STATE OF MICHIGAN
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL

Lynne Finman & Lanni Lantto,
Petitioners,

v

MTT Docket No. 14-003661-R

City of Marquette,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

ORDER DENYING PETITIONERS' MOTION FOR SUMMARY DISPOSITION

ORDER GRANTING SUMMARY DISPOSITION FOR RESPONDENT

FINAL OPINION AND JUDGMENT

INTRODUCTION

On November 5, 2015, Petitioners filed a motion requesting that the Tribunal enter summary judgment in their favor in the above-captioned case. More specifically, Petitioners argue that no uncapping occurred during the 2013 tax year because Paul Florence's ("Paul") life estate was neither extinguished nor terminated, the creation of the 2013 joint tenancy is not an uncapping pursuant to law and when Paul, a joint tenant, died in 2013, he was an original owner. Thus, Petitioners request the Tribunal reverse the uncapping of the subject property's taxable value ("TV") for the 2014 tax year.

On December 23, 2015, Respondent filed a response to the Motion arguing that summary disposition cannot be granted because outstanding issues of material fact exist relating to the uncapping of the subject property's TV. Respondent claims there may have been an uncapping when a life estate was created in 2005 if Lynne Finman ("Lynne") was not the sole present beneficiary of the trust at the time of the conveyance. Also, Respondent argues the 2013 uncapping was proper.

On February 25, 2016, Petitioners filed a reply brief to Respondent's response to their Motion. Petitioners argue "[w]hat happened in 2005 has little or no relevance in 2013," because the 2005 deed created a life estate which is not an uncapping event by law. Petitioners also argue that an uncapping did not occur in 2013 because the life estate did not terminate; rather, the interests were transferred into a joint tenancy which is a joint life estate under Michigan case law.

The Tribunal has reviewed the Motion, responses, and the evidence submitted and finds that denying Petitioners' Motion for Summary Disposition is warranted at this time. However, the Tribunal finds there are no outstanding issues of material fact and granting summary disposition in favor of Respondent is supported.

PROCEDURAL HISTORY

On January 26, 2016, the Tribunal issued an Order Denying Joint Motion to Extend. The parties agreed to allow Petitioners additional time to file a reply to Respondent's response to the Motion. The Tribunal concluded that "no reply is necessary for the Tribunal to resolve the issues presented by the Motion . . . ." Subsequently, Petitioners filed a Motion for Reconsideration of the denial arguing that their due process rights were infringed by the denial and the case would be resolved efficiently when all arguments are identified and addressed by the parties. The Tribunal agreed and granted Petitioners' Motion for Reconsideration on February 11, 2016. However, prior to the filing of Petitioners' Motion for Reconsideration, the Tribunal issued a Final Opinion and Judgment in this case. Specifically, on February 5, 2016, the Tribunal issued an Order Denying Petitioners' Motion for Summary Disposition, Order Granting Summary Disposition for Respondent, and a Final Opinion and Judgment. As a result, the Tribunal reinstated this case and vacated the Final Opinion and Judgment, issued on February 5, 2016, and

allowed Petitioners time to file their reply. This Final Opinion and Judgment is rendered in consideration of the Motion for Summary Disposition, response, and Petitioners' recently-filed reply.

PETITIONERS' MOTION FOR SUMMARY DISPOSITION

Petitioners contend that in 2005, Paul "conveyed his entire interest in the subject property to himself, reserving a life estate, and granting the remainder to Petitioner, [Lynne]" and, as a result, Paul "continued to possess and enjoy the subject property in full" (i.e., "beneficial use of the property"). Thus, no transfer of ownership occurred in 2005 that would justify the uncapping of the subject property's TV.

