

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

Seven Certainties, Inc,
Petitioner,

v

MTT Docket No. 14-003759

Wells Township,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER DENYING PETITIONER'S REQUEST FOR COSTS AND ATTORNEY FEES

FINAL OPINION AND JUDGMENT

On July 7, 2014, Petitioner filed a Motion requesting that the Tribunal render judgment in its favor under MCR 2.116(C)(10) and award costs and attorney fees. In the Motion, Petitioner also states:

- a. "This is an appeal of the taxable value established by the Township's Board of Review for tax year 2014 based upon the Township's unconstitutional uncapping of the taxable value of . . . parcel number 21-014-005-001-00 (the 'Property') for tax year 2013. The [P]roperty was conveyed by land contract on December 3, 1975, by Marvin and Teresa M. Pouliot, as vendors, and Delta Enterprise, a Michigan co-partnership, as vendee. On March 26, 1985, the land contract was assigned to Petitioner Subsequently, a deed to the Property was delivered and recorded on November 8, 2012, to vest legal title in the Petitioner under the terms of the land contract. As a result of the filing of the deed, the Respondent uncapped the taxable value of the Property for tax year 2013. Seven Certainties appealed the 2014 taxable value to the Township's 2014 Board of Review. However, the Board of Review failed to adjust the taxable value. This appeal follows."
- b. "Although the original land contract cannot be located, the land contract is referred to in the Purchase and Sale Agreement dated December 3, 1975 . . . as well as a complaint filed by Seven Certainties against the Spauldings for trespass dated January 7, 1986 Further, the attorney for Marvin R. Pouliot and Teresa M. Pouliot, Mr. Ralph B. K. Peterson, recalls reviewing and seeing a copy or an original of the executed land contract between the Pouliots and Delta Enterprises The land contract conveyed equitable title to the property."
- c. "Although the original Assignment also cannot be located, as indicated in the Affidavit of Mr. Peterson, Mr. Peterson recalls the execution of the Assignment and further the Assignment is referenced in the Complaint"

- d. “In 2012 it was realized that a deed conveying legal title to the Property had never been recorded although the Pouliots agreed that the terms of the Land Contract had been fulfilled to the extent the Pouliots required. On November 8, 2012, a quit claim deed was executed conveying legal title to the Property Although it should have, the Deed did not indicate that it was being delivered pursuant to the Land Contract. The Deed caused the Township to uncap the taxable value of the Property for tax year 2013 to its state equalized value for that year Thereafter, on April 25, 2014, Seven Certainties filed a verified complaint with the Circuit Court for the County of Delta to reform the Deed to reflect that it was delivered pursuant to the Land Contract. On May 1, 2014, the Circuit Court entered a consent judgment ordering the Deed reformed to include the following language:

This deed is delivered by the Grantor herein to the Grantee . . . [in] full satisfaction of the terms and conditions of a Land Contract dated December 3, 1975, entered into by the Grantor and his deceased wife as vendors and Delta Enterprises, a Michigan co-partnership, as vendee, which vendee’s interest was subsequently assigned to Seven Certainties, Inc., the Grantee on March 26, 1985.

- e. “. . . under the plain meaning of MCL 211.27a(6)(b), the transfer of ownership occurred at the time of conveyance of equitable title to the Property by Land Contract and the taxable value of the Property should not have been adjusted under MCL 211.27a(3) at the time the Deed conveying legal title to the Property was executed.”
- f. “In *Miller-Bradford & Risberg, Inc v Township of Negaunee*, unpublished opinion per curiam of the Court of Appeal issued October 10, 2013 (Docket No. 309726) . . . the Court of Appeals considered whether the Township of Negaunee properly uncapped the taxable value of property for tax year 1997 where the petitioner acquired legal title under the terms of a 1989 land contract in 1996. The Tax Tribunal had held that the conveyance occurred in 1996 because land contracts entered into before 1994 should be treated differently than land contracts entered into after 1994; and only land contracts after 1994 could be considered a ‘transfer of ownership’ where the subsequent recording of the deed conveying legal title would not operate to uncap the taxable value of the property. The Court of Appeals disagreed stating that ‘[a] plain reading of MCL 211.27a(6) supports that the subject property’s transfer of ownership occurred in 1989 when petitioner entered into the land contract.’”
- g. “The transfer here, like the transfer in *Miller-Bradford* occurred at the time of the Land Contract. The subsequent recording of the Deed conveying legal title was not a transfer of ownership and could not have resulted in the uncapping of the Property. It is clear from the Exhibits attached hereto that there is no question that a Land Contract was executed prior to 1994. Further, there is no question that the Deed was executed in satisfaction of the Land Contract. The recorded Consent Judgment of the Delta County

Circuit Court confirms this. As a result, the Township's uncapping for tax year 2013 was improper."

