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

William, John, and David Anderson,
Petitioners,

v

MTT Docket No. 433005

Township of Chocolay,
Respondent.

Tribunal Judge Presiding
Paul V. McCord

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

Tammie J. Tischler (P59516), for Petitioner.
Ross K. Bower II (P70574), for Respondent.

I. INTRODUCTION

Before the Tribunal are the parties' cross-motions for summary disposition brought under MCR 2116(C)(10). This case involves the uncapping of the taxable value of real property pursuant to MCL 211.27a in two particular circumstances in which a conveyance of property may or may not permit Respondent to "uncap" the taxable value of Petitioners' property. Specifically, this Tribunal is asked to address whether a 2009 conveyance from Agnes Bernice Anderson's ("Agnes") grantor trust in both her capacity as trustee and in her individual capacity to her three children in joint tenancy with rights of survivorship while also reserving an enhanced life estate (a "Ladybird" deed) resulted in an uncapping of the subject's taxable value; this Tribunal concludes that it did not. Second, this Tribunal must decide whether a subsequent October 2010 conveyance from the three joint tenants and Agnes to each of the four of them as joint tenants with right of survivorship in unequal shares (a "Lion cub" deed) was within the joint-tenancy of MCL 211.27a(7)(h); it was. Accordingly, this Tribunal GRANTS Petitioners' motion for summary disposition and DENIES Respondent's motion for summary disposition.

II. BACKGROUND[1]

A. Procedural Posture

1. Uncapping

At the beginning of 2012, Respondent determined the subject property experienced a transfer of ownership in 2010 and uncapped 99% the subject property's taxable value for tax years 2011 and 2012. On or about February 20, 2012, the Chocolay assessor filed an "Assessor Affidavit Regarding Uncapping of Taxable Value."

Petitioners made protest to the 2012 March Board of Review regarding the uncapping of their property. The Board of review denied Petitioners' protest concluding that the subject property's true cash value (TCV), assessed value (AV), and taxable value (TV), for the two tax years at issue (2011 and 2012) were as follows:

Parcel Number	Year	TCV	AV	TV
52-02-002-002-00	2011	$499,000	$249,500	$247,470
52-02-002-002-00	2012	$347,600	$173,800	$173,800

This, according to Petitioners, resulted in a $200,883 increase in the taxable value of the subject property for the 2011 tax year and an increase of $127,213 in the subject's taxable value for 2012.

Following the denial by the Board of Review, Petitioners commenced this case on April 10, 2012, by timely filing a petition after first protesting Respondent's uncapping of the taxable value of their property. In their petition, Petitioners allege that Respondent erred in uncapping the taxable value as Respondent misapplied existing statutory and decisional law.

2. Cross-Motions for Summary Disposition

On October 30, 2013, the parties filed cross-motions for summary disposition under MCR 2.116(C)(10). Petitioners moved for summary disposition in their favor arguing that the two conveyances, one occurring in 2009 and the other in 2010 and described in more detail below, do not fall within the definition of a "transfer of ownership." According to Petitioners, the 2010 transfer creating a joint tenancy was not an uncapping event as that conveyance met all of the requirements of MCL 211.27a(7)(h). Petitioners contend that Agnes was an original owner at the time of the 2010 conveyance because the last uncapping event before the 2010 conveyance was when she and her deceased spouse first purchased the property in 1955. Subsequent

[1] The "facts" presented in this Order are stated solely for purposes of deciding the motion and are not findings of fact for this case. See MCL 205.751; MCL 24.285; See *Burkhardt v Bailey*, 260 Mich App 636; 680 NW2d 453 (2004); *Nesbitt v American Community Mutual Insurance Co*, 236 Mich App 215; 600 NW2d 427 (1999); *Jackhill Oil Co v Powell Production, Inc*, 210 Mich App 114, 117; 532 NW2d 866 (1995) (stating that a court may not make findings of fact when deciding a summary disposition motion).