In 2013, the transfer of the life estate held by Paul was not an uncapping event given the "contemporaneous creation" of the joint tenancy. Petitioners maintain that the 2013 transfer of Paul's life estate did not result in the "expiration" or "termination" of the life estate, as the language in the 2005 deed only provided for termination of that life estate "upon his death" and the 2013 conveyance "did not change this fact." Further, the 2005 deed "did not reserve any rights in the grantor." Similarly, the 2013 deed "did not contain any specific language restricting or reserving any portion or ownership interest in the property," rather the deed "conveyed all of the interest that Paul and Lynne had in the property at that time." Paul's life estate "without a contingent remainder" was converted by the 2013 deed "into a life estate with a contingent remainder." Petitioners state that Paul and Lynne "conveyed" the property to themselves and Lanni A. Lantto ("Lanni"), as joint tenants. This transfer did not terminate Paul's life estate; rather, it "continued on, albeit change in the form of a joint tenancy, as he now shared his life estate with those of his other joint tenants." Petitioners argue that because Paul was an original owner of the property at the time the 2013 joint tenancy was created, Paul's death did not, under

Klooster,[1] result in an uncapping event and Petitioners are entitled to judgment as a matter of law.

RESPONDENT'S RESPONSE TO PETITIONERS' MOTION

Respondent contends that the 2005 transfer was "arguably" exempt under MCL 211.27a(7)(c), as a conveyance subject to a life estate, but not under MCL 211.27a(6)(d) unless Lynne was the sole present beneficiary of the Trust and Lynne was not identified in the Trust documents as the sole present beneficiary and no documents have been filed indicating that Lynne was added as the sole present beneficiary prior to the execution of the transfer (i.e., property transfer affidavit, etc.).

Respondent argues that "[t]he 2013 conveyance which attempted to transfer the property subject to Paul Florence's life estate uncapped the property under MCL 211.27a(7)(c)." As for the 2013 deed, the Tribunal held, in a similar case, that "a subsequent transfer of the life estate by the transferor (or the transferor's spouse) to a third-party falls outside the scope of MCL 211.27a(7)(c) and is a transfer of ownership."[2] Respondent argues that Paul "transferred the property that was subject to his life estate interest to a third party, which effectively terminated his life estate." Paul could not have, given his limited power of appointment, reserved a joint life estate when he "transferred all of his interests" in 2013. "Petitioners' reliance on *Albro*[3] . . . in their notion that the 2013 conveyance did not terminate Paul Florence's life estate is misleading . . . [as the] 2005 conveyance that granted the life estate to Paul Florence did not involve a joint tenancy."[4] Respondent argues that "the 2005 conveyance included a *limited* power of appointment according to the express provisions of the deed," because the power "could not be

[1] *Klooster v City of Charlevoix*, 488 Mich 289, 309; 795 NW2d 578 (2011).
[2] *Anderson v Chocolay Twp*, MTT Docket No. 433005 (December 18, 2013).
[3] *Albro v Allen*, 434 Mich 271; 454 NW2d 85 (1990).
[4] *Id.*

exercised in favor of himself [Paul]." The 2013 deed does not state that Paul exercised his limited power of appointment and such powers "may only be exercised by a written instrument"[5] and, as a result, Paul failed to "effectively exercise" his power and "[t]he net result is the gift in default passed to Lynne Finman at the time of the 2013 conveyance, pursuant to MCL 556.122(a), which is an uncapping event." Additionally, Respondent argues the 2013 deed also does not indicate that Lynne "had the requisite consent of her brother, Paul Perry Florence, who is also an appointed agent in the September 27, 2005 power of attorney, as required by Paragraph 1.10(c) of the power of attorney." Finally, Respondent argues that Paul was also not an original owner for purposes of the 2013 conveyance as his interest in the property at the time of that conveyance "did not satisfy the fee simple required of an original owner under *Klooster*, *supra*" and he "was precluded from becoming a joint tenant . . . by virtue of the express language in the 2005 conveyance."

PETITIONERS' REPLY TO RESPONDENT'S RESPONSE

Petitioners admit that "the 2005 deed's claimed exemption of a transfer out-of-trust under MCL 211.27a(6)(d) was mistaken and that the correct exemption from uncapping was a life estate under MCL 211.27a(7)(c)." Petitioners argue it is the Property Transfer Affidavit "that the Assessor primarily relies upon to assess whether an uncapping is triggered," and the assessor could have "easily detected the life estate to Paul . . . on page 2 of the 2005 deed." "[T]he harmless mistake classification in the 2005 deed does [not] create a genuine issue of material fact as to the effect of the 2013 deed, the latter of which is the subject matter of this dispute."

