FCB Associates LLC,
Petitioner,

v

City of Ann Arbor,
Respondent.

MICHIGAN TAX TRIBUNAL

MOAHR Docket No. 21-003236

Presiding Judge
Victoria L. Enyart

ORDER PARTIALLY GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER PARTIALLY GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

INTRODUCTION

On November 30, 2022, the Tribunal issued a revised scheduling order in the above-captioned case indicating that the parties were required to file motions for summary disposition by February 6, 2023, and responses by March 6, 2023. The parties thereafter filed their motions and responses on the respective dates.

The Tribunal has reviewed the Motions, responses, and the evidence submitted and finds that Petitioner's Motion shall be partially granted with respect to tax years 2020 and 2021 and partially denied with respect to tax year 2022. Respondent's Motion shall be partially denied with respect to tax years 2020 and 2021 and partially granted with respect to tax year 2022.

As a result, the subject's taxable value (TV) shall be as follows:

Parcel Number: 09-09-29-128-024

Year	TV
2020	$758,801
2021	$769,424
2022	$1,710,714

PETITIONER'S CONTENTIONS

In support of its Motion under MCR 2.116(C)(10), Petitioner contends that Respondent improperly uncapped the subject property's taxable value (TV). In 2019, the subject was owned by an entity that was owned 51% by Rene Papo and 49% by his wife, Dr. Hina Papo. Rene Papo died on August 11, 2019, and under the terms of his will, Dr. Papo inherited his interest in Petitioner. Her revocable living trust established Petitioner to control the ownership, and the trust continues to control Petitioner. Despite Respondent's contention that an uncapping would be applied, the 2021 assessment notice indicated no uncapping of the subject for tax year 2021. Thereafter, at Respondent's 2021 July Board of Review (BOR), Respondent retroactively uncapped the subject for tax year 2020.

Petitioner contends that Respondent had no authority to uncap the subject under Article IX, Section 3 of the Michigan Constitution, as well as MCL 211.27a. Petitioner states the first transfer was not a transfer of owner because it was a transfer from a decedent to a surviving spouse and was excluded from transfer under MCL 211.27a(7)(a).

Petitioner also argues that Respondent's July BOR lacked authority to uncap the property because there was no qualified error as defined by MCL 211.53b. Petitioner relies on the facts and holding *International Place Apartments - IV v Ypsilanti Township*[1] to support the assertion that an assessor's lack of judgment does not constitute a clerical error. Petitioner contends the facts in this case also support such a conclusion. Petitioner further contends that the language of MCL 211.27a(4) only allows an improper uncapping to be reversed and not the opposite.

Further, Petitioner states that the language of MCL 211.27a(6)(h) is not applicable because the subject transfer was not a transfer of ownership under MCL 211.27a(7)(a). Petitioner argues that Dr. Papo became the sole partner upon the death of her husband and that the subsequent transfer to Petitioner was a transfer among commonly controlled entities under MCL 211.27a(7)(m).

As a result, Petitioner contends that the subject should be re-capped and that the TV for the years at issue should reflect the application of the inflation rate multiplier (IRM) only.

RESPONDENT'S RESPONSE TO PETITIONER'S CONTENTIONS

In support of its response, Respondent contends that Petitioner improperly relies on marital status and improperly ignores that more than 50% of a partnership's ownership was transferred.

[1] *Int'l Place Apts IV v Ypsilanti Twp*, 216 Mich App 104 (1996).

Respondent contends that the July BOR acted appropriately in correcting the qualified error of a clerical error under MCL 211.53b(6)(a). Respondent states that this case is distinguishable from *International Place* because the error at issue involves the uncapping of the property under MCL 211.27a(4). Petitioner did not comply with the 45-day requirement of MCL 211.27a(10). Respondent relies on *Michigan Properties LLC v Meridian Township*[2] in support of the BOR's authority to correct the TV.

RESPONDENT'S CONTENTIONS

In support of its Motion under MCR 2.116(C)(10), Respondent contends that the death of a partner, as occurred when Rene Papo died in August 2019, resulted in a transfer of ownership under MCL 449.252 and therefore an uncapping under MCL 211.27a.

