STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

Dian Lee Gruber,
Petitioner,

v

MTT Docket No. 379007

Cleveland Township,
Respondent.

Tribunal Judge Presiding
Kimbal R. Smith III

ORDER GRANTING PETITIONER'S MOTION FOR LEAVE TO SUPPLEMENT MOTION FOR SUMMARY DISPOSITION

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

I. INTRODUCTION

Petitioner, Dian Lee Gruber, is appealing the delayed uncapping of the subject property by Respondent, Cleveland Township, retroactive to tax year 2006. On December 8, 2009, Petitioner filed a motion requesting the Tribunal to enter judgment as a matter of law in the above-captioned case, pursuant to MCR 2.116(C)(10), to reverse the uncapping of the subject property, and order a refund with interest of all taxes paid pursuant to the uncapping. On January 15, 2010, Petitioner filed a Motion for Leave to Supplement Petitioner's Motion for Summary Disposition Pursuant to MCR 2.116(C)(10). Respondent has not filed a response to either of Petitioner's Motions for Summary Disposition.

II. FINDINGS OF FACT

On October 7, 1997, a "Deed Creating Life Estate" (Liber 455 Page 262) was recorded in Leelanau County that conveyed a life estate in the subject property located in Cleveland Township from Mary Lee Merriman, mother of Petitioner, to David Merriman, husband of Mary Lee

Merriman. The deed described the subject property as "Government Lot Number Five, Section 23, T 29 N, R 13 West" and included a statement that "this deed is exempt from Michigan transfer tax pursuant to MCL 207.526(a) and MCL 205.505(a)." At 2:20 PM on October 7, 1997, a subsequent deed entitled "Quit Claim Deed" (Liber 455 Page 263) was recorded in Leelanau County that conveyed the subject property located in Cleveland Township from Mary Lee Merriman to herself and Petitioner as joint tenants with rights of survivorship. The deed described the subject property as "Government Lot Number Five, Section 23, T 29 N, R 13 West" and included a statement that "this deed is exempt from Michigan transfer tax pursuant to MCL 207.526(a) and MCL 205.505(a) and MCL 207.526(j)." Mary Lee Merriman died in 1999. David Merriman died in 2001. Petitioner survived both her mother and David Merriman.

Respondent uncapped the subject property in 2009 retroactively to 2006, filing Michigan Department of Treasury Form 3214 for tax years 2006, 2007, 2008, and 2009. The taxable value for the aforementioned years of the subject property increased as a result of the uncapping as follows:

Year	Taxable Value Before Uncapping	Taxable Value After Uncapping	Increase
2006	253,782	414,991	161,209
2007	263,171	430,345	167,174
2008	269,223	440,243	171,020
2009	281,068	459,614	178,546

Respondent's letter from Julie Krombeen, Assessor, stated the reason for the uncapping as "at the passing of David D. Merriman in 2001, his life estate that kept the taxable from uncapping expired."

III. PETITIONER'S CONTENTIONS

Petitioner contends that when Mary Lee Merriman died in 1999 the subject property became solely owned by Petitioner as the surviving joint tenant. Petitioner relies on MCL 211.27a(7)(h), which treats the creation or termination of a joint tenancy as an exempt transfer. Petitioner cites *Moshier v Whitewater Twp*, 277 Mich App 403; 745 NW2d 523 (2007), as authority for application of the statutory exception to "transfer" for joint tenancy terminations in that:

1) at least 1 of the persons involved in the transfer was an original owner of the property before the tenancy was created and, if the property was held as a joint tenancy at the time of the transfer

2) "at least 1 of the persons" involved in the transfer was a joint tenant at the time the joint tenancy was created and has remained a joint tenant since that time. *Moshier*, *supra* at 410.

Petitioner also relies on *Moshier* for the definition of "original owner" with respect to MCL 211.27a(7)(h) that "plainly speaks of an owner before the joint tenancy was created" and not before the effective date of the legislation enabling Proposal A.

Petitioner further contends that summary disposition should be granted because Respondent has not filed written opposition to her motion for summary disposition relying on TTR 205.1230 and MCR 2.116(G)(4). In support, Petitioner cites *Lanier v Bortz Health Care of Ypsilanti*, unpublished opinion per curiam of the Court of Appeals, issued March 31, 2009 (Docket No. 280343), *Quinto v Cross and Peters Co*, 451 Mich 358, 547 NW2d 314 (1996), and *Occidental Development, LLC v Van Buren Township*, MTT Docket No. 292745, March 4, 2004.

IV. RESPONDENT'S CONTENTIONS

In its Answer to the Petition, Respondent contends that "when Mrs. Merriman (the original owner) died, the tenancy was dissolved and would necessarily uncap." In support, Respondent cites receipt of a memo from the State Tax Commission dated February 5, 2008, that Respondent claims

"cautions a narrow interpretation" of *Moshier* apparently applying it to distinguish between the joint tenancy in *Moshier* created pre-Proposal A and the one established by Petitioner and Mary Lee Merriman created post-Proposal A.