Petitioners contest Respondent's claim that the 2013 deed terminated Paul's life estate. Specifically, Paul acquired a joint life estate in the subject property when the deed creating the

[5] See MCL 556.115(2).

joint tenancy with rights of survivorship was executed. "[S]ince Paul was one of the joint tenants with rights of survivorship in the 2013 deed, Paul acquired a life estate in the home . . . ." "Paul possessed a life estate before and after the 2013 deed, and had the right to transfer the life estate he received in the 2005 deed;" therefore, the 2013 deed continued Paul's life estate rather than terminate the prior life estate. Petitioners also refute Respondent's reliance on *Anderson* because the 2013 deed did not transfer Paul's life estate to a third party, as in *Anderson*.

Petitioners also contend that the 2013 deed did not result in a "gift in default". Lynne possessed the authority to sign the deed without any restrictions or need for Paul's son to consent; therefore, the deed rearranged Paul and Lynne's interests to joint life estates and joint contingent remainders in the 2013 deed.

Petitioners state that there is no authority substantiating Respondent's claim that Paul was not an original owner at the time of his death because he was not a fee simple absolute owner at the time of the conveyance creating the joint tenancy. Citing to *Anderson,* Petitioners claim that a life estate with a power of appointment was an equivalent of a present fee simple interest in property. Additionally, "Paul's interest was a present enhanced life estate together with a power of appointment;" therefore, his interest was the equivalent of a fee simple interest.

STANDARD OF REVIEW

There is no specific Tribunal rule governing motions for summary disposition. Therefore, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions.[6] In this case, Petitioners move for summary disposition under MCR 2.116(C)(10). Summary disposition under MCR 2.116(C)(10) tests the factual support for a claim and must identify those issues regarding which the moving party asserts there is no genuine issue of

[6] See TTR 215.

material fact. Under subsection (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.[7] In the event, however, it is determined that an asserted claim can be supported by evidence at trial, a motion under (C)(10) will be denied.[8]

The Michigan Supreme Court has established that a court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed by the parties in the light most favorable to the non-moving party.[9] The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider.[10] The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.[11] Where the burden of proof at trial on a dispositive issue rests on a non-moving party, the non-moving 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.[12] If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.[13]

CONCLUSIONS OF LAW

The Tribunal has considered Petitioners' Motion under MCR 2.116(C)(10) and finds that denying the Motion is warranted. However, MCR 2.116(I)(1) provides that "[i]f the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits or other proofs show that there is no genuine issue of material fact, the court shall render judgment without

[7] See *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999).
[8] See *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).
[9] See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)).
[10] See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).
[11] *Id.*
[12] See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).
[13] See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

delay." The Tribunal has determined that granting summary disposition in favor of Respondent is appropriate as described in further detail below.

Here, the underlying issue relates to whether the subject property's taxable value was properly uncapped for the 2014 tax year as a result of the 2013 transfer, as the 1998 and 2005 transfers were exempt transfers. The Tribunal reiterates its previous conclusion that:

> [T]he 1998 warranty deed transferring the property to the Trust was exempt from uncapping, as the settlor of the Trust, Mr. Florence, was also the sole present beneficiary of the Trust.[14] As for the 2005 transfer, the quit claim deed, although poorly drafted, transferred the property from the Trust to Ms. Finman and granted a life estate to Mr. Florence resulting in a transfer also exempt from uncapping.

