

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

John Routhier, III, and John Routhier, IV,  
Petitioners,

v

MTT Docket No. 450599

Township of Clark,  
Respondent.

Tribunal Judge Presiding  
Steven H. Lasher

ORDER OF PARTIAL DISMISSAL

ORDER PARTIALLY GRANTING PETITIONERS' MOTION FOR SUMMARY  
DISPOSITION

FINAL OPINION AND JUDGMENT

**INTRODUCTION**

On April 19, 2013, Petitioners filed their petition in the above-captioned case. The petition indicates that Petitioners are appealing the taxable value of the subject property (i.e., Parcel No. 49-003-328-001-00) for the 2012 and 2013 tax years, asserting that the taxable value was improperly uncapped in 2012.<sup>1</sup> The petition further indicates that Petitioners protested to Respondent's March 2013 Board of Review, and the subject property is classified as residential real property.

On March 7, 2014, Petitioners subsequently filed a Motion requesting that the Tribunal enter summary judgment in their favor in the above-captioned case pursuant to MCR 2.116(C)(10). More specifically, Petitioners contend that there is no genuine issue of material fact that the conveyance of the subject property in 2011 was not a transfer of ownership as defined in MCL 211.27a, and as such, the subject property's taxable value should not have uncapped in 2012.

Respondent has not filed a response to Petitioners' Motion.

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<sup>1</sup> Although Petitioners' petition states that this case involves issues relating to valuation, assessment, taxable value, uniformity, and uncapping, the actual relief sought in the petition, along with other documentation filed by Petitioners in this case, indicates that Petitioners' assessment appeal only relates to the subject property's taxable value for the 2012 and 2013 tax years.

The Tribunal has reviewed the Motion and the case file and finds that partially granting Petitioners' Motion for Summary Disposition is justified.

### **PETITIONERS' CONTENTIONS**

In support of their Motion, Petitioners contend that the entire conveyance of the subject property in 2011 falls within the purview of exclusions from the uncapping of taxable value stated under MCL 211.27a(7). More specifically, Petitioners contend that although the conveyance from John Routhier, III, to John Routhier, III, and John Routhier, IV, conveyed unequal percentage interests in the subject property (i.e., 1% interest to John B. Routhier, III, and a 99% interest to John B. Routhier, IV), the Quit Claim Deed, nevertheless, established a valid joint tenancy, and as such, the conveyance, in its entirety, meets the requirements set forth in MCL 211.27a(7)(h). In support of the foregoing, Petitioners primarily rely on MCL 554.44, MCL 565.49, and *In re Estate of Ledgidge*, 136 Mich App 603; 358 NW2d 18 (1984), the latter of which Petitioners contend the Tribunal relied on in *Moshier v Whitewater Twp*, 16 MTTR 759 (Docket No. 319920, April 9, 2008), and the Michigan Supreme Court favorably cited in *Albro v Allen*, 434 Mich 271, 277; 454 NW2d 85 (1990). Petitioners further mention the Tribunal's recent decision in *Anderson v Chocoley Twp*, \_\_\_ MTTR \_\_\_, \_\_\_ (Docket No. 433005, December 18, 2013), wherein Petitioners state that "the Tribunal held that unequal joint tenancies do not defeat [a] grantor's intent to create a joint tenancy with full rights of survivorship . . . ." Petitioners' Brief in Support at 8. In that regard, Petitioners contend that "[s]ince the 2011 deed created a valid joint tenancy with unequal percentage interests, the conveyance was not a 'transfer of ownership' that results in an uncapping because the requirements of MCL 211.27a(7)(h) were met." Petitioners' Brief in Support at 9. More precisely, Petitioners contend that the two requirements presented in MCL 211.27a(7)(h) are satisfied in this case because "John Routhier, III, was an 'original owner' . . . , [and] the continuous tenancy requirement does not apply because at the time of the 2011 conveyance the subject property was not held in a present joint tenancy." Petitioners' Brief in Support at 10-11.

### **RESPONDENT'S CONTENTIONS**

Respondent did not file a response to Petitioners' Motion.<sup>2</sup>

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<sup>2</sup> Respondent's contentions, as expressed in its documentation filed on September 16, 2013, are incorporated herein and were taken into consideration in the rendering of this Final Opinion and Judgment.

### **APPLICABLE LAW**

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. See TTR 215. In this case, Petitioners move for summary disposition under MCR 2.116(C)(10).

Summary disposition under MCR 2.116(C)(10) tests 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 Ins 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).

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).

### **CONCLUSIONS OF LAW**

The Tribunal has carefully considered Petitioners' Motion under MCR 2.116(C)(10) and finds that partially granting the Motion is warranted for the reasons indicated below.