V. APPLICABLE LAW

A motion for 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. *Smith v Globe Life Insurance*, 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 subsection (C)(10) will be denied. *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. *Quinto v Cross & Peters Co*, 451 Mich 358, 362-63; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)). The moving party bears the initial burden of supporting his position by presenting his documentary evidence for the court to consider. *Neubacher v Globe Furniture Rentals*, 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 nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. *McCart v J Walter Thompson*, 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. *McCormic* v *Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1992).

VI. CONCLUSIONS OF LAW

This Tribunal has carefully considered Petitioner's Motion for Summary Disposition under the criteria for MCR 2.116(C)(10) and, based on the pleadings and other documentary evidence filed with the Tribunal, determines that granting Petitioner's Motion is appropriate. Summary disposition can be granted under MCR 2.116(C)(10) because the Petitioner's pleadings and documentary evidence demonstrates that there is no genuine issue of material fact.

Under MCL 211.27a(2) of the General Property Tax Act, MCL 211.1 *et seq*, except as otherwise provided in subsection (3), for taxes levied in 1995 and for each year after 1995, the taxable value of each parcel of property is the lesser of the following:

> (a) The property's taxable value in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the inflation rate, plus all additions. For taxes levied in 1995, the property's taxable value in the immediately preceding year is the property's state equalized valuation in 1994.
>
> (b) The property's current state equalized valuation.

MCL 211.27a(3) states that "upon a transfer of ownership of property after 1994, the property's taxable value for the calendar year following the year of the transfer is the property's state equalized valuation for the calendar year following the transfer." Under MCL 211.27a(4), if the taxable value of property is adjusted under subsection (3) [MCL 211.27a(3)], a subsequent increase in the property's taxable value is subject to the limitation set forth in subsection (2) [MCL 211.27a(2)] until a subsequent transfer of ownership occurs. Thus, in the absence of a "transfer of ownership," a property's taxable value is "capped" at the lesser of the values in MCL 211.27a(2). Furthermore, MCL 211.27a(7) exempts certain transfers of real property from "transfers of ownership" and

hence, preserves the cap. Those transfers of real property that are not exempted are said to result in an "uncapping." The Tribunal concludes that none of the transfers of subject property are "transfers of ownership" and, therefore, are exempt transfers that should not have resulted in an uncapping for tax years 2006, 2007, 2008, and 2009.

David Merriman Life Estate

Under MCL 211.27a(7)(a), the transfer of property from one spouse to the other spouse or from a decedent to a surviving spouse is not a "transfer of ownership." David Merriman was the spouse of Mary Lee Merriman, the owner of the subject property. A life estate is a freehold estate but not an estate of inheritance. MCL 554.2. It is an estate in possession. MCL 554.7. A life estate is one in which the owner of the life estate is entitled to possess and enjoy the real estate during his or her own life or during the life of a third person or persons. MCL 554.6. The remaining portion of the fee simple, other than the life estate, is a remainder. *See MCL 554.11* [Cameron, *1 Cameron, Michigan Real Property Law (3d ed.)*, Estates, § 7.8, p. 263.]. The "Deed Creating Life Estate" was simply a creation of a life estate. Therefore, there was no "transfer of ownership."

Joint Tenancy Between Petitioner and Mary Lee Merriman

Under MCL 211.27a(7)(h), a transfer in joint tenancy is not a "transfer of ownership" if the transfer creating or terminating a joint tenancy between two or more persons has the following characteristics:

> (1) at least 1 of the persons was an original owner of the property before the joint tenancy was initially created and,

> (2) if the property is held as a joint tenancy at the time of conveyance, at least 1 of the persons was a joint tenant when the joint tenancy was initially created and that person has remained a joint tenant since the joint tenancy was initially created. MCL 211.27a.

A joint owner at the time of the last transfer of ownership of the property is an original owner of the property. MCL 211.27a(7)(h). In defining an "original owner," MCL 211.27a(7)(h) plainly speaks of an owner before the joint tenancy was created and not before the effective date of the legislation enabling the Proposal A amendment to Const. 1963, art. 9, § 3. *Moshier*, *supra* at 410. In *Klooster v City of Charlevoix*, 2009 WL 4824971 (Mich App) (December 15, 2009), the Michigan Court of Appeals concluded that the requirement of MCL 211.27a(2) is a conditional requirement: it need only be met in instances where the property was held as a joint tenancy at the time of the conveyance. *Id.* If the property was not so held, this requirement is inapplicable. *Id.*

Petitioner and Mary Lee Merriman created a joint tenancy on October 7, 1997, by the "Quit Claim Deed." *Moshier* stands for the proposition that MCL 211.27a(7)(h) plainly requires status as an owner before the joint tenancy was created. Before creation of the joint tenancy, Mary Lee Merriman was an owner of the property subject to her husband's life estate. Therefore, there can be no dispute that "at least one of the persons involved in the transfer was an original owner of the property before the tenancy was created." MCL 211.27a(7)(h). The second condition of § 27a(7)(h) is not applicable because the facts indicate that the property was not held as a joint tenancy at the time of conveyance. Therefore, the 1997 transfer creating the joint tenancy was an exempt transfer.

