

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

Eltel Associates, LLC,
Petitioner,

v

MTT Docket No. 0304874

City of Pontiac,
Respondent.

Tribunal Judge Presiding
Jack Van Coevering

FINAL OPINION AND JUDGMENT

ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

ORDER GRANTING SUMMARY DISPOSITION FOR PETITIONER

The Tribunal, having reviewed all documents submitted by the parties and having presided over the prehearing conference in this matter, finds that, for the 2002 tax year, the taxable value for parcel numbers 14-30-200-004, 14-30-200-005, and 14-30-200-006 is zero (0).

RESPONDENT'S CONTENTIONS

On August 25, 2005, Respondent filed a Motion for Summary Disposition under authority of TTR 230 and MCR 2.116(C)(10), together with a brief in support, challenging Petitioner's mutual mistake of fact theory and requesting the petition be dismissed.

Respondent contends that MCL 211.53a addresses only clerical, typographical and transpositional errors. Respondent also contends that whether or not Petitioner was the owner of the property on December 31, 2001, tax day, is irrelevant because Petitioner paid the taxes without protest. Respondent states in its Brief in Support of Motion for Summary Disposition, page 3:

The other premise of this motion is that there is a question of law as to whether or not Petitioner was the owner on tax day. ...[R]esolution of that question of law is entirely outside the scope of the pending Petition. ...The mere fact that ownership on tax day is a question of law combined with the fact that Petitioner paid the taxes without protest provides compelling authority for this Tribunal to dismiss the Petition.

PETITIONER'S CONTENTIONS

Petitioner opposes Respondent's Motion For Summary Disposition as required by TTR 230(1).

TTR 205.111(4) states that "If an applicable entire tribunal rule does not exist, the 1995 Michigan Rules of Court...shall govern." 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, 33 (1999). In *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314, 317 (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, 336 (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. *McCart v J Walter Thompson*, 437 Mich 109, 115; 469 NW2d 284, 287 (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, 743 (1992).

In the event, however, it is determined an asserted claim can be supported by evidence at trial, a motion under subsection MCR 2.116(C)(10) will be denied. *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991). If it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party under MCR 2.116(I)(2).

This motion requires the Tribunal to determine if there are genuine issues of material fact as to whether Eltel was the owner of the subject properties on December 31, 2001. It also requires us to determine whether a mistake of fact occurred under MCL 211.53a.

FINDINGS OF FACT

In 2001 Petitioner, Eltel Associates, LLC, entered into an agreement to purchase property from the Pontiac Tax Increment Finance Authority (hereafter “Authority”). The Authority first had to receive title from the State of Michigan. Because the property was owned by the State of Michigan, it was exempt from property tax prior to the transaction.

On December 12, 2001, the property was transferred by quit claim deeds, first from the State of Michigan to the Authority, then to Eltel Associates. The quit claim deeds were placed in escrow until approximately January 24, 2002, when Eltel Associates’ financing was completed and the deeds were released from escrow. Neither the Authority nor Eltel Associates acquired title to the property until approximately January 24, 2002.

Based on the date of December 12, 2001, as stated on the deeds that were transferred, the assessor believed that Eltel Associates was the owner on December 31, 2001, tax day. At the July, 2002 Board of Review, the property was placed on the 2002 assessment roll. The property was assessed and a property tax bill was sent to Eltel Associates. Eltel Associates paid the 2001 tax bill believing the property tax bill was correct.

This matter concerns three parcels. As to each, the taxable value on the assessment roll is as follows:

Tax Year	Parcel Number	Taxable Value
2002	14-30-200-004	\$33,750.00
2002	14-30-200-005	\$1,704,350.00
2002	14-30-200-006	\$3,022,170.00

Petitioner filed a petition in March, 2004. Petitioner does not contest the true cash value for 2002. There is also no dispute regarding years subsequent to 2002. The only issue in this case is whether the taxable value for the 2002 tax year should be zero or whether it should be those values on the assessment roll. The sole issue is whether a mutual mistake of fact as provided in MCL 211.53a exists.

CONCLUSIONS OF LAW

“The general rule is that a deed delivered to a third person to be by him delivered to the grantee upon the happening of some event in the future, which may or may not happen, does not pass the title to the land until such event occurs, and then only from that time.” *Noakes v Noakes*, 290 Mich 231, 240; 287 NW 445, 449 (1939).

The parties agree that the subject deeds were held in escrow until Eltel Associates met the finance company’s requirement. This condition—meeting the finance company’s requirements prior to the deeds being released from escrow—was a future event, which may or may not have happened. Both Petitioner and Respondent have agreed that the conditions were not met until

January 24, 2002. Under the holding in *Noakes*, title did not pass until January 24, 2002. Eltel Associates did not have title to the property on December 31, 2001, tax day, and the property should not have been placed on the assessment rolls and assessed.