conveyances of the subject property include the following: (1) Agnes' acquisition of sole title upon her husband's death, excluded under MCL 211.27a(7)(a), (2) the conveyance to her trust excluded under 211.27a(6)(c), and (3) the 2009 "Lady Bird" deed granting an "enhanced life estate to Agnes . . . and a 'joint tenancy' to the other three grantees, excluded under MCL 211.27a(6)(d). Petitioners further contend that the 2010 conveyance meets the "original owner" and continuous-tenancy requirements of MCL 211.27a(7)(h). Petitioners finally claim that while the 2010 conveyance created a joint tenancy with unequal percentage interests, such joint tenancies are permitted under Michigan law, and this fact does not defeat the satisfaction of MCL 211.27a(7)(h).

In its motion for partial summary disposition, Respondent argues that the 2009 and 2010 conveyances were transfers of ownership by operation of MCL 211.27a(6)(d), 7(c) and (h). Specifically, Respondent argues that the 2009 conveyance was a distribution from a trust to persons other than the sole present beneficiary and, therefore, a transfer of ownership under MCL 211.727a(6)(d). The exclusion for certain trust distributions where the distributee "is the sole present beneficiary or the spouse of the sole present beneficiary, or both", does not apply in this case because, according to Respondent, there were four distributees, three of whom (William, John, and David Anderson) were not the "sole present beneficiary." Respondent also contends that the 2009 conveyance was not a reservation of a life estate excluded under MCL 211.27a(7)(c) because the Trust was the grantor and the Trust cannot "retain" a life estate. Nor does the 2009 conveyance fall within the exclusion for transfers creating or terminating a joint tenancy of MCL 211.27a(7)(h) because Petitioners do not meet the original owner test.

Respondent further claims that the 2010 conveyance was a transfer of ownership under MCL 211.27a(3), because (1) the transfer ended a life estate and is an uncapping under MCL 211.27a(7)(c); (2) the unequal interest transfer should be construed as tenancy in common shares; and (3) MCL 211.27a(7)(h) does not apply because the original owner and continuous-tenancy requirements are not met. Respondent finally claims that its uncapping was proper because the State Tax Commission states that Michigan does not recognize the intentional creation of unequal joint tenancies. Thus, according to Respondent, its uncapping of the subject's taxable value was proper.

3. Responses

The parties each filed responses in opposition on November 14, 2013. Responding to Petitioners' motion, Respondent contends that the April 1, 2009 deed was a transfer of ownership. MCL 211.27a(6) defines a transfer of ownership to include either "the conveyance of title *or* a present interest in property . . ." Respondent thus argues that the 2009 deed conveyed *title* to Petitioners, and that is it irrelevant whether this title represented a present interest in the property. Respondent counters further by asserting that Petitioners' interests were vested rather than contingent at the time of conveyance. As a result of the vested nature of their interests, Petitioners were appropriately viewed as distributees of the trust. Therefore, according to Respondent who cites to MCL 211.27a(6)(d), the uncapping was proper because an interest was transferred to Petitioners who were not the sole present beneficiary of the trust.

Petitioners countered Respondent's motion by arguing in their response that: (1) the 2009 deed does meet the exception of MCL 211.27a(6)(d) and, (2) the 2010 deed falls within the exception of MCL 211.27a(7)(h). Petitioners state that the 2009 deed clearly granted Agnes a life estate in the subject property and that Petitioners' joint tenancy interests were not vested and never actually occurred. With regard to the 2010 deed, Petitioners argued that this instrument did not terminate Agnes' life estate, it "released" the life estate and simultaneously created a joint tenancy with her sons.

B. The Subject Property

The subject property underlying this case is a 4.3 acre plot of residential land improved with a 912 square foot cottage located in Michigan's upper peninsula at 2891 M-28 E, in Chocolay Township. The subject has approximately 300 front feet along the southern shore of Lake Superior.

