

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

Buzzelli Residential Properties, LLC,
Petitioner,

v

MTT Docket No. 16-000125

Hersey Township,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

On June 14, 2016, Petitioner filed a Motion requesting that the Tribunal render summary disposition in the above-captioned case in its favor. In the Motion, Petitioner contends that (i) Respondent “retrospectively” uncapped the subject property’s taxable value in 2015 “for all tax years from 2002 through 2015” based on a 2001 transfer of the property’s ownership “from Robert and Barbara Buzzelli, husband and wife, to a limited liability company that they had established [i.e., Petitioner] . . . in which they each own a 50% stake,” (ii) said transfer was exempt from uncapping as it was a transfer “between entities under common control,” and (iii) the uncapping also “fails as a matter of law” as a property transfer affidavit was filed with Respondent “during September 2001.”

Respondent did not file a response to the Motion.¹

The Tribunal has reviewed the Motion and the case file and finds that there is no specific Tribunal rule governing motions for summary disposition and, as such, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions.² In the instant case, Petitioner indicates that its Motion is being filed under MCR 2.116(C)(10), which tests the factual support for Petitioner’s claim based upon the Tribunal’s consideration of all pleadings, affidavits, depositions, admissions, and any other documentary evidence submitted by the parties “in the light most favorable to the party opposing the motion.”³ Further, the Tribunal may only grant such motions if the parties’ submissions show that there is no genuine issue of material fact

¹ A telephonic status conference was conducted on July 7, 2016, to verify the timely filing of the required property transfer affidavits. During the conference, Respondent confirmed that the property transfer affidavits were filed during 2001 and Petitioner, in response to a statement that said filing resolved the pending matter, requested the Tribunal to address whether the transfer was also exempt as a transfer between entities under common control inasmuch as a “husband and wife” are a recognized legal entity and not all of the entities listed in MCL 211.7m are “necessarily” business-type entities.

² See TTR 215.

³ See *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 187 (1999) and *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

and that the moving party is entitled to judgment as a matter of law.⁴ If it is, however, determined that an asserted claim can be supported by evidence at trial, the motion under (C)(10) must be denied.⁵ The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.⁶ 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.⁷ If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.⁸

Here, the Osceola County Treasurer sent a letter to Petitioner dated December 18, 2015, that provided, in pertinent part:⁹

Enclosed please find tax bills for three parcels that were uncapped by the assessor for the years 2002 to 2015. Uncappings are caused when there is a change in ownership. The assessor has determined that the transfer of the properties to the LLC was a change in ownership.

Said uncapping was, however, erroneous, as Respondent had no authority to retroactively uncap the property's taxable values for tax years 2002 through 2015.¹⁰ More specifically, Respondent's authority to retroactively uncap is dependent on a failure to "notify the appropriate assessing office" of the transfer of ownership and it is undisputed that Petitioner notified the appropriate assessing office (i.e., Respondent) of the transfer, albeit untimely, through the filing of the required property transfer affidavit in the year of the transfer.¹¹

Although Respondent has indicated that it "is willing to Stipulate and uncap only the present and one year prior to the taxable value due to the property transfer affidavit being presented at the time of the change," Respondent's failure to properly uncap the property's taxable value for the

⁴ See *Smith v Globe Life Insurance Co*, 460 Mich 446, 454-55; 597 NW2d 28 (1999) and *Quinto, supra* at 362.

⁵ See *Arbelius v Poletti*, 188 Mich App 14, 18; 469 NW2d 436 (1991).

⁶ See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).

⁷ See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).

⁸ See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

⁹ Petitioner alleges that said letter was Petitioner's first notice of the uncapping of the property's taxable value by Respondent's 2015 July Board of Review.

¹⁰ The authority of Respondent's July and December Board of Review is, in the instant case, limited under MCL 211.53b(1) to the correction of a qualified error and the failure to uncap is not one of the qualified errors enumerated in MCL 211.53b(10). See also *Michigan Properties, LLC v Meridian Twp*, 491 Mich 518, 532-33; 817 NW2d 548 (2012).