Petitioner seeks relief under MCL 211.53a, which states:

Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a clerical error or mutual mistake of fact made by the assessing officer and the taxpayer may recover the excess so paid, without interest, if suit is commenced within 3 years from the date of payment, notwithstanding that the payment was not made under protest.

“The primary rule of statutory construction is to determine and effectuate the intent of the Legislature through reasonable construction in consideration of the purpose of the statute and the object sought to be accomplished.” *Frankenmuth Mut Ins Co v Marlette Homes*, 456 Mich 511, 515; 573 NW2d 611, 613 (1998). The language of the statute is the best source for ascertaining intent. MCL 8.3a states that, “All words and phrases shall be construed and understood according to the common and approved usage of the language....” “We begin by examining the plain language of the statute; where the language is unambiguous, we presume the Legislature intended the meaning clearly expressed.” *Echelon Homes, LLC v Carter Lumber Co*, 472 Mich 192, 196; 694 NW2d 544, 547 (2005) quoting *People v Morey*, 461 Mich 325; 329-330; 603 NW2d 250 (1999). “An act must be read in its entirety and the meaning given to one section arrived at after due consideration of the other sections so as to produce, if possible, a harmonious and consistent enactment as a whole.” *Herald Wholesale, Inc v Dep't of Treasury*, 262 Mich App 688, 693-694; 687 NW2d 172, 175 (2004) quoting [*Stratton-Cheeseman Mgt Co v Dep't of Treasury*, 159 Mich App 719, 724-725; 407 NW2d 398 (1987)].

However, the statutory construction ought not be captive to a literal interpretation contrary to the obvious purpose of the statute. *People v Lynch* 410 Mich 343; 301 NW2d 796 (1981). The purpose of section 53a is undeniably remedial. It serves to reject common law once applicable in Michigan that had allowed government to benefit, unjustly, from its error. *Spoon-Shacket Co v Oakland County*, 356 Mich 151; 97 NW2d 25 (1959). Section 53a also acts as a guarantee of taxpayers' due process rights because exaction of taxes constitutes deprivation of property. *Matter of Hawaiian Flour Mills, Inc*, 76 Hawai'i 1; 868 P2d 419 (1994). Within the realm of state taxes the Due Process Clause has been interpreted as requiring states to “provide meaningful, backward-looking relief to rectify any unconstitutional deprivation.” *James B Beam Distilling Co v State*, 263 Ga 609, 612; 437 SE2d 782 (1993).

In place of the harsh common law rule, the Legislature enacted an equitable means for relief and explicitly made the relief retroactive. Remedial statutes are to be liberally construed in the favor of the person intended to be benefited. *Bierbusse v Farmers Ins Group*, 84 Mich App 34, 37; 269 NW2d 297 (1978). “Statutory provisions establishing remedies so that the taxpayer may recover taxes unjustly collected have generally been liberally construed. This applies to proceedings for abatement and refund of taxes....” *Malburg v Sterling Heights*, 152 Mich App 484, 492; 394 NW2d 455, 458 (1986) citing 3 *Sutherland, Statutory Construction* (4th ed), §

66.07, p 202. Where there is doubt in the interpretation of a tax statute, the statutes must be interpreted in favor of the taxing authority and against the taxing unit. *Bechtel Power Corp v Dept of Treas*, 128 Mich App 324; 340 NW2d 297 (1983). While under the common law standard, equitable principles are not applicable in the area of tax law –See *Consumers Power Co, supra*, at 246-251; see also *Ford Motor Company v Twp of Bruce*, 264 Mich App 1, 7; 689 NW2d 764, 768 (2004), that standard has been widely and soundly eclipsed by recent jurisprudence incorporating remedial provisions that ameliorate unjust government enrichment and return taxing agency operations within the boundaries of its statutory authority.¹

“A ‘mutual mistake of fact’ is a shared or common error, misconception, misunderstanding, or erroneous belief about a material fact.” *Ford Motor Co v Twp of Bruce, supra*, at 9.

The key to the “mistake of fact” analysis under MCL 211.53a is to determine what mistake of fact directly caused the assessor’s excess assessment and compare it to the mistake of fact that directly caused the taxpayer’s excess payment. If they are the same, the mutuality requirement of MCL 211.53a is met. *Ford Motor Company*, at 10-11.

There are limits to the right to recover under MCL 211.53a, as a mistake of law does not accord relief. *Ford Motor Company, supra*, at 8-9. MCL 211.53a is clear and unambiguous. It is intended to provide equitable relief when clerical errors or mutual mistakes occur as a result of communication or lack of communication between an assessor and the taxpayer. MCL 211.53a states that a taxpayer may recover excess taxes paid because of either clerical error or mutual mistake of fact, not exclusively clerical error as Respondent contends.