- h. "The taxable value should be corrected for tax year 2014 to reflect that . . . [the] taxable value of the Property should not have been uncapped for tax year 2013. Under *Michigan Properties, LLC v Meridian Twp*, 491 Mich 518[; 817 NW2d 548] (2012), the Tax Tribunal has 'the authority to reduce an unconstitutional previous increase in taxable value for purposes of adjusting a taxable value that was timely challenged in a subsequent year' While the Court of Appeals held that the Tribunal did not have the authority to prospectively adjust an erroneous taxable value where the taxable value was not appealed in the year it was increased, the Michigan Supreme Court disagreed stating "we agree with the Tax Tribunal that it has the ability to prospectively adjust the timely challenged taxable values"
- i. "Using the statutory formula set forth in MCL 211.27a(2)(a), the Property's taxable value for 2014 should be \$642,589.02."

On August 6, 2014, Respondent filed a response to Petitioner's Motion for Summary Disposition. In the Response, Respondent states:

- a. "The property in question was properly un-capped under Michigan Law."
- b. "The first report of a land contract or other purported conveyance did not occur until the filing of the Property Transfer Affidavit on December 9, 2012."
- c. "The un-capping was not unconstitutional and the establishment of the tax[able] value by the Township of Wells was proper."
- d. "A Title Search of the property for the period of June 26, 1963 to October 12, 2012 was prepared by Delta Abstract & Title Agency, Inc That Title Search shows that the only recorded documents during that time period were the June 25, 1963 deed to the Pouliots . . . and the death certificate of Teresa M. Pouliot. There is no mention of any land contracts, deeds, or other instruments effecting title during that time period."
- e. "Petitioner claims that there was a sale, with land contract, of the property in 1976 to Delta Enterprises None of the partners in Delta Enterprises is listed as either Marvin R. Pouliot or Teresa M. Pouliot. That transaction should have resulted in the Township of Wells being informed of the alleged agreement. It is also of interest that the 'land contract' . . . has not been presented as an exhibit by the Petitioner, leaving the question of whether it ever existed."
- f. "The Township of Wells Assessor, Miles Anderson in his attached Affidavit . . . indicates that there are no records indicating that there was a transfer by land contract or otherwise to Delta Enterprises or to any other persons or entities prior to the Property Transfer

Affidavit of December 9, 2012 . . . [The Property Transfer Affidavit] further does not make any claim that there is an ‘Exemption’ as to property taxes or the transfer.”

- g. “No assignment document has been presented by the Petitioner and the only reference to it is in an affidavit by Ralph B. K. Peterson . . . in which he vaguely stated that he either drafted or reviewed such a document The Title Search . . . discloses no recorded document of this type. Miles Anderson’s Affidavit . . . indicates again that there is nothing of record with the Township indicating any transfer or assignment in March of 1985.”
- h. “. . . any reference to . . . [the 1986] lawsuit does not appear in the Title Search nor in the Township records . . . It further does not indicate what the interests were of the Plaintiffs to that lawsuit.”
- i. “. . . the Township . . . was not a party to [the 2012] action [to reform the Deed] and is not bound by same.”
- j. “There is a lack of documentation to support the position of the Petitioner. Further if notification of alleged transfers to Wells Township had occurred then this may result in a[n] examination of what the taxes should have been and a billing for any taxable values based on transfers.”

The Tribunal, having given due consideration to the Motion, the Response, and the case file, finds 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. See TTR 215.

Motions under MCR 2.116(C)(10) test 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. See *Smith v Globe Life Insurance Co*, 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 (C)(10) will be denied. See *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).

Further, 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. See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)). The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider. See *Neubacher v Globe Furniture Rentals, Inc*, 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 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. See *McCart v J Walter Thompson USA, Inc*, 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. See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

Here, Respondent alleges there is insufficient documentation to support Petitioner's claim that the subject property's equitable title transferred by Land Contract and Assignment to Petitioner prior to 1994. Respondent also alleges that Petitioner has failed to produce the Land Contract or Assignment at issue and that a Title Search was conducted and no documents evidencing the purported Land Contract and Assignment were recorded. Respondent further alleges that December 2, 2012 Property Transfer Affidavit did not reflect an "Exemption" or, more specifically, an explanation as to why the transfer would be exempt from uncapping under MCL 211.27a.

Although Petitioner did not submit the land contract or assignment documents, Petitioner did submit an Affidavit signed by Ralph B.K. Peterson indicating that he, at the very least, reviewed both the Land Contract and the Assignment. In that regard, Mr. Peterson is an attorney and, as an attorney, he knows or should know that his signature would be subject to the requirements of and sanctions provided under MCR 2.114¹.

Petitioner also submitted a copy of the executed Purchase and Sale Agreement between the Pouliots and Delta Enterprises dated December 3, 1975, and that Agreement provides, in pertinent part, "[i]t is understood and agreed that, upon the closing of this transaction, the Sellers and Delta **shall** enter a Doubleday 5050 Land Contract with respect to the sale of the real estate and buildings." [Emphasis added.]

