STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL
SMALL CLAIMS DIVISION

Truss Development, LLC,
Petitioner,

v

MTT Docket No. 358386

City of Novi,
Respondent.

Tribunal Judge Presiding
Kimbal R. Smith III

ORDER DESIGNATING DECISION AS PRECEDENT

Pursuant to MCL 205.765, the Michigan Tax Tribunal declares the March 24, 2011, decision rendered in this case precedential for defining whether recording a deed is sufficient to provide the appropriate assessing office notice of a transfer of ownership, pursuant to MCL 211.27a.

MICHIGAN TAX TRIBUNAL

Entered: March 24, 2011

By: Kimbal R. Smith III

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL
SMALL CLAIMS DIVISION

Truss Development, LLC,
Petitioner,

v

MTT Docket No. 358386

City of Novi,
Respondent.

Tribunal Judge Presiding
Patricia L. Halm

ORDER GRANTING RESPONDENT'S MOTION TO DISMISS

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

INTRODUCTION

Petitioner, Truss Development, LLC, is appealing the uncapping of Parcel No. 22-12-101-044's (the subject property) taxable value in the 2008 tax year and the subject property's assessed and taxable values for the 2008, 2009 and 2010 tax years as determined by Respondent, City of Novi. On June 30, 2010, Respondent filed a Motion requesting that this case be dismissed for lack of jurisdiction. On July 8, 2010, Petitioner filed a response in opposition to Respondent's Motion and a Motion for Summary Disposition.

RESPONDENT'S MOTION TO DISMISS

In its Motion to dismiss, Respondent states that the 2008 December Board of Review uncapped the subject property's 2008 taxable value after Petitioner filed an untimely Property Transfer Affidavit. According to Respondent, Petitioner purchased the subject property on October 30, 2007, but did not record the warranty deed. On September 12, 2008, almost a year later, Petitioner filed a Property Transfer Affidavit. Because Respondent did not have notice of the transfer of ownership, the subject property's taxable value was not uncapped prior to the 2008 March Board of Review. Respondent asserts that, pursuant to MCL 211.53b, there was a qualified error and that the 2008 December Board of Review had authority to uncap the subject property's taxable value.

Respondent contends that the Tribunal's jurisdiction is limited to the question of the 2008 uncapping of the subject property's taxable value and that valuation is not at issue because Petitioner failed to appeal the subject property's assessment to the 2008 March Board of Review. Given this, the Tribunal lacks jurisdiction over a 2008 valuation appeal. Respondent requests the Tribunal dismiss this appeal in its entirety.

PETITIONER'S MOTION FOR SUMMARY DISPOSITION

Petitioner agrees that the Tribunal has jurisdiction over the uncapping issue for the 2008 tax year. According to Petitioner, the 2007 Warranty Deed was recorded with the Oakland County Register of Deeds on December 19, 2007. A copy of the Warranty Deed indicating receipt by the Oakland County Clerk was included with the Motion. Because the Warranty Deed was recorded, Petitioner argues that Respondent received notification of the transfer of ownership and that the requirement to file a property transfer affidavit is superseded.

In support of this argument, Petitioner cites *Gary D Morehouse and Susan C Morehouse v Mackinaw Township*, unpublished opinion per curiam of the Court of Appeals, issued March 17, 2009 (Docket No. 271483). Petitioner states that "the [*Morehouse*] court determined that the assessor 'did not have the authority to retroactively uncap and increase petitioners' property value based on an oversight of paperwork in the assessor's office.'" As such, Petitioner contends that Respondent is precluded from uncapping the subject property's taxable value merely because Petitioner did not timely file a property transfer affidavit.

Petitioner further argues that "Respondent's use of MCL 211.53b in support of uncapping the taxable value at the December Board of Review is misplaced. Respondent's failure to adjust the taxable value pursuant to MCL 211.27a(3) is not a qualified error that is correctable at the December Board of Review." Petitioner concludes this argument by asserting that "Petitioner met the requirement of notifying Respondent of the transfer of ownership and the uncapping by the December Board of Review is illegal and should be reversed."