Jurisdiction

With regard to Petitioners' assessment appeal regarding the taxable value of the subject property, MCL 205.735a(3) states that "for an assessment dispute as to the valuation or exemption of property, the assessment must be protested before the board of review before the tribunal acquires jurisdiction of the dispute under subsection (6)." Further, MCL 205.735a(6) states that "[t]he jurisdiction of the tribunal in an assessment dispute as to property classified . . . as . . . residential real property . . . is invoked by a party in interest, as petitioner, filing a written petition on or before July 31 of the tax year involved." In that regard, because Petitioners failed to protest the subject property's assessment to Respondent's March 2012 Board of Review and file an appeal with the Tribunal by July 31, 2012, the Tribunal's jurisdiction has not been invoked over Petitioners' assessment appeal for the 2012 tax year under MCL 205.735a.

Additionally, the Tribunal has no authority over Petitioners' assessment appeal regarding the taxable value of the subject property for the 2012 tax year under MCL 211.53a, as Petitioners have failed to allege any facts that would indicate that the assessment for the 2012 tax year was 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"). 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), *Eltel Assoc, LLC v City of Pontiac*, 278 Mich App 588; 752 NW2d 492 (2008), and *Briggs Tax Service, LLC v Detroit Public Schools*, 485 Mich 69; 780 NW2d 753 (2010).

The Tribunal likewise has no authority over Petitioners' assessment appeal regarding the taxable value of the subject property for the 2012 tax year under MCL 211.53b, as, although an adjustment of a property's taxable value for a transfer of ownership can qualify as a clerical error under MCL 211.53b, there is no evidence in the file that demonstrates that Respondent's assessor determined that there had not been a transfer of ownership and that an adjustment to taxable value was made at a July or December Board of Review. See MCL 211.27a(4). Further, there is no evidence to establish that Petitioners filed their appeal within 35 days after a final decision, ruling, or determination regarding the taxable value of the subject property for the 2012 tax year as required by MCL 205.735a(6).

As a result, Petitioners have failed to invoke the Tribunal's jurisdiction over their assessment appeal relative to the taxable value of the subject property for the 2012 tax year and the same shall be dismissed.

#### Taxable Value

Pursuant to MCL 211.27a(3), a property's taxable value is "uncapped" (i.e., equals the property's state equalized value) in the calendar year following the year in which a transfer of ownership occurred. A "transfer of ownership" is defined as "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." MCL 211.27a(6). Further, Section 27a provides examples of what constitutes a transfer of ownership, along with specific exclusions. See MCL 211.27a(6) and (7). In that regard, although the conveyance of the subject property in this case is a conveyance by deed and would otherwise constitute a transfer of ownership under MCL 211.27a(6)(a), the Tribunal is called upon in this case to make a determination as to whether the conveyance falls within the exclusion of a transfer of ownership presented in MCL 211.27a(7)(h).

MCL 211.27a(7)(h) states, in relevant part, that the following is not a transfer of ownership: "A transfer creating . . . a joint tenancy between 2 or more persons if at least 1 of the persons was an original owner of the property before the joint tenancy was initially created . . . ." While the second part of the preceding sentence in Section 27(a)(h) includes an additional requirement, this additional requirement for continuous tenancy is not applicable to the facts in this case as the subject property, prior to the conveyance at issue, was not held as a joint tenancy.

That being said, the conveyance in this case involves a Quit Claim Deed that transferred the subject property in 2011. More precisely, the Quit Claim Deed stated, "The Grantor, JOHN B. ROUTHIER, a/k/a John B. Routheir [sic], III, an unmarried man, . . . **Quit-claims a 1% interest** to JOHN B. ROUTHIER, III, and **a 99% interest** to JOHN B. ROUTHIER, IV, **all parties as joint tenant with full rights of survivorship** . . . ." [Emphasis in original.]

Following the filing of a Property Transfer Affidavit and the recording of the Quit Claim Deed, Respondent uncapped 99% of the subject property's taxable value for the 2012 tax year pursuant to guidance issued by the State Tax Commission which Respondent contends, as indicated by Respondent's March 2013 Board of Review decision, states that a valid joint

tenancy must have equal ownership interests. As detailed below, the Tribunal will address why the subject property's taxable value was improperly uncapped in 2012.

Although the State Tax Commission has issued guidance titled Transfer of Ownership Guidelines which states that “[a] joint tenancy requires that the joint tenants have equal ownership interests,”<sup>3</sup> and although “agency interpretations are entitled to respectful consideration, . . . they are not binding on courts and cannot conflict with the plain meaning of the statute.” *In re Complaint of Rovas Against SBC Mich*, 482 Mich 90, 117-118; 754 NW2d 259 (2008). (See also *CMS Energy Corp v Dep’t of Treasury*, unpublished opinion per curiam of the Court of Appeals, issued October 15, 2013 (Docket No. 309172) at 4, wherein the Court stated, citing *In re Complaint of Rovas Against SBC Mich, supra* at 108, “while the statutory language itself is ultimately controlling, agency interpretations are granted ‘respectful consideration,’ and if persuasive, should not be overruled without ‘cogent reasons.’”) In that regard, neither Section 27a, nor any other section within The General Property Tax Act, evidences legislative intent that joint tenants must have equal ownership interests in order for a transfer of ownership to fall under the exclusion listed under MCL 211.27a(7)(h). As a result, in light of the foregoing and the Michigan Court of Appeals’ decision in *In re Estate of Ledwidge, supra*, as discussed in further detail below, the Tribunal finds convincing reasons as to why the State Tax Commission’s guidelines regarding this issue shall not be followed.