The Tribunal further stated that "[a]lthough the deed indicated that the transfer was exempt under MCL 211.27a[(6)](d), the transfer was actually exempt under MCL 211.27a(7)(c)." The citation to an inapplicable provision of the law does not negate the applicability of section MCL 211.27a(7)(c) to the transaction. The error was a mere drafting error and the transfer was exempt from uncapping because the transfer of the subject property was "subject to a life estate . . . retained by the transferor . . . ."[15]

In the Tribunal's previous Final Opinion and Judgment, it was concluded that "the 2013 deed was invalid, at least in part, because [Paul] was precluded under the 2005 deed from becoming a joint tenant in the joint tenancy created by that transfer . . . [because Paul] could only pass to the grantees the [life] estate he could lawfully convey . . . ." The Tribunal cited MCL 565.4, in support of this conclusion, stating that "[a] conveyance made by a tenant for life or years, purporting to grant a greater estate than he possessed or could lawfully convey, shall not work a forfeiture of his estate, but shall pass to the grantee all the estate which such tenant could lawfully convey." In reconsideration of the previous decision, the Tribunal finds that it

[14] Final Opinion and Judgment, February 5, 2016. Also referring to MCL 211.27a(6)(c)(i).
[15] MCL 211.27a(7)(c).

improperly applied this statute. This specifies the conveyance is *made by a tenant for life* and is, thus, distinguishable from the facts of this case. Here, as opposed to only Paul (the life estate holder) conveying his life estate interest in the property, Paul *and* Lynne (the contingent remainder) conveyed the property via the 2013 deed. The legislature carved out MCL 565.4 to protect the destruction of contingent remainders. Michigan's Courts have supported this pronouncement and held that a contingent remainder cannot be destroyed by any act of the life estate holder.[16] However, here, Lynne agreed to destruct her contingent remainder in the property when the 2013 deed was executed. The Tribunal finds that this deed was not invalid, as previously determined. Accordingly, the Tribunal finds that the life estate was terminated by the 2013 deed as both Paul and Lynne intended to destruct their interests in the property in order to execute the deed creating the joint tenancy.[17] If Paul and Lynne did not intend to destruct their interests in the life estate and contingent remainder, the 2013 deed would be invalid since Paul could not convey an interest greater than his life estate.

The Tribunal also finds that Paul's life estate was not continued by the transfer. The Tribunal agrees with Respondent's assertion that "Petitioner's reliance on [*Albro*] . . . is misleading." Petitioners cite *Albro* "for the proposition that a joint tenancy with right of survivorship means that the joint owners own two estates: first they each own life estates, called joint life estates and second they own joint contingent remainder interests." The holding in *Albro* is uncontested; however, the holding in *Albro* is not instructive as to whether Petitioners' life estate granted by the 2005 deed was continued by the 2013 transfer. Petitioners' life estate

[16] See *Wengel v Wengel*, 270 Mich App 86; 714 NW2d 371 (2006).
[17] The parties debate the effect of Petitioners' purported limited power of appointment and whether this precluded Paul from transferring the life estate to himself as a joint tenant. Given the Tribunal conclusion that Paul did not solely transfer his life estate and both Paul and Lynne transferred the entire interest in the property (life estate and contingent remainder), the Tribunal need not consider this issue.

granted him sole use and control of the property; the 2013 deed provided three life estates to three individuals (Paul, Lynne, and Lanni) which allowed them *all* to use and control the property for their lives and granting them *all* contingent remainders in the property. Paul's life estate could not "continue" due to the difference between the interests being conveyed and the resulting interests in 2013.

Additionally, Respondent cites the *Anderson* case where the Tribunal was "asked to address whether a 2009 conveyance from Agnes Bernice Anderson's ("Agnes") grantor trust in both her capacity as trustee and in her individual capacity to her three children in joint tenancy . . . while also reserving an enhanced life estate . . . resulted in an uncapping of the subject's taxable value."[18] Even though there was no subsequent transfer of Agnes' life estate, the Tribunal concluded that "a subsequent transfer of the life estate by the transferor (or the transferor's spouse) to a third-party falls outside of the scope of MCL 211.27a(7)(c) and is a transfer of ownership."[19] The Tribunal finds *Anderson* is also distinguishable from the instant case. While the 2013 deed transferred the property to one third-party joint tenant, Lanni, the Tribunal does not find this scenario akin to that contemplated by the Tribunal Member in *Anderson.*