¹¹ See MCL 211.27b(1) (i.e., "does **not** notify"). [Emphasis added.] As for the "undisputed" filing, Respondent's answer indicates that the affidavit was filed during 2001 and that allegation was verified by Respondent during the July 7, 2016 telephonic status conference indicated above. In that regard, the property transferred on January 2, 2001, and Petitioner filed the required affidavit on September 10, 2001. Although the affidavit was filed more than 45 days after the transfer of ownership, Respondent still had notice of the transfer in sufficient time to take action to uncap the property's taxable value, if appropriate, "for the calendar year following the year of the transfer" (i.e., 2002). See MCL 211.27a(10) and 211.27a(3).

tax years at issue is not, as indicated above, the result of a qualified error. More specifically, the failure to uncapp is not the result of a clerical error (i.e., “an error of a transpositional, typographical, or mathematical nature”) or a mutual mistake of fact (i.e., “an erroneous belief, which is shared and relied on by both parties”) and would not constitute “[a]n error regarding the correct taxable status of the real property being assessed, as said errors relate to exemption issues and not assessment disputes (i.e., the correct taxable value).”¹² Further, the authority to correct the property’s taxable value, if erroneous, is reserved to the March Board of Review and only “for the current tax year” (i.e., 2015) and Respondent’s 2015 March Board of Review failed to take any such action.¹³

Finally, Petitioner’s request for the Tribunal to also determine whether the transfer from Robert and Barbara Buzzelli, as husband and wife, to Petitioner is an exempt transfer so as to preclude an uncapping in a subsequent tax year as inappropriate, as Petitioner is requesting a declaratory judgment relative to a tax year or years not at issue in this case.¹⁴ Further, said determination would require the application of principles of statutory construction and consideration of the purposes for the formation of the “entities” at issue (i.e., marriage is “the legal union of a couple as spouses” and an LLC may be formed “for any lawful purpose for which a domestic corporation or a domestic partnership could be formed”)¹⁵ and said application and consideration are unnecessary for the resolution of the Motion or, for that matter, the case, as Petitioner has already shown good cause to justify the granting of the Motion.¹⁶ Therefore,

¹² See *Int’l Place Apartments-IV v Ypsilanti Twp*, 216 Mich App 104, 109; 548 NW2d 668 (1996), *Ford Motor Co v City of Woodhaven*, 475 Mich 425, 442; 716 NW2d 247 (2006), and *Briggs Tax Service, LLC v Detroit Public Schools, et al*, 485 Mich 69, 78; 780 NW2d 753 (2010). See also *Exodus Place v City of Grand Rapids*, MTT Docket No. 457527 (October 1, 2014).

¹³ See *Michigan Properties, supra* at pp 536-37. Although the Tribunal “has the authority to carry out a March board of review’s duty to correct a previous erroneous taxable value in order to adjust the current taxable value,” the exercise of that authority required consideration or, more appropriately, “action” by the March Board of Review, rather than action by a July Board of Review. See *Michigan Properties, supra* at pp 543 and MCL 205.735a(4) and (6) (i.e., “for an assessment dispute as to the valuation . . . the assessment must be protested before the board of review before the tribunal acquires jurisdiction of the dispute under subsection (6)”).

¹⁴ The Tribunal’s authority in this case is limited to the tax years actually uncapped. More specifically, MCL 211.27b(6) provides:

A buyer, grantee, or other transferee may appeal any increase in taxable value or the levy of any additional taxes, interest, and penalties under subsection (1) to the Michigan tax tribunal within 35 days of receiving the notice of the increase in the property’s taxable value. An appeal under this subsection is limited to the issues of whether a transfer of ownership has occurred and correcting arithmetic errors. A dispute regarding the valuation of the property is not a basis for appeal under this subsection.