As to the question of the subject property's 2008, 2009 and 2010 assessments, Petitioner asserts that "Respondent's contention that the Tribunal has limited/no jurisdiction is incorrect. . . ." Petitioner argues that because it timely appealed the December 2008 Board of Review's action, Petitioner's 2008 valuation claim is properly pending before the Tribunal. Furthermore,

pursuant to TTR 313(3), the subject property's 2009 and 2010 assessments must be included in this appeal.

FINDINGS OF FACT

The subject property is located at 40645 Thirteen Mile Road, Novi, Michigan, and is known as Parcel No. 22-12-101-044. For classification purposes the property is classified residential. Each party in this case filed a copy of what it claims to be the Warranty Deed transferring the subject property from Cary Borden to Truss Development, LLC. However, Petitioner filed two different Warranty Deeds, one with its letter of appeal and one with its Motion for Summary Disposition. The first Deed is the same Deed relied upon by Respondent; this Deed indicates that the subject property was transferred on October 30, 2007, but is not certified by the Register of Deeds as recorded. The other Deed indicates that the property was transferred on November 15, 2007, and that it was recorded on December 19, 2007.

On September 12, 2008, Petitioner filed a Property Transfer Affidavit with Respondent indicating that Truss Development, LLC, purchased the subject property from Cary & Natalie Borden on November 15, 2007, for $17,000.00. Respondent's 2008 December Board of Review corrected the tax roll to reflect the transfer of ownership and uncapped the subject property's taxable value. The Board of Review took this action under the theory of a qualified error. See MCL 211.53b.

On December 3, 2008, Petitioner filed its initial pleading (letter of appeal). The letter of appeal states that Petitioner ". . . received a letter on November 19th from the City of Novi regarding the taxable value of our property. I understand that the taxable value is being uncapped as a result of transfer of ownership." On January 5, 2009, Petitioner filed its Petition indicating that it is also appealing the subject property's 2008 true cash and taxable values.

According to Respondent, Petitioner did not protest the subject property's assessment to the 2008 March Board of Review. Petitioner does not dispute this statement.

MOTION FOR SUMMARY DISPOSITION

Petitioner does not state the basis for its summary disposition Motion. However, given the content of the Motion, the Tribunal concludes that Petitioner's Motion is filed under MCR 2.116(C)(10). A Motion for 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 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. *Smith v Globe Life Insurance*, 460 Mich 446, 454-455; 597 NW2d 28 (1999). In the event, however, it is determined that 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).

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. *Quinto v Cross & Peters Co*, 451 Mich 358, 362-63; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)). The moving party bears the initial burden of supporting his position by presenting his documentary evidence for the court to consider. *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.

McCart 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).

CONCLUSIONS OF LAW

The requirements for assessing property and the formula for calculating taxable value are found in Article IX, §3, of the Constitution of the State of Michigan. In relevant part, §3 provides:

> The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not, after January 1, 1966, exceed 50 percent; and for a system of equalization of assessments. **For taxes levied in 1995 and each year thereafter, the legislature shall provide that the taxable value of each parcel of property adjusted for additions and losses, shall not increase each year by more than the increase in the immediately preceding year in the general price level, as defined in section 33 of this article, or 5 percent, whichever is less until ownership of the parcel of property is transferred.** When ownership of the parcel of property is transferred as defined by law, the parcel shall be assessed at the applicable proportion of current true cash value. (Emphasis added.)

The general property tax act ("GPTA"), being MCL 211.1 *et seq*, implements the legislative determination required by Article IX, §3. Specifically, MCL 211.27a provides, in relevant part:

> 1) Except as otherwise provided in this section, property shall be assessed at 50% of its true cash value under section 3 of article IX of the state constitution of 1963.
>
> (2) 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 valuation in 1994.
>
> (b) The property's current state equalized valuation.
>
> (3) Upon a transfer of ownership of property after 1994, the property's taxable value for the calendar year following the year of the transfer is the property's state equalized valuation for the calendar year following the transfer. (Emphasis added.)

