 N.J. 408](#), 412 (1985); Lucent Tech., Inc. v. Berkeley Heights Tp., [24 N.J. Tax 297](#), 307-08 (2008).

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