Respondent argues that Petitioner's exemption was not a transfer under MCL 211.27a(7)(m) because there was no transfer between commonly controlled entities. Instead, Respondent contends the transfer was from the partnership to Dr. Papo to Petitioner. Respondent states that Petitioner also did not notify the assessor of Mr. Papo's death until November 2020, more than a year after his death and not within the timeframe established by MCL 211.27a(10).

Respondent contends that the 2021 Notice of Assessment, which failed to uncap the property, was the result of a clerical error under MCL 211.53b(6)(a) relative to the correct assessment figures and also was an error under MCL 211.53b(6)(c). Respondent relies on *Michigan Properties* in support of the July BOR's authority to correct the error. Respondent contends that the matter was timely brought to the July BOR. Because Respondent contends that the Tribunal has jurisdiction over the BOR decision, Respondent states that the BOR decision should be upheld.

PETITIONER'S RESPONSE TO RESPONDENT'S CONTENTIONS

In support of its response, Petitioner contends that Respondent's argument errs in stating that the partnership assets automatically transferred upon dissolution of the partnership and errs in finding that Rene Papo's interest transferred to his surviving spouse as allowed under MCL 211.27a(7)(a). Petitioner also repeats its contention from its Motion that the July BOR lacked authority to make the changes it sought to make. Petitioner states that, under MCL 449.30, the dissolution of the partnership was caused by Rene Papo's death but that the dissolution was not termination of the partnership as argued by Respondent. Petitioner also states that the conveyance from the partnership to Petitioner was a transfer among commonly controlled entities.

Petitioner also re-states its argument that the July BOR lacked authority to make the identified revision because the purported error was not a clerical error as defined by case law or a qualified error under MCL 211.27a(4) as Respondent argues. Petitioner

[2] *Michigan Properties LLC v Meridian Twp*, 491 Mich 518 (2012).

also contends that Respondent's argument with respect to the property transfer affidavit (PTA) is misstated because it refers to the wrong transfer and because Respondent seeks to exceed its jurisdiction in response to a purportedly late affidavit.

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.[3] In this case, each party moves for summary disposition under MCR 2.116(C)(10).

MCR 2.116(C)(10) provides for summary disposition when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law."[4] The Michigan Supreme Court, in *Quinto v Cross and Peters Co*,[5] provided the following explanation of MCR 2.116(C)(10):

> MCR 2.116 is modeled in part on Rule 56(e) of the Federal Rules of Civil Procedure . . . [T]he initial burden of production is on the moving party, and the moving party may satisfy the burden in one of two ways.
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> First, the moving party may submit affirmative evidence that negates an essential element of the nonmoving party's claim. Second, the moving party may demonstrate to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim. If the nonmoving party cannot muster sufficient evidence to make out its claim, a trial would be useless and the moving party is entitled to summary judgment as a matter of law.
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> In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted 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 the affidavits or other documentary evidence show that 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).
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> 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. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. Where the burden of proof at trial on a dispositive issue rests on a

[3] See TTR 215.
[4] *Id*.
[5] *Quinto v Cross and Peters Co*, 451 Mich 358 (1996) (citations omitted).

> 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. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.[6]

"A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ."[7] In evaluating whether a factual dispute exists to warrant trial, "the court is not permitted to assess credibility or to determine facts on a motion for summary judgment."[8] "Instead, the court's task is to review the record evidence, and all reasonable inferences therefrom, and decide whether a genuine issue of any material fact exists to warrant a trial."[9]

CONCLUSIONS OF LAW

The Tribunal has carefully considered the parties' Motions under MCR 2.116(C)(10) and finds that partially granting each party's Motion is warranted, as explained below.

The stipulated facts and pleadings support a finding that Rene Papo's death in August 2019 resulted in an uncapping event on the date of his death under MCL 211.27a(6)(h). Respondent correctly contends that a PTA was to have been filed within 45 days of his passing because his death was a dissolution event for the partnership.