C. Herbert and Agnes Anderson's Purchase of the Subject Property

Herbert and Agnes Anderson purchased the subject property on June 3, 1955, from J. Irving and Minerva P. Gitzen. Had the so-called uncapping provisions of MCL 211.27a(3) existed in 1955 at the time of Herbert and Agnes' purchase of the subject property, their purchase transaction would have been a taxable transfer of ownership subject to uncapping as no exception or exclusion would have applied. See *Klooster v City of Charlevoix*, 488 Mich 289, 300 n7; 795 NW2d 578 (2011).

D. The Trust

Over the course of their marriage, Herbert and Agnes Anderson had three sons, William, John, and David, ("Petitioners"). Sometime before November of 1994, Herbert Anderson passed away. Following Herbert's death, Agnes established a grantor trust on November 30, 1994 (the Agnes Bernice Anderson Revocable Living Trust, u/t/a November 30, 1994, and hereinafter referred to simply as the "Trust") and appointed herself as the sole present beneficiary of the Trust. Agnes also named her three sons, Petitioners, contingent beneficiaries of the Trust upon her death. As the Trust was a revocable living trust, Agnes retained at all times the right to revoke the Trust during her life; however, the Trust was never revoked or amended. Contemporaneous with the creation of the Trust, Agnes transfer the subject property to the Trust on the same day.

E. The Conveyances

1. 2009 Conveyance

On April 1, 2009, the subject property was conveyed out of the trust via a Quit-Claim deed, creating a joint tenancy among Petitioners with rights of survivorship. The April 2009 deed also granted an enhanced life estate in Agnes with the following language:

> Grantor grants and reserves to herself as an individual a life estate coupled with an absolute power to convey, sell, mortgage, lease, or otherwise dispose of the property described above in fee simple, during her lifetime, without joinder by the remaindermen, and to keep any proceeds derived from the property.

The April 2009 deed was recorded for record with the Marquette County Register of Deeds and a Property Transfer Affidavit (PTA) was prepared indicating that the transfer was exempt from "uncapping" under the life estate exception (see MCL 211.27a(7)(c)). Although the PTA was apparently prepared and executed on the same day as the April 1, 2009 deed, Respondent did not receive it.

2. 2010 Conveyance

In October 2010, the three joint tenants, Petitioners, as well as Agnes as the life tenant, conveyed the subject property as follows:

> A 33% interest to WILLIAM H. ANDERSON . . . a 33% interest to JOHN C. ANDERSON . . . a 33% interest to DAVID P. ANDERSON . . . and a 1% interest to AGNES BERNICE ANDERSON . . . all parties as joint tenants with full rights of survivorship . . . .[2]

The October 2010 deed also stated "In addition, this transaction is not a transfer under . . . (MCL §211.27a(6) – commonly known as Proposal A because it constitutes a conveyance creating a joint tenancy pursuant to MCL 211.27a(6)(h) [sic].

The four parties signed the deed within days of each other, from October 18 to October 20, 2010. A hand-written notation below Agnes' signature states "Releasing Life Estate." This deed was also recorded for record with the Marquette County Register of Deeds on December 9, 2011, approximately 14 months after it was signed.
A PTA dated November 29, 20101, was also prepared in conjunction with this conveyance and mailed to Respondent. The PTA also claims an exemption from "uncapping" as a transfer creating or ending a joint tenancy (see MCL 211.27a(7)(h)).

