



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

June 27, 2018

Dear Tax Tribunal Practitioner:

The Tribunal would like to announce the retirement of Chairman Steven H. Lasher. Judge Lasher's last day is this Thursday, June 28, 2018. Judge Lasher was integral in improving the Tribunal's communication, the quality of its work product, and facilitating the overall improvement of the Tribunal's processes and procedures. The Tribunal sincerely thanks Judge Lasher for his dedication and hard work as Tribunal Member and Chair of the Michigan Tax Tribunal.

The Tribunal is also pleased to announce the hiring of three new office assistants, Lisa Endres, Kerry Fountain, and Brooke Kita. Lisa will be serving as the Tribunal's receptionist and Kerry and Brooke will be assisting with processing appeals.

New Small Claims Forms

To better assist parties appearing before the Tribunal's Small Claims Division, the Tribunal has created three new forms available on the Small Claims page of our website. They are: (1) Hear on File Request Form, (2) Telephonic Request Form, and (3) Motion to Set Aside Default Form. Please feel free to use these fillable forms. These forms may be printed and a hard copy filed or they may be e-filed using the e-filing system. Don't forget that a copy of these forms must be sent to the opposing party and you must certify the form was sent to the other side by signing the appropriate section of the form.

Handicap Parking at the Tribunal

This is a reminder that if you need handicap parking because you are attending a Tribunal hearing or other matter at the Tribunal's Lansing offices, please submit your request for handicap parking *at least two days prior to the date of the hearing*. Requests for handicap parking may be made by telephone or e-mail (taxtrib@michigan.gov) and addressed to Lisa Endres.

Court of Appeals Decisions

Breakey v Dep't of Treasury, ___ Mich App ___; ___ NW2d ___ (2018) (Docket No. 339345)

Petitioner appealed an order of the Tribunal that determined that she was not an "owner" for purposes of being granted a Principal Residence Exemption ("PRE"). Petitioner and her husband were co-trustees of the William Breakey Trust, which owned the home that Petitioner occupied. Upon Petitioner's husband's death, Petitioner's son was appointed trustee of the William Breakey Trust, and a Marital Trust was created to provide for Petitioner, including the



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home. The terms of the Marital Trust allowed Petitioner the use of the home rent free. The Trust allowed Petitioner to remove a successor trustee without cause. Petitioner argued that, under *Barnes*, “‘possession alone’ is the most relevant consideration in determining whether a person is an ‘owner’.” The case relied on by Petitioner, *Barnes v Detroit*, 379 Mich 169; 150 NW2d 740 (1967), stated the Court, was distinguishable because it involved tenant in common, and possession was an important element of ownership. The Court applied the definition of “owner” as adopted in *Flowers v Bedford Twp*, 304 Mich App 661 (2014). The Court held that Petitioner was an “owner” of the property “because she holds as her own the . . . property as a result of being a beneficiary of the Marital Trust.” The Trust held the property for Petitioner’s benefit, the Court explained, allowed her to use it rent free, and Petitioner had the right to remove a trustee if he or she took “action inconsistent with the Trust and her wishes.” Petitioner therefore held an equitable interest in the property. The definition of “owner” adopted in *Flowers* did not include “control,” and thus the Tribunal erroneously relied on one of its own unpublished cases that expanded the *Flowers* definition to include control. In addition, in the unpublished Tribunal case, the Tribunal utilized a legal dictionary to define owner. Lay dictionaries should be used for words or phrases that have no unique meaning in the law. Respondent’s own interpretation of the PRE statute is consistent with the Court’s decision as well as *Flowers*.

Skinner v City of Royal Oak, unpublished per curiam opinion of the Court of Appeals, issued June 14, 2018 (Docket No. 342101)

Plaintiffs appealed the circuit court order dismissing the case for lack of subject-matter jurisdiction. Respondent determined that the sidewalks adjacent to plaintiffs’ properties required repair. Plaintiffs were informed that they could either hire their own contractor or allow Respondent’s contractor to perform the work. Plaintiffs raised concerns with the City Commission, but the Commission went forward with the project. Subsequently, plaintiffs brought suit in the circuit court, which dismissed the case because it was within the exclusive jurisdiction of the Tribunal. The circuit court also denied plaintiffs leave to amend their complaint. Plaintiffs argued that the dispute did not fall within the Tribunal’s jurisdiction because no special assessment had actually been levied. Plaintiffs also argued that they challenged a decision to deny exemptions and that the trial court abused its discretion by denying a motion to amend the complaint. The Court held that plaintiffs’ action related to a special assessment because the plaintiffs asserted that the procedures used by the defendant to impose



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the special assessment were improper. Additionally, the defendant's actions were taken under the authority of its charter to impose the costs of improvements on property owners. Although the complaint mentioned the denial of exemptions, it focused on whether the defendant had followed proper procedures, as did the plaintiffs' response to the defendant's motion for summary disposition. In any event "the fact that plaintiffs were denied exemptions from what they claim is a defective special assessment does not take the matter out of the MTT's jurisdiction" because the exemptions relate to the special assessment process. The trial court did not abuse its discretion when it denied plaintiffs' motion to amend the complaint because the court rule applicable to motions to amend, MCR 2.116(I)(5), does not apply to dismissals for lack of subject-matter jurisdiction. The amendment would also have been futile because the claims in the amended complaint fell within the exclusive jurisdiction of the Tribunal.

Michigan Tax Tribunal
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