MCL 211.27a(6)(h) indicates that a conveyance of a majority ownership interest in a partnership is a transfer of ownership under MCL 211.27a. The conveyance occurs at the time of the death of the partner. Therefore, the death of the partner resulting in that transfer was a dissolution of the partnership for ownership purposes. Specifically, the dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business.[10] Dissolution is caused by the death of any partner.[11] The Tribunal gives no weight to Petitioner's argument that the winding period extends the dissolution of the partnership or activates any transitory period that precludes the 45-day filing timeframe established in MCL 211.27a(10). Instead, the statutory scheme of the Uniform Partnership Act (UPA) supports a finding that the winding up or settling of accounts period happens after dissolution.[12] No cited language in the UPA supports a

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[6] *Id*. at 361-363. (Citations omitted.)
[7] *West v General Motors Corp*, 469 Mich 177 (2003).
[8] *Cline v Allstate Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued June 21, 2018 (Docket No. 336299) citing *Skinner v Square D Co*, 445 Mich 153 (1994).
[9] *Id.*
[10] MCL 449.29.
[11] MCL 449.31(4).
[12] See MCL 449.40, wherein accounts may be settled and other actions taken after dissolution.

finding that the ownership transfer in the partnership ownership occurred at any time other than upon the death of Rene Papo. The nominal ownership interest in the partnership may have been permitted to continue under the statutory winding period, but based on the death of Rene Papo, the Tribunal finds the language of the UPA supports a finding that the dissolution occurred at the time of his death.

The Tribunal also finds that, contrary to as argued by Petitioner, Dr. Papo's status as Rene Papo's spouse or as beneficiary of the will is not controlling with respect to the August 2019 transfer. As established above, Rene Papo's death resulted in a transfer of ownership of the partnership as contemplated by MCL 211.27a(6)(h). However, the subject property was still nominally owned by the partnership during the winding up of its business. Dr. Papo had no property rights in the subject property from her status as Rene Papo's surviving spouse or as the beneficiary of his will. "On the death of a partner his right in specific partnership property vests in the surviving partner or partners . . .."[13] Thus, while Dr. Papo, as the beneficiary of Rene Papo's estate, was entitled to his portion of the assets and liabilities of the partnership, that entitlement as beneficiary does not extend to use or control of the subject property. No consideration is given to arguments made by Petitioner under MCL 211.27a(7)(a) because, at no time during this series of events, was Dr. Papo's status as surviving spouse pertinent or controlling for purposes of MCL 211.27a. The subject was owned by a partnership until it was transferred to the Petitioner. The property remained titled to the partnership during its winding up period and was never the property of Rene Papo or Dr. Papo as individuals or as spouses.

Because the partnership experienced a change in control of greater than 50% as a result of Rene Papo's death, the partnership was required to file a PTA with Respondent's assessor within 45 days of his death under MCL 211.27a(6)(h) and MCL 211.27a(10). The partnership did not comply with the deadline, and instead, Respondent was first aware of the transfer when the untimely PTA was filed in November 2020. Because the TV was already established for 2020 without being uncapped by the March BOR, Respondent's remedy at that time would have been to retroactively uncap the subject under MCL 211.27b using Treasury Form 3214.

The Tribunal also finds that the transfer from the partnership to Petitioner in November 2020 is not a transfer of ownership because it is a transfer among commonly controlled entities under MCL 211.27a(7)(m). It is undisputed that Dr. Papo controls 100% of the Petitioner Limited Liability Company. Likewise, Dr. Papo controlled 100% of the partnership at the time of transfer, including her original 49% ownership plus the additional 51% ownership transferred to her as Rene Papo's beneficiary at the time of Rene Papo's death. Because the transfer to her control already occurred upon his death in 2019, the 2020 transfer from the partnership to Petitioner is not a transfer of ownership under MCL 211.27a(7)(m).

[13] MCL 449.25(d).

Once Respondent became aware in November 2020 that the property was supposed to have been uncapped for tax year 2020 because of Rene Papo's 2019 death, Respondent was required to issue a notice of delayed uncapping and to immediately arrange for the billing of taxes to Petitioner.[14] Instead, it neither sought to retroactively uncap for 2020 or seek the uncapping of tax year 2021 at Respondent's 2021 March BOR. Respondent took no action until it asked its 2021 July BOR to uncap the subject for both tax years 2020 and 2021.