III. STANDARD OF REVIEW

Both parties move for summary disposition pursuant to MCR 2.116(C)(10). Summary disposition is intended to expedite litigation and avoid unnecessary and expensive hearings of phantom factual issues where no genuine issue of material fact exists. "A genuine issue of material fact exists when the record, drawing all reasonable inferences in favor of the nonmoving party, leaves open an issue upon which reasonable minds could differ." *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). We will render a decision on a motion for summary disposition under MCR 2.116(C)(10) if the pleadings, affidavits, depositions, admissions, and any other acceptable materials, show in the light most favorable to the

[2] The deed is attached to the parties' stipulated facts as Exhibit G.

nonmoving party, that there is no genuine issue as to any material fact and that a decision may be rendered as a matter of law. MCR 2.116(G)(5); *Maiden v Rozwood*, 461 Mich 109, 120-121; 597 NW2d 817 (1999). But such materials "shall only be considered to the extent that [they] would be admissible as evidence . . . ." MCR 2.116(G)(6); *Veenstra v Washtenaw Country Club*, 466 Mich 155, 163; 645 NW2d 643 (2002). Because summary disposition decides an issue against a party before hearing, we grant such a remedy cautiously and sparingly, and only after carefully ascertaining that the moving party has met all requirements for summary disposition. Furthermore, the Tribunal will not resolve disagreements over material factual issues through summary disposition. In this case, however, the parties are in agreement there are no genuine issues of material fact and that the Tribunal must decide and submitted this case for a decision pursuant to cross-motions for summary disposition based on stipulated facts. Under MCR 2.116(A)(1), "[t]he parties to a civil action may submit an agreed-upon stipulation of facts to the court." "If the parties have stipulated to facts sufficient to enable the court to render judgment in the action, the court shall do so." MCR 2.116(A)(2). The parties furnished sufficient stipulated facts regarding the property and the various conveyances for the purpose of deciding these cross-motions. Hence, this case is ripe for summary disposition.

IV. CONCLUSIONS OF LAW

MCL 211.27a provides that the taxable value of property shall not increase by more than the rate of inflation or five percent per year unless there is a "transfer of ownership." MCL 211.27a(2). After a transfer of ownership, the taxable value is "uncapped" and becomes the state equalized value, regardless of rate of increase. MCL 211.27a(3). Further, MCL 27a(6) and (7) provide nonexhaustive lists of examples of actions that do and do not constitute transfers of ownership. Looking at the statute as a whole, it is apparent that a transfer of ownership occurs when the property is transferred from one owner to a wholly new owner. See *Sebastian J. Mancuso Family Trust v Charlevoix*, 300 Mich App 1, 8; 831 NW2d 907 (2013).

A. 2009 Conveyance

Respondent presses several theories that the 2009 conveyance was a transfer of ownership. Section 27a(6) of the General Property Tax Act states that : "[a] 'transfer of ownership' means the conveyance of title to or a present interest in property, including the beneficial use of the property, the value of which is substantially equal to the value of the fee interest." Here, the substance of the 2009 conveyance did not transfer the property within the flush language of MCL 211.27a(6).

The 2009 instrument is commonly referred to as a "Lady Bird" deed.[3] This particular device is a will substitute. Technically speaking, a Lady Bird Deed sets up a type of ownership in which the original owner, Agnes, retains a life estate coupled with an "unlimited power of appointment." The instrument then specifies who will become the owner of the property upon her death, Petitioners in joint tenancy. In layman's terms, this works like a beneficiary designation for real estate. This means that Agnes retained full control of the subject property

[3] The name comes from the mechanism that President Lyndon Johnson used to pass property to his wife, "Lady Bird" Johnson on his death. Some lawyers call these "enhanced life estate" deeds.

during her lifetime, but upon her death, the subject property passes to the designated persons, without the need for probate. The arrangement also allows the owner, Agnes, to change her mind about who to leave her property to by simply changing the deed (*i.e.*, conveying the property to herself or another.)