In light of the above, the Tribunal does not find support for its previous conclusion that "the parties' separate contentions regarding an original owner for purposes of a joint tenancy are irrelevant, as Mr. Florence was not or, more appropriately, could not have been a joint tenant and neither Ms. Finman nor Mr. Lantto were an original owner before the joint tenancy was created." The Tribunal concludes that Paul and Lynne possessed the ability to create a joint tenancy and did so with the 2013 deed. The creation of the joint tenancy is not a transfer of ownership under

[18] *Anderson*, supra.
[19] *Id.*

MCL 211.27(7)(i) if "at least 1 of the persons was an original owner of the property before the joint tenancy was initially created."[20] The statute goes on to state that "[a] joint owner at the time of the last transfer of ownership of the property is an original owner of the property." The Supreme Court of Michigan in *Klooster* applied the "two requirements for satisfying the joint-tenancy exception, which we label to simplify analysis as the 'original-ownership requirement' and the 'continuous-tenancy requirement.'"[21] The Court specified that the "continuous-tenancy requirement" "applies only to conveyances terminating a joint tenancy and conveyances creating a successive joint tenancy."[22] Thus, because the property was not held in a joint tenancy before the creation of the joint tenancy between Paul, Lynne, and Lanni, the continuous-tenancy requirement does not apply. However, prior to the creation of the joint tenancy, Paul owned the life estate, and thus the subject property, and was granted "the right to possess, control, and enjoy the property during [his] lifetime,"[23] subject to the interests of the contingent remainder. Paul was, at minimum, a joint owner at the time of the last transfer of ownership of the property; therefore, Paul was an original owner for purposes of uncapping.

When Paul died in 2013, he was a joint tenant in the subject property and was an original owner, as explained above. However, Paul's death did not terminate the joint tenancy; rather, his interest in the property was conveyed to Lynne and Lanni and because the contingent remainder did not vest, the joint tenancy continued between Lynne and Lanni. Therefore, Paul's death did not trigger an uncapping of the subject property's taxable value.

After analyzing all transfers at issue, the Tribunal finds the only transfer of ownership occurred when the life estate terminated in 2013. The execution of the 2013 deed was one

[20] MCL 211.27a(7)(i).
[21] *Id.* at 301.
[22] *Id.*
[23] *Flowers v Bedford Twp*, 304 Mich App 661; 849 NW2d 51 (2014) (citing *Wengel*, supra)

transaction; however, it contained two separate transfers of property (termination of life estate and creation of the joint tenancy) that were independently analyzed. Even though the 2013 deed created a joint tenancy, it also terminated the life estate when Paul and Lynne conveyed the life estate and contingent remainder interests, effectively terminating the life estate created in 2005. The subsection of MCL 211.27a identifying transfers subject to a life estate as exempt from uncapping specifically carves out the clause "until expiration or termination of the life estate or life lease." This shows the exception applies *only until* the life estate terminates. Because the life estate terminated in 2013, Respondent properly uncapped the subject property's taxable value in the 2014 tax year. Given the above, Petitioners have failed to show good cause to justify the granting of their Motion. However, there are no genuine issues of material fact in dispute and Respondent is entitled to judgment as a matter of law.

JUDGMENT

IT IS ORDERED that Petitioners' Motion for Summary Disposition is DENIED.

IT IS FURTHER ORDERED that summary disposition is GRANTED in favor of Respondent.

IT IS FURTHER ORDERED that the property's TV as established by Respondent's March Board of Review for the 2014 tax year is AFFIRMED.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally provided in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization.[24] To the extent that the final level of assessment for a given year has

[24] See MCL 205.755.

not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, through June 30, 2012, at the rate of 1.09%, and (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%.

This Final Opinion and Judgment resolves the last pending claim and closes the case.

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.[25] Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or

[25] See TTR 261 and 257.

personal service. The fee for the filing of such motions is $50.00 in the Entire Tribunal and $25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.[26] A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.[27] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[28]

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave."[29] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.[30] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[31]

By: Steven H. Lasher

Entered: April 1, 2016
sms

[26] See TTR 217 and 267.
[27] See TTR 261 and 225.
[28] See TTR 261 and 257.
[29] See MCL 205.753 and MCR 7.204.
[30] See TTR 213.
[31] See TTR 217 and 267.