

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

Priebe-Marzke Development, L.L.C.,
Petitioner,

v

MTT Docket No. 317303

Covert Township
Respondent.

Tribunal Judge Presiding
Jack Van Coevering

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION
PURSUANT TO MCR 2.116(C)(10)

ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION
PURSUANT TO MCR 2.116(C)(10)

In this cause, Petitioner has filed a Motion for Summary Disposition under authority of MCR 2.116(c)(10), together with Brief in Support, challenging Respondent's uncapping of the taxable values of the subject property based on Petitioner's filing of a corrective deed. Respondent, in addition to filing an Answer and Reply Brief to Petitioner's Motion for Summary Disposition, has requested that Petitioner's Motion for Summary Disposition be denied and that Respondent be granted Summary Disposition on the issue of a transfer of ownership of the subject property as of 2003.

Standards for Determining Motions for Summary Disposition

Under **MCR 2.116(c)(10)**, a motion for summary disposition will be granted if the documentary evidence demonstrates that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Smith v Globe Life Insurance*, 460 Mich 446, 454-455; 597 NW2d 28 (1999). In *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996), the Michigan Supreme Court set forth the following standards for reviewing motions for summary disposition brought under MCR 2.116(c)(10):

In reviewing a motion for summary disposition under MCR 2.116(c)(10), the trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed by the parties, MCR 2.116(g)(5), in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(c)(10) if affidavits or other documentary evidence show there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(c)(10), (g)(4).

In presenting a motion for summary disposition the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. *Neubacher v Globe Furniture Rentals*, 205 Mich App 418 420; 522 NW2d 335 (1994). The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Id.* Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the

nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. *McCarty v J Walter Thompson*, 437 Mich 109, 115; 469 NW2d 284 (1991). If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1992).

In the event, however, it is determined an asserted claim can be supported by evidence at trial, a motion under subsection (c)(10) will be denied. *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).

PETITIONER'S CONTENTIONS

Petitioner contends that "...Respondent, Covert Township, improperly 'uncapped' and refused to 'recap' and restore the 2004 taxable values of the properties in violation of the Michigan Property Tax Act and MCL 211.27(a), and in violation of the Van Buren County Circuit Court Order, and because the undisputed facts entitle Petitioner to a finding that there has been no 'transfer of ownership' and no 'uncapping' event as a matter of law."

RESPONDENT'S CONTENTIONS

Respondent opposes Petitioner's motion for summary disposition under MCR 2.116(c)(10), and contends that "...there is no genuine issue of material fact that the conveyance of four of the five parcels by deed in November, 2003, constituted a transfer of ownership under MCL 211.27(a)(6) of the General Property Tax Act and that the taxable value of the four parcels was properly uncapped by Respondent in accordance with MCL 211.27(a)(3)."

DISCUSSION

These motions require the Tribunal to determine if there are genuine issues of material fact as to whether there was a transfer of ownership, by the 2003 deed, applying MCL 211.27(a)(6), effectively "uncapping" the subject property. More specifically, the question is whether MCL 211.27(a) applies to the subject property and provides for the "capping" of a property's taxable value as of January 1, 1995, or if the 2003 deed effectively "uncapped" the subject property. If this conveyance is a transfer of ownership, MCL 211.27(a)(3) provides that the property's taxable value is "uncapped" and the taxable value in the calendar year following the transfer becomes equivalent to the property's state equalized value. If this conveyance is not a transfer of ownership, the subject property's taxable value will continue to be "capped" pursuant to MCL 211.27(a)(2).

In the instant case, Mrs. Priebe owned five parcels of real property. The record indicated Mrs. Priebe intended to transfer the five parcels of real property to Priebe-Marzke Development Company by quit claim deed. Originally, Priebe-Marzke was a co-partnership but converted to a

Michigan Limited Liability Company in 1994. Another deed conveying the subject property from the co-partnership to the limited liability company was executed in 1994. Likewise, the 1994 deed compounded the 1991 problem in only conveying one parcel.

Both the 1991 and 1994 Quit Claim Deeds purported to convey all five parcels, however, a mutual mistake of fact occurred and only one of the five parcels was actually conveyed. Although only one parcel was in fact transferred by Quit Claim Deed, Priebe-Marzke Company occupied, possessed and paid all taxes in connection to the five parcels and treated the property as their own. In 2003, subsequent to Mrs. Priebe's death, the error was realized and Mrs. Priebe's personal representative executed a personal representative's deed to Petitioner. The deed indicated on its face that it was limited to a corrective deed to clarify the mutual mistake made in the 1991 and subsequently the 1994 deed(s). It is upon the 2003 deed that Respondent uncapped the four parcels.

This 2003 corrective deed caused Covert Township to consider the additional four parcels as transferred by Mrs. Priebe's estate to Priebe-Marzke as of November 21, 2003, applying MCL 22.27(a)(6) and "to uncapped" the properties pursuant to MCL 211.27(a)(3). Petitioner appealed this decision to the December 2004 Board of Review on March 17, 2005 resulting in a denial of the appeal on March 26, 2005.

The Van Buren County Circuit Court issued an Order for the reformation of the original 1991 and 1994 Quit Claim Deeds to include all five parcels on December 16, 2005. The Order was a reformation of the 1991 and 1994 Quit Claim Deeds and MCL 211.27(a)(7)(g), stating [the] "[T]ransfer of ownership does not include the following: A transfer pursuant to a judgment or order of a court of record making or ordering a transfer, unless a specific monetary consideration is specified or ordered by the court for the transfer," did not apply to the reformation.