"Lady Bird" deeds are nothing new and are the subject of Standard 9.3 of the Michigan Land Title Standards (6th Edition) which states "[t]he holder of a life estate, coupled with an absolute power to dispose of the fee estate by inter vivos conveyance, can convey a fee simple estate during the lifetime of the holder. If the power is not exercised, the gift over becomes effective." The authority for the power to convey during the life estate can also be found in the Powers of Appointment Act of 1967 (MCL 556.111, *et seq*.). One can also find authority in the creation of the title in *Quarton v Burton*, 249 Mich 474; 229 NW 465 (1930); see also *In re Tobias Estates*, unpublished per curiam opinion of the Court of Appeals issued May 10, 2012 (Docket No. 304852) (citing Standard 9.3 of the Michigan Land Title Standards (6th Edition).[4]

As any lawyer may recall from first year property in law school, fee simple title must reside in a person or entity at all times. Here the 2009 conveyance runs to Petitioners, as joint tenants with rights of survivorship, subject to Agnes' power to dispose of the fee title during her life. The result is the Petitioners received a gift in default – an expectancy – in the form of a joint life estate with cross contingent remainders in the survivor. See MCL 554.8; MCL 556.112(j) and 122; Michigan Land Title Standard 6.4 and 9.3. Petitioners had no present legal right or authority to control, possess, or enjoy the subject property during Agnes' life. Agnes possessed the power convey the subject property away and dissolve any interest Petitioners may have in the property without their consent as the 2009 instrument of conveyance granted Agnes the ability to convey "without joinder by the remaindermen, and to keep any proceeds derived from the property." Petitioners did not receive title to the subject property or a present interest therein. Their interest lay sometime in the future and was contingent. What was reserved by the grantor, Agnes? Agnes retained for herself the present use and enjoyment in the subject property during her life – a life estate – coupled with the absolute power of appointment to convey the fee simple estate at any time. In other words, Agnes' held the entire estate.

As a result, no transfer of "title or a present interest in property, including the beneficial use of the property, the value of which is substantially equal to the value of the fee interest" within the flush language of MCL 211.27a(6) occurred as a result of the 2009 conveyance. Petitioners received a gift in default which would only become effective *if* Agnes failed to exercise her power of appointment. It is not until Agnes' death, and her failure to exercise the power of

[4] The language creating the power of appointment in *In re Tobias Estates* was "GRANTORS reserve and grant to RAYMOND H. TOBIAS the full use, benefit, control, possession and power to sell or otherwise deal with said premises for and during his lifetime, and RESERVE AND GRANT to CLEONE REIGLER TOBIAS, upon the death of RAYMOND H. TOBIAS, the full use, benefit control, income and possession of said premises for and during her lifetime, provided she is married to RAYMOND H. TOBIAS at the time of his death." *Id*. The language is substantially similar to the language in the 2009 conveyance.

appointment, that there would be a transfer of ownership to the default beneficiaries. In this case, Petitioners.

The definition of a gift in default makes it clearer that no transfer occurred. Under MCL 556.112(j), a "gift in default" means "a transfer to a person designated in the creating instrument as the transferee of property if a power is not exercised" (emphasis added). The only time that it can be certain that the power is not (and will never be) exercised is at Agnes' death. Thus, it would be the death of Agnes—not the 2009 conveyance—that would signify a transfer of ownership within the meaning of that phrased in MCL 211.27a(6) to Petitioners, the default beneficiaries.

Respondent argues that it is the trust that was the grantor of the 2009 conveyance and the trust cannot "reserve" for itself a life estate. Respondent's argument misapprehends the nature of the trust and Agnes' relationship to the trust and the subject property.

