**SUPREME COURT OF MINNESOTA**

# Continental Retail, LLC v. County of Hennepin

801 N.W.2d 395 (Minn. 2011) · Decided August 17, 2011

## SUMMARY

The Minnesota Supreme Court reviewed a Minnesota Tax Court valuation of a commercial property for three assessment dates. The court held that the challenge to the county appraiser's expert qualifications was not preserved, that building settlement did not affect market value until the 2008 assessment date, and that the tax court properly evaluated the fee simple interest and valuation approaches. The court affirmed the tax court's decision.

## CASE DETAILS

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| COURT | Supreme Court of Minnesota |
| WRITING FOR THE COURT | Dietzen, Justice; Anderson; Barry; Dietzen; Paul |
| JURISDICTION | Minnesota |
| DECIDED | August 17, 2011 |
| DISPOSITION | affirmed |
| PROCEDURAL POSTURE | Continental Retail sought certiorari review of final market-value determinations by the Minnesota Tax Court for three property-tax assessment dates. The Minnesota Supreme Court reviewed the tax court's decision under the limited statutory grounds applicable to tax-court appeals. |
| STANDARD OF REVIEW | The Supreme Court reviews the tax court's legal determinations de novo and its factual findings under the clearly erroneous standard. A final tax-court order may be reviewed for lack of jurisdiction, lack of evidentiary or legal support, or other error of law. Evidentiary rulings are reviewed for error of law or abuse of discretion, but an evidentiary objection arising during trial must generally be preserved through a motion for a new trial or amended findings. |
| PRECEDENTIAL VALUE | Published precedential opinion |
| PARTIES | Continental Retail, LLC v. County of Hennepin |

## TOPICS

property tax · tax court procedure · real estate · appellate procedure · expert testimony

## PRACTICE AREAS

property taxation · real property valuation · appellate procedure · evidence

## QUESTIONS PRESENTED

1. Whether Continental preserved for appellate review its challenge to the qualification of the county's appraiser as an expert witness.
2. Whether the tax court clearly erred in finding that building settlement did not adversely affect market value until the January 2, 2008 assessment date.
3. Whether Continental's appraiser improperly valued the leased fee interest rather than the fee simple interest.
4. Whether the tax court erred in adopting the county appraiser's valuation conclusions and in assigning relative weight to the sales comparison, income capitalization, and cost approaches.

## HOLDINGS

1. A challenge to an evidentiary ruling concerning an expert's qualifications must be raised in a motion for a new trial or amended findings to preserve the issue for appellate review in a tax-court proceeding. Because Continental did not make such a motion, review of its challenge to the county appraiser's qualifications was precluded.
2. The tax court did not clearly err in finding that the building's structural problems did not adversely affect its market value for the January 2, 2006 or January 2, 2007 assessment dates, and that the problems affected market value by the January 2, 2008 assessment date.
3. The tax court correctly concluded that Continental's appraiser valued the leased fee interest rather than the fee simple interest because he used actual contract rents and expressly described his appraisal as valuing the leased fee interest. Minnesota property-tax valuation requires valuation of the entire, unencumbered fee simple interest.
4. The tax court did not clearly err in adopting the county appraiser's valuation conclusions and assigning greater weight to the sales comparison and cost approaches while giving minimal weight to the income capitalization approach.

## KEY QUOTATIONS

> *"A final order of the tax court is reviewable by this court on the grounds that the tax court lacked jurisdiction, that the order is not justified by the evidence or in conformity with the law, or that the order is affected by any other error of law."* (399)

> *"The statute contemplates valuation of the entire, unencumbered interest in the real property, and not a lesser estate."* (401)

> *"We recognize three basic approaches to determining the market value of real property: the cost approach, the market comparison or sales approach, and the income capitalization approach."* (402)

## FACTUAL BACKGROUND

Continental Retail owned a 124,432-square-foot parcel improved with a multi-tenant commercial building in Brooklyn Park, Minnesota. The building had soil and structural movement issues, but the evidence indicated that serious structural problems affecting market value were not known until September 2007. Occupancy declined from 73% on the January 2, 2006 assessment date to 66% on January 2, 2007, and 62% on January 2, 2008. The parties presented competing appraisal opinions using the sales comparison, income capitalization, and cost approaches.

### PROCEDURAL HISTORY

Continental challenged the Hennepin County assessor's estimated market value of $2,216,000 for assessment dates January 2, 2006, January 2, 2007, and January 2, 2008. After trial, the Minnesota Tax Court increased the values to $3,776,600, $3,967,200, and $2,416,600, respectively. Continental appealed directly by petition for writ of certiorari without moving for a new trial or amended findings. The Minnesota Supreme Court affirmed.

### DISPOSITION

affirmed

### CASES CITED

- S. Minn. Beet Sugar Coop. v. Cnty. of Renville, 737 N.W.2d 545, 551 (Minn. 2007)
- Eden Prairie Mall, LLC v. Cnty. of Hennepin, 797 N.W.2d 186, 192-93 (Minn. 2011)
- Montgomery Ward & Co., Inc. v. Cnty. of Hennepin, 450 N.W.2d 299, 308 (Minn. 1990)
- Lewis v. Cnty. of Hennepin, 623 N.W.2d 258, 261 (Minn. 2001)
- Nw. Nat'l Life Ins. Co. v. Cnty. of Hennepin, 572 N.W.2d 51, 52 (Minn. 1997)
- McNeilus Truck & Mfg., Inc. v. Cnty. of Dodge, 705 N.W.2d 410, 414 (Minn. 2005)
- TMG Life Ins. Co. v. Cnty. of Goodhue, 540 N.W.2d 848, 851, 853 (Minn. 1995)
- Alpha Real Estate Co. v. Delta Dental Plan, 664 N.W.2d 303, 310-11 (Minn. 2003)
- Sauter v. Wasemiller, 389 N.W.2d 200, 201-02 (Minn. 1986)
- Carson Pirie Scott & Co. v. Cnty. of Hennepin, 576 N.W.2d 445, 446-47, 451 (Minn. 1998)
- Equitable Life Assurance Soc. v. Cnty. of Ramsey, 530 N.W.2d 544, 552-54 (Minn. 1995)
- Contos v. Herbst, 278 N.W.2d 732, 737 (Minn. 1979)
- Kmart Corp. v. Cnty. of Becker, 709 N.W.2d 238, 240 (Minn. 2006)
- Harold Chevrolet, Inc. v. Cnty. of Hennepin, 526 N.W.2d 54, 56 (Minn. 1995)
- Lewis & Harris v. Cnty. of Hennepin, 516 N.W.2d 177, 180 (Minn. 1994)