In *In re Estate of Ledwidge, supra* at 606, the Court of Appeals held that, in interpreting MCL 565.49,<sup>4</sup> “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 arriving at this conclusion, the Court stated:

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<sup>3</sup> State Tax Commission, Transfer of Ownership Guidelines  
<[http://www.michigan.gov/documents/treasury/TransferOwnershipGuidelines\\_423898\\_7.pdf](http://www.michigan.gov/documents/treasury/TransferOwnershipGuidelines_423898_7.pdf)> (accessed April 30, 2014) at 19.

<sup>4</sup> MCL 565.49 states:

Conveyances in which the grantor or 1 or more of the grantors are named among the grantees therein shall have the same force and effect as they would have if the conveyance were made by a grantor or grantors who are not named among the grantees. Conveyances 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.

Under the common law, the written instrument of conveyance had to produce unity of time, title, interest and possession in order to create a joint tenancy. . . .

In 1955, the Legislature abolished the requirement of unity of title in creating a joint tenancy by enacting M.C.L. § 565.49. . . . Since then, no Michigan case has addressed the statute's effect on the necessity of the existence of the four unities in creating a joint tenancy. *In re Estate of Ledgidge, supra* at 605-606.

In that regard, although the conveyance in this case does not meet the requirements for a common-law joint tenancy, since there is no unity of interest (i.e., equal interest in the subject property), rigid adherence to the common-law four-unity requirement *would* defeat the intent of John B. Routhier, III, as evidenced by his Affidavit attached to the petition,<sup>5</sup> along with the specific language in the Quit Claim Deed. As a result, such strict adherence to the common-law four-unity requirement is not warranted, and the Tribunal finds that the 2011 Quit Claim Deed established a joint tenancy with John B. Routhier, III, and John B. Routhier, IV, as owners of the subject property.

With that being settled, the Tribunal must now determine if the requirements of MCL 211.27a(7)(h) have been satisfied. As stated above, although there are two requirements codified within MCL 211.27a(7)(h), only the original owner requirement needs to be met based on the facts in this case.

Again, the original owner requirement in MCL 211.27a(7)(h) states that “[a] transfer creating . . . a joint tenancy between 2 or more persons if at least 1 of the persons was an original owner of the property before the joint tenancy was initially created . . . .” Here, according to the Warranty Deed dated March 12, 1990, John B. Routhier, III, was the sole owner of the subject property at the time of the last uncapping event and remained an owner after the 2011 conveyance in which the joint tenancy was initially created. As such, the applicable requirements in MCL 211.27a(7)(h) have been satisfied, and the conveyance in 2011 was not a transfer of ownership as defined in MCL 211.27a. The taxable value, therefore, given that there are no genuine issues of material fact, for the tax year in which the Tribunal’s jurisdiction was properly

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<sup>5</sup> The Affidavit of John B. Routhier, III, dated April 5, 2013, states:

1. That my intent in adding my son, John Routhier, IV as an additional joint owner was to create a “joint tenancy with full rights of survivorship” so that I could qualify tis [sic] created joint tenancy under MCL 211.27a(7)(h) as an exemption from uncapping the taxable assessment.
2. That I did not intend this deed to create a tenancy in common.

invoked (i.e., 2013), shall be as follows “to bring the current tax rolls into compliance with the [General Property Tax Act],” *Michigan Properties LLC v Meridian Twp*, 491 Mich 518, 546; 817 NW2d 548 (2012):

- a. The property’s taxable value, as established by the Board of Review for the tax year at issue, is as follows:

**Parcel Number:** 49-003-328-001-00

Year	TV
2013	\$35,430

- b. The property’s final taxable value for the tax year at issue is as follows:

**Parcel Number:** 49-003-328-001-00

Year	TV
2013	\$7,175

### JUDGMENT

IT IS SO ORDERED.

IT IS FURTHER ORDERED that Petitioners’ assessment appeal relative to the taxable value of the subject property for the 2012 tax year shall be DISMISSED.

IT IS FURTHER ORDERED that Petitioners’ Motion for Summary Disposition is PARTIALLY GRANTED.

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 of 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 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 June 30, 2014, at the rate of 4.25%.

This Final Opinion and Judgment resolves the last pending claim and closes this case.

By: Steven H. Lasher

Entered: 5/6/14  
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