There are two basic types of trusts: (1) revocable trusts and (2) irrevocable trusts. Perhaps the most common type of trust is revocable trusts (aka revocable living trusts, inter vivos trusts or living trusts). Most revocable living trusts, as in this case, are created by a person ("settlor" or "grantor") who creates the trust and serves as the initial trustee. Here the Trust Agreement provides that the trustee, Agnes, has complete discretion in dealing with trust assets so that she can deal with the assets just as she did before transferring them to the trust. As the name implies, revocable trusts are also fully revocable at the request of the grantor. Thus, assets transferred (or "funded") to a revocable trust remain within the control of the grantor – Agnes. Agnes can simply revoke the trust and have the assets returned. The assets placed in a revocable trust remain subject to the claims of the grantor/donor/donee creditors. See MCL 556.123. Further when a grantor reserves to themselves an unqualified power of revocation, they are deemed the owner of the property being conveyed as far as it affects the rights of creditors and purchasers. See MCL 556.128; *In re Hertsberg Inter Vivos Trust*, 457 Mich 430, 433-434; 378 NW2d 289 (1998); *In re Johnnes Trust*, 1991 Mich App 514; 479 NW2d 25 (1991). If Agnes dies without exercising her power of revocation, her creditors can also reach the assets following her death. MCL 556.128 provides that assets subject to an unqualified power of revocation are to be made available to pay creditor claims in probate when the probate assets are insufficient. Further, for both federal and state income tax purposes, a grantor trust is treated as the owner of the trust's assets, and is not required to obtained a federal employer identification number, file separate tax returns and is otherwise treated as a separate taxable entity for income tax purposes because the grantor has not relinquished complete dominion and control over the trust assets.

The legislature was cognizant of these factors and the peculiar nature of such revocable living trusts when it enacted MCL 211.27a. Simply put, during Agnes' lifetime, there was no transfer of ownership of the subject property even after she transferred title of the property to her trust. Transfers into trust or from trusts are not changes in ownership if either: (1) The trust is revocable, or; (2) The settlor of the trust is its sole beneficiary during their lifetime because ownership does not change in circumstances where the transfer is to or from a trust settlor when the settlor is the sole present beneficiary. MCL 211.27a(6)(c), (d) and 7(f); see *Sebastian J. Mancuso Family Trust v Charlevoix*, 300 Mich App 1, 8; 831 NW2d 907 (2013); see also *Steinhart v County of Los Angeles*, 47 Cal 4th 1298, 223 P3d 57 (2010) (interpreting under

California Revenue and Taxation Code section 60 which is similar to MCL 211.27a(6)(c)). Because Agnes' trust was revocable during her lifetime, and she was the sole beneficiary, she is regarded as the true owner of the property despite its being held in trust because the owner is still essentially the same person.

Respondent further contends the 2009 conveyance did not qualify under the exception found at MCL 211.27a(6)(d) because the conveyance was a distribution from a trust to individuals other than the sole present beneficiary. The fact that the instrument of conveyance split the transfer from her grantor trust to Agnes, in her individual capacity, for immediate possession and enjoyment, coupled with an absolute power to convey the same property, with a gift over to Petitioners in joint tenancy, is essentially irrelevant. Petitioners receive nothing more than a gift in default. Rather, it is only relevant that real ownership of the subject follows the legal and beneficial estate, which did not transfer as a result of 2009 instrument but simply vested in Agnes, the sole present beneficiary.

Respondent states that the joint tenancy created among Petitioners does not qualify under the joint tenancy exception of MCL 211.27a(7)(h). Again, the joint tenancy created as a result of the 2009 instrument is irrelevant because there was not "transfer creating a joint tenancy" within the meaning of MCL 211.27a(7)(h), because the purported "joint tenancy" was a contingent future interest, a gift in default, that transferred no present interest.

B. 2010 Conveyance

Respondent first argues that the 2010 conveyance was an uncapping event because the conveyance terminated Agnes' life estate in the subject property. This Tribunal disagrees.

MCL 211.27a(7)(c) provides that a transfer of ownership does not include "that portion of property subject to a life estate or life lease retained by the transferor, until expiration or termination of the life estate or life lease." A life estate is the ownership of land for the duration of a person's life, in this case, Agnes. In legal terms, it is an estate in real property that ends at death when ownership of the property may revert to the original owner, or it passes to another person.