Petitioner further submitted a copy of the January 7, 1986 Complaint filed by Petitioner and the Pouliots in the Delta County Circuit Court (File No. 86-7851-CH). The Complaint was also signed by an attorney and, contrary to Respondent's allegations, provides, in pertinent part:

- a. "Plaintiffs [i.e., Petitioner and the Pouliots] were and still are entitled to possession of certain lands [i.e., the subject property] . . . [and said] possessory interest is owned by the Plaintiff Seven Certainties, Inc. pursuant to a certain Assignment of Land Contract dated March 26, 1985, by and between Delta Enterprises, a Michigan co-partnership and the plaintiff Seven Certainties, Inc."
- b. "At all times mentioned herein, plaintiff Marvin R. Pouliot and Teresa M. Pouliot were and still are the vendors of the real property [i.e., the subject property] . . . pursuant to that certain Land Contract dated December 3, 1975, by and between Marvin R. Pouliot and Teresa M. Pouliot as sellers and Delta Enterprises, a Michigan co-partnership, as purchaser."

¹ MCR 2.114 provides, in pertinent part, "[t]he signature of an attorney . . . constitutes a certification by the signer that . . . to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well-grounded in fact . . ."

Although the November 8, 2012 Quit Claim Deed and December 2, 2012 Property Transfer Affidavit submitted by Respondent do not reflect the transfer of legal title pursuant to the completion of a land contract² or the appropriate real estate transfer tax exemptions under MCL 207.505(m) and 207.526(o), Petitioner did submit a copy of the Consent Judgment rendered by the Delta County Circuit on May 1, 2014, reforming³ the Deed to reflect that transfer.⁴ Further, there is no requirement to record a Land Contract or Assignment. Rather, Delta Enterprises and Petitioner were “entitled” to record those documents under MCL 565.354 and the recording of those documents would have had “the same force and effect, as to subsequent encumbrancers and purchasers, as the recording of deeds and mortgages as now provided by law.”

Taken as a whole, Petitioner’s documentary evidence demonstrates that there is no genuine issue of material fact and that Petitioner is entitled to judgment as a matter of law. In that regard, Respondent’s documentary evidence consists primarily of “denials” regarding the existence of the Land Contract and Assignment because those documents were not recorded or produced. More specifically, the execution of the November 9, 2012 Quit Claim Deed was not an uncapping event under MCL 211.27a, as the property’s equitable title transferred to Petitioner pursuant to the December 3, 1975 Land Contract and March 26, 1986 Assignment. See also *Miller-Bradford, supra*.⁵ As a result, the property’s taxable value for the 2013 tax year should not have been uncapped⁶ and the property’s taxable value for the 2014 tax year needs to be corrected on a prospective basis, as provided by the Court of Appeals in *Michigan Properties, supra*.

Given the above, Petitioner has shown good cause to justify the granting of its summary disposition under MCR 2.116(C)(10), but not its request for an award of costs and attorney fees, as it does not appear that the uncapping or Respondent’s defense was interposed for any improper purpose, particularly in light of the circumstances of this case (i.e., the non-recording of the Land Contract and Assignment, the reformation of the Deed, and Petitioner’s failure to properly complete the Property Transfer Affidavit). Therefore,

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

² Petitioner should have completed the section of Property Transfer Affidavit relating to “Exemptions” under “Other” to reflect that the transfer was the result of the completion of a land contract.

³ The reformation occurred after the 2014 March Board of Review denied Petitioner’s request to revise the property’s taxable value for the 2014 tax year.

⁴ The reformation in this case is different from the reformation addressed by the Michigan Court of Appeals in its unpublished opinion *per curiam* in *Lewallen v Porter Twp* issued on February 20, 2014 (Docket No. 312677). In that case, the taxpayers reformed the deed “to change the grantees and the nature of their title” so as to avoid an uncapping. Although Petitioner is also attempting to avoid an uncapping, the purpose of the reformation is to “clarify an ambiguity” and not change the nature of the ownership transferred.

⁵ Although *Miller-Bradford* is an unpublished decision, the facts are, for all practical purposes, the same and, as such, the decision does provide important guidance.

⁶ The Tribunal has no authority to revise the uncapping for the 2013 tax year under MCL 211.27a and 205.735a, as Petitioner filed the instant Petition on June 2, 2014, which was more than 35 days after the receipt of actual notice of the uncapping (i.e., the property’s ad valorem tax bills, etc.). See also *Electronic Data Sys Corp v Flint Twp*, 253 Mich App 538; 656 NW2d 215 (2002).

IT IS FURTHER ORDERED that Petitioner's Request for Costs and Attorney Fees is DENIED.

IT IS FURTHER ORDERED that the property's taxable (TV) value is as follows:

1. The property's TV, as established by Respondent's Board of Review, for the tax year at issue are as follows:

Parcel Number: 21-014-005-001-00

Year	TV
2014	\$890,127

2. The property's TV, as determined⁷ by the Tribunal, for the tax year at issue is as follows:

Parcel Number: 21-014-005-001-00

Year	TV
2014	\$642,588

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 taxable value indicated herein within 20 days of entry of this Final Opinion and Judgment ("FOJ"). See MCL 205.755.

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 the 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 after June 30, 2012, through December 31, 2014, at the rate of 4.25%.

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

By: Steven H. Lasher

Entered: August 28, 2014
pmk

⁷ Petitioner's proposed taxable value was not properly calculated under MCL 211.27a.