In this case, the parties do not disagree that ownership of the subject property was transferred to Petitioner in 2007. Instead, the parties disagree as to whether Respondent had statutory authority to uncap the subject property's 2008 taxable value. For the reasons stated herein, the Tribunal finds that Respondent possessed the requisite authority and that the subject property's 2008 taxable value was properly uncapped.

To begin, the Tribunal rejects Respondent's "qualified error" argument and finds that authority to uncap the subject property's taxable value is found in MCL 211.27b. MCL 211.27b states, in pertinent part: "If the buyer, grantee, or other transferee in the immediately preceding transfer of ownership of property does not notify **the appropriate assessing office** as required by section 27a(8)[1], the property's taxable value shall be adjusted under section 27a(3). . . ." (Emphasis added.) As it relates to a buyer, grantee, or other transferee, MCL 211.27a(10) states:

> **Unless notification is provided under subsection (6)**, the buyer, grantee, or other transferee of the property shall notify **the appropriate assessing office** in the local unit of government in which the property is located of the transfer of ownership of the property within 45 days of the transfer of ownership, on a form prescribed by the state tax commission that states the parties to the transfer, the date of the transfer, the actual consideration for the transfer, and the property's parcel identification number or legal description. (Emphasis added.)

[1] As Petitioner recognized, the correct citation is to 27a(10) and not 27a(8).

The first question that must be addressed is who is the appropriate assessing officer? Pursuant to MCL 211.10d(1), "[t]he annual assessment of property shall be made by an assessor who has been certified as qualified by the board. . . ." MCL 211.10d(6) provides that:

> A local assessing district which does not have an assessor qualified by certification of the board may employ an assessor so qualified. If a local assessing district does not have an assessor qualified by certification of the board, and has not employed a certified assessor, the assessment shall be made by the county tax or equalization department or the state tax commission and the cost of preparing the rolls shall be charged to the local assessing district.

In this case, the City of Novi employed a certified assessor and maintained an "appropriate assessing office."

The next question is whether Petitioner notified the City of Novi's assessing office of the transfer of ownership as required under MCL 211.27a(10). To that end, the Tribunal finds the language in subsection (10) confusing. Specifically, subsection (10) states that "[u]nless notification is provided under subsection (6) . . . ." However, but for (6)(h)[2], subsection (6) is silent as to "notification"; it does not provide for nor require any specific type of notification of transfer of ownership, nor does it state who is responsible for the notification or to whom notification should be made. It cannot be assumed that "notification" means simply transferring ownership via a deed, for example, as in (6)(a), because executing a deed does not provide notification to anyone other than the person transferring ownership. Even if it is assumed that this language is intended to apply in situations where a deed is recorded, notification is not made

[2] MCL 211.27a(6)(h) states, in pertinent part:

> Unless notification is provided under subsection (6), the buyer, grantee, or other transferee of the property shall notify the appropriate assessing office in the local unit of government in which the property is located of the transfer of ownership of the property within 45 days of the transfer of ownership, on a form prescribed by the state tax commission that states the parties to the transfer, the date of the transfer, the actual consideration for the transfer, and the property's parcel identification number or legal description.

to the "appropriate assessing office" under (6); it is made to an unrelated governmental office, the county register of deeds. Furthermore, how could a buyer, grantee, or other transferee ever be certain that notice was provided to the appropriate assessing office by recording a deed, thus relieving it of its obligation under subsection (10)?

The concept of notification becomes even more complicated in situations where a document transferring ownership is never recorded with the register of deeds, i.e., an ownership interest in a cooperative housing corporation. Does the fact that the conveyance of an ownership interest is publicly documented somewhere mean that notification has been provided, thus releasing a buyer, grantee, or other transferee from its obligation to provide notification to an assessing officer? Clearly, notification by a buyer, grantee, or other transferee to the appropriate assessing office is never made merely under (6).