Reading the statute as a whole, exceptions are made in various subsections of Section (6) where ownership essentially does not change. See, e.g., MCL 211.27a(6)(c). Exceptions are also made for transfers of property that substitute the transferor for the transferor's spouse. See, e.g., MCL 211,27a(6)(d), (e), and (f). The exceptions in MCL 211.27a(7) are no different. They are triggered when property is transferred from one owner to a wholly new owner. *Mancuso Family Trust, supra* at 8. What is clear from the language in MCL 211.27a(7)(c) is that the creation of a life estate in real property is a transfer of ownership at the time of the transfer unless the instrument creating the life estate reserves the estate in either the transferor or the transferor's spouse (by operation of the spousal exception of MCL 211.27a(7)(a)).

Keeping with this theme, a subsequent transfer of the life estate by the transferor (or the transferor's spouse) to a third-party falls outside of the scope of MCL 211.27a(7)(c) and is a transfer of ownership. So, for example, had Agnes exercised her power of appointment over the

subject property during her life, and conveyed the property away, this transaction would have terminated her life estate in the property and the transaction would have worked a transfer of ownership. This same result would also occur on the vesting of rights to possession or enjoyment in the remainderman, e.g., Petitioners, at the end of the life estate upon Agnes' death. In either of those cases, the expiration of the life estate would have resulted in an uncapping of the subject property under MCL 211.27a(7)(c). However, neither of these events occurred here. Instead, Agnes exercised her power of appointment and deeded the property to both herself (thereby, vesting the property back in herself - the transferor), and creating a new joint tenancy in the subject property with Petitioners. As discussed below, because this Tribunal finds that the 2010 conveyance falls within the provisions of MCL 211.27a(7)(h), no uncapping occurred.

1. Joint Tenancy Exception

Respondent argues that the joint tenancy exception of MCL 211.27a(7)(h) does not apply to the 2010 conveyance because the two requirements of (1) original ownership and (2) continuous-tenancy are not met. See *Klooster v Charlevoix*, 488 Mich 289, 301; 795 NW2d 578 (2010). This Tribunal disagrees.

a. Original Owner Test

The joint-tenancy exception of MCL 211.27a(7)(h), provides that (1) "[a] joint owner at the time of the last transfer of ownership . . . is an original owner" and that (2) "[f]or purposes of this subdivision, a person is an original owner of property owned by that person's spouse." The test for "original owner" in a joint-tenancy exception "examines ownership of the property both before and after the conveyance at issue to ensure that continuity of original ownership bridges the transfer." *Klooster*, 488 Mich at 299. The Supreme Court in *Klooster*, *supra* ,explained that "there are thus three possibilities for who may constitute an "original owner" under the joint-tenancy exception: (1) a sole owner at the time of the last uncapping event, (2) a joint owner at the time of the last uncapping event, and (3) the spouse of either a sole or joint owner of the property at the time of the conveyance at issue (i.e., the conveyance that may uncap the property). See *id.* at 299-300.

As instructed by the *Klooster* Court, we first identify the most recent transfer of ownership that uncapped the property and then determine who owned the property as a result of that uncapping conveyance. *Klooster*, *supra* at 299-300. Here, Agnes became a joint owner in the property with her spouse when they purchased it in 1955 from J. Irving and Minerva P. Gitzen. Next, had the provision of MCL 211.27a existed at the time of this transaction, it would have been an uncapping event as no exception or exclusion otherwise would have applied. The next conveyance of the subject property occurred in 1994 when Agnes transferred the property to her revocable living trust of which she was both the trustee and sole present beneficiary. This conveyance would not have been an uncapping as MCL 211.27a(6)(c) would have applied had it existed in the law at that time.

Nor, as discussed in more detail above, has this Tribunal found that the 2009 conveyance was an uncapping event. As a result, the most recent uncapping event would have been the original conveyance in 1955 when Agnes, along with her spouse, acquired the property as the original

owners. Accordingly, Agnes was an "original owner" at the time of the 2010 conveyance. Since Agnes was an original owner, the 2010 conveyance was "[a] transfer creating…a joint tenancy between 2 or more persons" [Agnes and Petitioners] and at least one of the persons, namely, Agnes, "was an original owner of the property before the joint tenancy was initially created." MCL 211.27a(7)(h).