The Tribunal finds that the 2021 July BOR had no authority to retroactively uncap the subject for 2020 or 2021. Respondent makes two arguments in support of the BOR's authority. First, it contends that the failure to uncap was a clerical error. However, Respondent's contention of facts stated do not support any determination that there was "an error of a transpositional, typographical, or mathematical nature."[15] No evidence or stipulated facts were submitted to support any conclusion that there was an error of a transpositional, typographical, or mathematical nature. Instead, the error appears to be one of omission or inaction. *International Place* specifically excludes from clerical errors situations "where the assessor fails to consider all relevant data, even if the root of the assessor's error may have been a ministerial mistake such as the misfiling of a document."[16] Second, the Tribunal finds that the BOR had no authority under MCL 211.53b(6)(c) because its authority under that subsection is limited to the re-capping of an improperly uncapped property under MCL 211.27a(3) and MCL 211.27a(4). Petitioner correctly contends that Respondent's July BOR did not have authority to uncap the subject under MCL 211.53b(6)(c) because that subsection authorizes only the re-capping of improperly uncapped properties. There is no dispute that neither the 2020 or 2021 March BOR uncapped the subject. Respondent has therefore not demonstrated any authority of the 2021 July BOR to uncap the subject for tax year 2020 or 2021. The Tribunal's authority is limited to review of a final decision of an assessment,[17] and because the BOR lacked authority to uncap the subject, the Tribunal therefore also lacks any authority to take any action other than to vacate the BOR denial. That decision must therefore be vacated. The original TV values of $758,801 for 2020 and $769,424 for 2021 are reinstated.

However, the uncapping beginning in tax year 2022 is appropriate. As discussed above, the March BOR has authority to set the TV as required by law. Respondent's 2022 March BOR uncapped the subject, and because that assessment was timely appealed to the Tribunal, the Tribunal has authority to determine the correct TV for 2022. While the Tribunal lacks authority to modify the 2020 and 2021 assessments due to lack of jurisdiction, for the reasons stated above, it has authority to modify the 2022 assessment to correct the mandatory calculation of TV under MCL 211.27a.[18]

Having authority to consider the 2022 TV, the Tribunal turns to the calculation of the subject's 2022 TV. As previously indicated, the Tribunal has authority under

[14] MCL 211.27b(6).
[15] See *International Place Apartments – IV v Ypsilanti Township*, 216 Mich App 104, 109 (1996).
[16] *International Place*, *supra* at 109.
[17] MCL 205.731.
[18] See *Michigan Properties*, *supra*.

Michigan Properties to set the 2022 TV, the year for which it has proper jurisdiction over the TV, to the lawful and correct amount as required by MCL 211.27a. No additions or losses at the subject have been demonstrated for 2020, 2021, or 2022. In 2020, the TV should have been equal to the 2020 SEV, or $1,633,200, because of the 2019 uncapping event.[19] The 2021 TV should have been $1,656,064, which is the prior-year TV of $1,633,200 multiplied by the IRM of 1.014. The 2022 TV therefore should have been $1,710,714, which is the prior-year TV of $1,656,064 multiplied by the 2022 IRM of 1.033.

JUDGMENT

IT IS ORDERED that Petitioner's Motion for Summary Disposition is PARTIALLY GRANTED with respect to tax years 2020 and 2021.

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition is PARTIALLY GRANTED with respect to tax year 2022.

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.[20] 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 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, 2013, through June 30, 2016, at the rate of 4.25%, (ii) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (iii) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (iv) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, (v) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, (vi) after June 30, 2018, through December 31, 2018, at the rate of 5.41%, (vii) after December 31, 2018 through June 30, 2019, at the rate of 5.9%, (viii) after June 30, 2019 through December 31, 2019, at the rate of 6.39%, (ix) after December 31, 2019,

[19] MCL 211.27a(3).
[20] See MCL 205.755.

through June 30, 2020, at the rate of 6.40%, (x) after June 30 2020, through December 31, 2020, at the rate of 5.63%, (xi) after December 31, 2020, through June 30, 2022, at the rate of 4.25%, (xii) after June 30, 2022, through December 31, 2022, at the rate of 4.27%, and (xiii) after December 31, 2022, through June 30, 2023, at the rate of 5.65%.

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 Tribunal with the required filing fee within 21 days from the date of entry of the final decision. 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 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. You are required to serve a copy of the motion 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. Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.

A claim of appeal must be filed with the Michigan Court of Appeals 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." You are required to file a copy of the claim of appeal with filing fee with the Tribunal in order to certify the record on appeal. The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.

By Victoria A. Enjart

Entered: May 9, 2023
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PROOF OF SERVICE

I certify that a copy of the foregoing was sent on the entry date indicated above to the parties or their attorneys or authorized representatives, if any, utilizing either the mailing or email addresses on file, as provide by those parties, attorneys, or authorized representatives.

By: Tribunal Clerk