The transfer of property is a factual event. Here, both the assessor and the taxpayer believed that title had passed on December 12, 2001. They were both mistaken in believing that a transfer took place prior to December 31, 2001. The mistake was one of fact, not law. *Cf Redford Opportunity House v Township of Redford*, unpublished per curiam of the Court of Appeals, decided May 18, 2004 (Dk No. 235051); 2004 WL 1103769 (Taxpayer’s incorrect belief that it was not exempt from property taxes was a mistake of law); *Upper Peninsula Generating Co v City of Marquette*, 18 Mich App 516, 171 NW2d 572 (1969) (Failure of local unit to obtain voter approval for a millage was a mistake of law); *Carpenter v City of Ann Arbor*, 35 Mich App 608; 192 NW2d 523 (1971) (Voluntary payment of an invalid tax was not a mistake of fact). Like many factual questions, the question of whether a transfer took place may have a variety of legal permutations. See *Carpenter v Detroit Forging Co*, 191 Mich 45, 53; 157 NW 374 (1916). Section 53a does not preclude recovery when mistakes of law *in addition* to a mistake of fact

¹ While the Court of Appeals may accord deference to the Tribunal’s interpretation of a statute, *Ford Motor Company, supra* at 4, most of the Tribunal’s cases denying section 53a relief were not a determination made by the entire tribunal or a majority of its members, but by the Tribunal’s chair prior to a case being assigned to individual members, based on the chair’s determination that 53a was a jurisdictional statute. As the Court of Appeals noted, the analysis in these prior decisions was flawed to the extent it sought to create “very narrow interpretations” and “restrictive” interpretations inconsistent with modern statutory and constitutional jurisprudence (*Ford Motor Company, supra* at 13). This member does not construe section 53a as a jurisdictional provision, but rather as a provision for relief.

occur. The statute only requires that the taxpayer demonstrate *a* mutual mistake of fact. Indeed, it is far more important that the parties share the mistake and agree that the taxing unit will be unjustly enriched in derogation of every applicable law. The requirements of MCL 211.53a have been met.

Respondent has not met its burden of proof under MCR 2.116(C)(10). The Tribunal has reviewed and considered the entire file, including pleadings, admissions, and documentary evidence filed by the parties as allowed under MCR 2.116(G)(5) and has found that a shared or common error, misconception, misunderstanding, or erroneous belief about a material fact occurred. This finding constitutes a mistake of fact under MCL 211.53a.

The key to this case is whether the misunderstanding regarding the transfer of title was a mutual mistake of fact under MCL 211.53a. The Tribunal finds that Petitioner, rather than Respondent, is entitled to summary disposition; therefore, judgment will be entered in favor of Petitioner under MCR 2.116(I)(2).

JUDGMENT

IT IS ORDERED that the property's assessed and taxable values for the 2002 tax year are those shown on the first page of this Opinion.

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 assessed and taxable values in the amounts as finally shown in the "Final Values" section of this Opinion and Judgment, subject to the processes of equalization, within 20 days of the entry of this Order. To the extent that the final level of assessment for a given year has 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 as required by this Order within 20 days of the entry of this Order. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of 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 Order. As provided by 1994 PA 254 and 1995 PA 232, being MCL 205.737, as amended, interest shall accrue for periods after March 31, 1985, but before April 1, 1994, at a rate of 9% per year. After March 31, 1994, but before January 1, 1996, interest shall accrue at an interest rate set monthly at a per annum rate based on the auction rate of the 91-day discount treasury bill rate for the first Monday in each month, plus 1%. After December 1, 1995, interest shall accrue at an interest rate set each year by the Department of Treasury. Pursuant to 1995 PA 232, interest shall accrue

(i) after December 31, 1995, at a rate of 6.55% for calendar year 1996, (ii) after December 31, 1996, at a rate of 6.11% for calendar year 1997, (iii) after December 31, 1997, at a rate of 6.04% for calendar year 1998, (iv) after December 31, 1998, at the rate of 6.01% for calendar year 1999, (v) after December 31, 1999, at the rate of 5.49% for calendar year 2000, (vi) after December 31, 2000, at the rate of 6.56% for calendar year 2001, (vii) after December 31, 2001, at the rate of 5.56% for calendar year 2002, (viii) after December 31, 2002 at the rate of 2.78% for calendar year 2003, and (ix) after December 31, 2003, at the rate of 2.16% for calendar year 2004, (x) after December 31, 2004, at the rate of 2.07% for calendar year 2005, and (xi) after December 31, 2005, at the rate of 3.66% for calendar year 2006.

This Opinion & Judgment resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: November 14, 2006

By: Jack Van Coevering, Tribunal Judge