2. Continuous Tenancy Test

With respect to the second requirement of the joint-tenancy exception, the court in *Klooster* held that "[f]or purposes of applying the continuous-tenancy requirement . . . a person who becomes a joint tenant as a result of a conveyance is 'a joint tenant when the joint tenancy was initially created.'" *Id.*[5] However, the Supreme Court held that "the continuous-tenancy requirement applies only if the property was held in a joint tenancy at the time of the conveyance." *Id.* In this case, the continuous-tenancy requirement does not apply because at the time of the 2010 conveyance, the subject property was not held in a present joint tenancy. Instead, and as explained above, Agnes retained an enhanced life estate in the subject property entitling her, during her lifetime, to the full enjoyment of the property. She continued to possess the rights of the entire fee interest and, as such, is appropriately regarded as the true owner of the property, even after she transferred title of the property to Petitioners in joint tenancy in 2009. Petitioners' joint tenancy interest was simply a non-possessory contingent future interest. Accordingly, when Agnes conveyed the subject property to herself and Petitioners in 2010, she created a nonsuccessive joint tenancy, meeting the requirements of MCL 211.27a(7)(h).

3. Disproportionate Tenancy

Respondent invites this Tribunal to hold that a joint tenancy which sets forth unequal interest therein should be construed as tenancy in common and as such, subject to MCL 211,27a(6)(i). This Tribunal declines Respondent's invitation.

The Legislature has provided in MCL 565.49, that "[c]onveyances expressing an intent to create a joint tenancy or tenancy by the entireties in the grantor or grantors, together with the grantee or grantees, shall be effective to create the type of ownership indicated by the terms of the conveyance." The Michigan Court of Appeals has interpreted this statute to mean that "rigid adherence to the requirement of the four unities in creating a joint tenancy is not warranted where such adherence will defeat the intent of the grantor(s)." *In re Estate of Ledwidge*, 136 Mich App 603, 606; 358 NW2d 18 (1984). As such, the Court of Appeals held that unequal shares do not defeat the grantor's intent in creating a joint tenancy with full rights of survivorship. Thus, the 2010 conveyance, creating unequal interest to Agnes and Petitioners, is a valid joint tenancy arrangement under Michigan law.

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[5] The Court in *Klooster* reasoned that:

"when" is used in the joint-tenancy exception, it is not durational; it refers to the moment in time "when the joint tenancy was initially created . . . ." MCL 211.27a(7)(h). At that moment, each cotenant acquired the status of a joint tenant by virtue of the instrument creating the joint tenancy.

Given the above analysis, neither the 2009 nor 2010 conveyances are "transfers of ownership" for uncapping purposes either falling outside of the definition under MCL 211.27a(6) or, with respect to the 2010 conveyance, falling within MCL 211.27a (7)(h), Petitioners' Motion for Summary Disposition is granted.

In reaching the holdings in this Opinion and Judgment, this Tribunal has considered all arguments for contrary holdings, and have rejected all arguments not discussed as without merit or irrelevant. To reflect the foregoing:

V. JUDGMENT

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

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

IT IS FURTHER ORDERED that the property's taxable value ("TV") for the tax year at issue is as follows:

Parcel Number: 5202-002-002-00

Year	TV
2011	$46,587
2012	$46,587

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. See MCL 205.755. 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 the Final Opinion and Judgment within 28 days of the entry of the 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 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. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, and prior to July 1, 2012, at the rate of 1.09%, and (iv) after June 30, 2012, through December 31, 2013, at the rate of 4.25%.

This Opinion resolves the last pending claim and closes the case.

By: Paul V. McCord

Entered: Dec. 18, 2013