Reading the first sentence of subsection (10) in conjunction with the second sentence does not eliminate the confusion. The first sentence states:

> The register of deeds of the county where deeds or other title documents are recorded shall notify the assessing officer of the appropriate local taxing unit not less than once each month of any recorded transaction involving the ownership of property and shall make any recorded deeds or other title documents available to that county's tax or equalization department.

Thus, the first sentence clearly specifies the action required of the register of deeds. It does not, however, specify any action required of a buyer, grantee, or other transferee.

Could the legislature have intended to give so little responsibility to a buyer, grantee, or other transferee and at the same time so great a responsibility to an unrelated governmental entity? For if the county register of deeds fails to notify the appropriate assessing office of a recorded transaction, the property's taxable value will remain capped until ownership is transferred once again, assuming that notice is provided at that time. In other words, the new

owner will receive a benefit not intended by Article IX, §3, namely that the correct amount of property taxes will never paid. The Tribunal finds that the legislature could not have intended to infer such a benefit, while at the same time recognizing that all governmental units that levy a property tax against that property would be deprived of tax revenue rightfully theirs.

Instead, the Tribunal finds that the intent of the legislature was to require the register of deeds to notify the assessing officer and to require a buyer, grantee, or other transferee to also notify the assessing officer by filing what has become known as a "property transfer affidavit." This statutory interpretation is supported by the fact that not all of the information required in the affidavit is required in a deed. The affidavit requires the following information: "the parties to the transfer, the date of the transfer, the actual consideration for the transfer, and the property's parcel identification number or legal description." (MCL 211.27a(10)) Deeds, on the other hand, are not required to include "the actual consideration for the transfer." Moreover, if the legislature had intended that a buyer, grantee, or other transferee's obligation to notify the appropriate assessing office was satisfied by merely recording a deed, there would be no need for the language in MCL 211.27b assessing a civil penalty for failure to file a property transfer affidavit.

Petitioner cites *Gary D Morehouse and Susan C Morehouse v Township of Mackinaw*, unpublished opinion per curiam of the Court of Appeals, decided March 17, 2009, (Docket No. 281483), in support of its position that Respondent received notice that ownership of the subject property was transferred at the time it recorded the Warranty Deed with the county register of deeds. In *Morehouse*, the Michigan Court of Appeals dealt with a situation where the petitioners recorded their land contract and filed a property transfer affidavit. However, the register of deeds did not notify the respondent that a deed had been recorded and the property transfer

affidavit filed by the petitioner specified an incorrect parcel number. Several years later, once the respondent became aware that a deed had been recorded, it uncapped the property's taxable value by relying on MCL 211.27b. The court stated:

> . . . because the petitioners entered into, and recorded, a land contract, the assessor should have been notified pursuant to §27a(6). MCL 211.27b(10) provides, "*Unless notification is provided under subsection (6)*, the buyer . . . shall notify the appropriate assessing office." (Emphasis added.) Because the land contract was recorded with the register of deeds, notice should have been provided through the register of deeds, even if the property transfer affidavit did not trigger the usual internal procedures for notifying the assessor. *Id*.

From these statements, it appears that the *Morehouse* court believed that recording a deed with the county register of deeds releases a buyer, grantee, or other transferee from its requirement to provide notice to the appropriate assessing office. The Tribunal notes that the *Morehouse* decision is unpublished. As such, the decision is not binding on this Tribunal. The Tribunal respectfully disagrees with this part of the *Morehouse* decision and declines to follow its reasoning.

Even if the Tribunal agreed with that aspect of the *Morehouse* decision, the Tribunal finds that the facts in this case differ substantially from the facts in the *Morehouse* case. First, unlike the Morehouses, there is no dispute that Petitioner did not timely file the property transfer affidavit. The affidavit was filed on September 12, 2008, along with an unrecorded Warranty Deed that indicates that ownership was transferred on October 30, 2007. The subsequent Warranty Deed submitted by Petitioner with its Motion for Summary Disposition indicates that ownership of the subject property was transferred on November 15, 2007. This Deed was not recorded until December 19, 2007.