Further, Mrs. Priebe owned 35.58% of the Priebe-Marzke Development Company, L.L.C. as of December 31, 1994. Between 1994 and 1997, Mrs. Priebe and her trust transferred all of the membership interest to family members.

PROCEDURAL HISTORY

On February 27, 2006, Petitioner, represented by Robert L. Hood and Jeremy R. Cnudde of Willingham & Cote', P.C., filed a Motion for Summary Disposition and Brief in support, pursuant to MCR 2.116(c)(10). On March 9, 2006, Respondent, represented by David A. Lewis of Lewis, Reed & Allen, P.C., filed a response to Petitioner's Motion for Summary Disposition and Respondent's Motion and Brief for Summary Disposition pursuant to MCR 2.116(c)(10).

FINDINGS OF FACT

The subject property consists of five parcels of real property located in the county of Van Buren, Township of Covert, State of Michigan, identified as parcel numbers: 80-07-075-004-00, 80-07-030-013-00, 80-07-075-001-00, 80-07-075-006-00, and 80-07-017-006-00. Mrs. Priebe

transferred her interest to Priebe-Marzke Development Company, a Michigan co-partnership, in 1991. Priebe-Marzke converted to a Michigan limited liability company in 1994, transferring the interest in the properties from the co-partnership to the limited liability company. Both deeds in 1991 and 1994 purported to transfer all five properties but due to a mutual mistake of fact only one of five were actually conveyed. In 2003, a corrective deed was filed and in 2005 the Van Buren County Circuit Court issued an Order for the reformation of the original 1991 and 1994 Quit Claim Deeds so as to include all five parcels. Respondent deemed the 2003 deed to be a transfer of ownership and uncapped the taxable value of the four subject properties in 2004, increasing the taxable values from: \$621,930 to \$1,203,048; \$43,000 to \$130,227; \$46,685 to \$256,466; \$8,697 to \$32,800; and \$4,435 to \$4,435, respectively. The Tribunal finds there is no genuine issue of material fact as to whether the 2003 deed was a corrective deed and the 2003 transaction in question was not a transfer of ownership. As such, Respondent was incorrect in “uncapping” the subject property’s taxable value pursuant to MCL 211.27(a)(3), and Summary Judgment in favor of Petitioner, pursuant to MCR 2.116(c)(10), is granted.

CONCLUSIONS OF LAW

The Tribunal has considered Petitioner’s Motion for Summary Disposition and Respondent’s answer thereto under the criteria for MCR 2.116(c)(10), and based on the pleadings and other documentary evidence filed with the Tribunal, determines that granting this motion is appropriate under MCR 2.116(c)(10) as there is no genuine issue of material fact as to whether there was a transfer of ownership by the 2003 deed discussed herein.

MCL 211.27(a)(2) states:

Except as otherwise provided in subsection (3), for taxes levied in 1995 and for each year after 1995, the taxable value of each parcel of property is the lesser of the following:

(a) The property’s taxable value in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the inflation rate, plus all additions. For taxes levied in 1995, the property’s taxable value in the immediately preceding year is the property’s state equalized value in 1994. (b) The property’s current state equalized valuation.

Thus, the taxable values of the subject parcels should have stayed “capped” limited to the inflation rate. “Uncapping” can take place after there is a transfer of ownership. MCL 211.27(a)(6) defines transfer of ownership as “...the conveyance of title to or a present interest in property, including the beneficial use of the property, the value of which is substantially equal to the value of the free interest.”

This Tribunal has considered Respondent’s argument that the four subject parcels were transferred by a deed on November 21, 2003 and finds this argument to be without merit. By the very nature of the quitclaim deed, a grantor can only deed property rights currently possessed. There are no warranties attached to a quitclaim deed. The 2003 deed was only a corrective, attempted reformation of the earlier 1991 and 1994 deeds and thus can only transfer the property rights currently held by the transferor, which in this case amounts to nothing.

The 2003 deed, on its face, stated that the purpose of the deed was for clarification and not for the transfer of property. The 2005 Circuit Court Order confirmed the 2003 deed was nothing more than a reformation of the 1991 and 1994 deeds. As a result of the Circuit Court action reforming the 1991 and 1994 deeds, the 2003 deed did not convey anything and therefore, was basically a nullity in its form. The basis of Respondent's "uncapping" of the subject property is this 2003 deed. In effect, the result of the reformation action was that no property was conveyed in 2003, and as a consequence there is nothing to be "uncapped."

It is Respondent's position that circuit courts are prohibited from deciding matters within the exclusive jurisdiction of the Tribunal, and that Circuit Court Judge Buhl recognized his limitations regarding the jurisdiction over uncapping issues and transfers of ownership under the General Property Tax Act. The Tribunal has exclusive and original jurisdiction regarding "[a] proceeding for direct review of a final decision, finding, ruling, determination, or order of an agency relating to assessment, valuation, rates, special assessments, allocation, or equalization, under property tax laws, and [a] proceeding for refund or redetermination of a tax under the property tax laws." (MCL 205.731). Respondent's position is irrelevant as the Tribunal finds the 2003 deed transferred no rights to Petitioner. As a result of nothing being transferred, the uncapping of the subject properties was improper and violates Michigan Act 415, "Proposal A."

JUDGMENT

IT IS ORDERED that Petitioner's Motion for Summary Disposition is GRANTED and Respondent is directed to correct the 2004 taxable value of the subject properties to reflect no uncapping.

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition is DENIED.

This Order resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: April 19, 2006
Mml

By: Jack Van Coevering