¹⁵ See the definition of “marriage” in Black’s Law Dictionary (10th ed. 2014) and *VanderWerp v Plainfield Charter Twp*, 278 Mich App 624, 630; 752 NW2d 479 (2008).

¹⁶ See *Weakland v Toledo Engineering Co*, 467 Mich 344, 349-50; 656 NW2d 175 (2003), as amended on denial of rehearing (April 8, 2003) (i.e., “the general term is restricted to include only things of the same kind, class, character, or nature as those specifically enumerated”; that is, because the listed items have a **commonality**, the general term is taken as sharing it”), the Michigan State Tax Commission “*Transfer of Ownership Guidelines*” issued December 2014 at pp 32-34 (i.e., “business activity”) and the unpublished opinion *per curiam* issued by the Michigan Court of Appeals in *C & J Investments of Grayling, LLC v City of Grayling*, issued on November 13, 2007 (Docket No. 270989) (i.e., “not inconsistent with the plain meaning of ‘commonly controlled’”). [Emphasis added.]

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

IT IS FURTHER ORDERED that the property's taxable value ("TV") as established by Respondent's March Board of Review for the tax years at issue are as follows:

Parcel Number: 67-05-014-018-00

Year	TV
2002	\$15,828
2003	\$16,065
2004	\$16,434
2005	\$16,811
2006	\$17,365
2007	\$18,007
2008	\$18,421
2009	\$19,231
2010	\$19,173
2011	\$19,498
2012	\$20,024
2013	\$20,504
2014	\$20,832
2015	\$21,165

IT IS FURTHER ORDERED that the property's TV as established by Respondent's March Board of Review for the tax years at issue are AFFIRMED.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax year at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true and taxable values as indicated in this Final Opinion and Judgment ("FOJ") within 20 days of entry of the FOJ.¹⁷

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 FOJ. 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 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 FOJ. Interest shall accrue after June 30, 2012, through December 31, 2015, at the rate of 4.25%.¹⁸

¹⁷ See MCL 205.755(1).

¹⁸ See MCL 205.737(4).

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

By Steven H. Lasher

Entered: August 19, 2016
pmk

APPEAL RIGHTS

If you disagree with the final decision in this case, you may either file a motion with the Tribunal requesting the Tribunal to reconsider the final decision (i.e., a motion for reconsideration) or appeal the final decision to the Michigan Court of Appeals (i.e., a claim of appeal).¹⁹

The motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision. Because the final decision closes the case, you cannot file the motion through the Tribunal's web-based e-filing system. Rather, you are required to either mail the motion, hand deliver it (i.e., personal service), or have it delivered by a commercial delivery service.²⁰ Further, the fee for the filing of such motions in the Entire Tribunal is \$50.00 and in the Small Claims Division is \$25.00 unless the Small Claims final decision relates 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.²¹

A copy of the motion must also be served (i.e., sent) to the opposing party by mail, by personal delivery or, if the opposing party agrees to electronic service, by email and proof demonstrating that service must be submitted with the motion.²² Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.²³

The claim of appeal must be filed with the Court of Appeals with appropriate filing fee. If the claim is filed within 21 days of the entry of the decision, the appeal is an "appeal by right." If the claim is filed more than 21 days after the entry of the decision, the appeal is an "appeal by leave."

A copy of the claim must also be filed with the Tribunal with appropriate filing fee for certification of the record on appeal.²⁴ The filing of the claim is, as indicated above, by mail, personal service, or commercial delivery. Further, the fee for the filing of the claim in both the Entire Tribunal and the Small Claims Division is \$100.00 unless no Small Claims fee is required, as also indicated above.

¹⁹ See MCL 205.752(2) and 205.753(2). See also TTR 261, 213, and 257(1).

²⁰ See MCL 205.735a(7).

²¹ See TTR 217(j), 267(1), and 267(3)(k).

²² See TTR 261 and 225(3).

²³ See TTR 261 and 257(2).

²⁴ See TTR 217(1) and 267(4).