In the *Morehouse* case, the court stated that "the testimony and evidence presented does not clearly establish that respondent did not receive sufficient notice of petitioners' purchase of

property." In this case, it is clear that sufficient notice was not provided until September 12, 2008. It is unclear if the Deed that was actually recorded was ever provided to Respondent.

To summarize, the Tribunal finds that the language of MCL 211.27a(10) relies on a notification process that does not exist in MCL 211.27a(6). Moreover, the Tribunal finds that the legislature could not have intended that a property owner receive what is, for all practical purposes, a tax exemption, because a governmental agency not charged with the administration of property taxes failed to provide the requisite notice. For these reasons, the Tribunal finds that a buyer, grantee, or other transferee is always required to file a property transfer affidavit as provided in MCL 211.27a(10). Because Petitioner did not do so within 45 days of the transfer of ownership, Respondent's action in uncapping the subject property's 2008 taxable value was correct under MCL 211.27b.

As for Petitioner's appeal of the subject property's 2008, 2009 and 2010 assessed values, Petitioner asserts that because it timely appealed the December 2008 Board of Review's action, Petitioner's 2008 valuation claims are properly pending before the Tribunal. Petitioner further argues that, pursuant to TTR 313(3), the subject property's 2009 and 2010 assessments must be included in this appeal.

The Tribunal disagrees and finds that it lacks jurisdiction over Petitioner's valuation appeals under MCL 205.735a, which provides, in pertinent part:

> (3) Except as otherwise provided in this section or by law, for an assessment dispute as to the valuation or exemption of property, the assessment must be protested before the board of review before the tribunal acquires jurisdiction of the dispute under subsection (6).

Because the subject property is classified as residential property, this provision of subsection (6) of MCL 205.735a applies.

> The jurisdiction of the tribunal in an assessment dispute as to property classified under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c, as agricultural real property, residential real property, timber-cutover real property, or agricultural personal property is invoked by a party in interest, as petitioner, filing a written petition on or before July 31 of the tax year involved.

Because MCL 205.735a is silent as to whether property classified as residential must be protested to the Board of Review, such a protest is required. Thus, Petitioner was required to protest the assessment of the subject property to the 2008 March Board of Review and failed to do so. Additionally, the assessment appeal was not filed on or before July 31, 2008. As such, Petitioner's 2008 valuation claim is not properly pending before the Tribunal.

Petitioner's reliance on TTR 205.1313(3) for its position that its appeal of the subject property's 2009 and 2010 assessed values are automatically added to this appeal is misplaced. For a subsequent tax year to be automatically included in an appeal, the Tribunal must have had jurisdiction over the appeal of the initial tax year. Because the Tribunal did not have jurisdiction over the 2008 assessment dispute, it does not have jurisdiction over the 2009 and 2010 assessment disputes.

Finally, while December Boards of Review have authority to consider uncapping issues, they do not have the authority to consider valuation issues. In an appeal of a Board of Review's decision, the Tribunal only has jurisdiction over the issues presented to the Board. A proper appeal of one issue does not open the flood gates to allow appeals of "everything but the kitchen sink."

Having considered Petitioner's Motion for Summary Disposition under the criteria for MCR 2.116(C)(10), and based on the pleadings and other documentary evidence, the Tribunal finds that while there is no genuine issue as to any material fact, Petitioner is not entitled to judgment as a matter of law. In fact, because Petitioner failed to state a claim upon which relief

can be granted, the Tribunal finds that Respondent is granted summary disposition pursuant to MCR 2.116(C)(8). For these reasons, Respondent's Motion to Dismiss is granted and Petitioner's Motion for Summary Disposition is denied.

JUDGMENT

IT IS ORDERED that Respondent's Motion to Dismiss is GRANTED.

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

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

MICHIGAN TAX TRIBUNAL

Entered: March 24, 2011 By: Patricia L. Halm