Death of Mary Lee Merriman

Joint tenants hold equal and undivided interests in a parcel, with a right of survivorship. When a joint tenant dies, the deceased's interest does not descend to heirs; instead, the entire

ownership remains in the surviving joint tenant or tenants. *Townsend v Chase Manhattan Mortgage Corp*, 254 Mich App 133; 657 NW2d 741 (2002). As concluded above, MCL 211.27a(7)(h) provides an exemption for joint tenancies from "transfers of ownership." In *Klooster, supra*, the Michigan Court of Appeals held that a transfer that satisfies the requirement of MCL 211.27a(1) does not constitute a "transfer of ownership" when a joint tenant subsequently dies as the death of a joint tenant is not a conveyance within the meaning of MCL 211.27a. The Court of Appeals' interpretation of MCL 211.27a(7)(h) specifically focused on the GPTA's absence of definition of conveyance and gave weight to the plain meaning of the word conveyance as "every instrument in writing which affects the title to any real estate." *Klooster*, *supra* (citing MCL 565.35; *McMurty v Smith*, 320 Mich 304, 307; 30 NW2d 880 (1948)).

As concluded above, Mary Lee Merriman was the original owner of the property before the joint tenancy was created in the October 7, 1997 "Quit Claim Deed." The first requirement of MCL 211.27a(7)(h) is satisfied. In following *Klooster*, Mary Lee Meriman's death was not a conveyance within the meaning of MCL 211.27a as no writing was required to vest Petitioner's interest in the property under appeal. Therefore, the death of Mary Lee Merriman did not result in a "transfer of ownership." The entire ownership interest of the subject property remained in the surviving joint tenant, Petitioner Dian Lee Gruber.

Death of David Merriman

MCL 211.27a(7)(c) exempts from "transfer of ownership" life estates or life leases *retained by the transferor* until expiration or termination of the life estate or life lease. The deed "Deed Creating Life Estate" entitled David Merriman to possess and enjoy the subject property during his own life. The transfer in joint tenancy to Petitioner and Mary Lee Merriman was exempt. Upon

David Merriman's death, the life estate ceased, leaving the surviving party, Petitioner, the whole estate in fee simple. In following the conclusion in *Klooster* that the plain meaning of conveyance requires a writing, and the termination of the life estate of David Merriman did not entertain a writing, it follows that his death was not a "transfer of ownership." Therefore, the death of David Merriman should not have caused the uncapping of the subject property.

It should be noted that the letter from Julie Krombeen, Assessor, which states Respondent's reason for the uncapping as "at the passing of David D. Merriman in 2001, his life estate that kept the taxable from uncapping expired . . ." misapplies the plain meaning of MCL 211.27a(7). If the language of a statute is clear and unambiguous, the plain meaning of the statute reflects the legislative intent and judicial construction is not permitted. *Turner v Auto Club Ins Ass'n,* 448 Mich 22, 27; 528 NW2d 681 (1995). Only where the statutory language is ambiguous may a court properly go beyond the words of the statute to ascertain legislative intent. *Luttrell v Dep't of Corrections*, 421 Mich 93; 365 NW2d 74 (1984). MCL 211.27a(7) states:

> Transfer of the ownership does not include the following: …
>
> (c) A transfer of 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.

Here, the language of MCL 211.27a(7)(c) is not ambiguous. A portion of the property must be subject to a life estate or life lease, and the life estate or life lease must be "*retained by the transferor.*" MCL 211.27a(7)(c). No life estate or life lease was retained by a transferor as Mary Merriman was clearly the grantor/transferor in the deed "Deed Creating Life Estate." David Merriman was the grantee/transferee of the life estate. Thus, MCL 211.27a(7)(c) cannot be a basis for "uncapping" the subject property under appeal.

Respondent's Failure to Respond

In following *Quinto*, the Tribunal finds that once Petitioner supported her motion for summary disposition under MCR 2.116(C)(10) with pleadings and documentary evidence, Respondent, as the opposing party, had the duty to rebut with pleadings and documentary evidence Petitioner's contention that no genuine issues of material fact existed. Respondent filed no response. In viewing the evidence in the light most favorable to Respondent, the assessor's previously filed affidavit, affirmative answer, and other documents were insufficient to satisfy Respondent's burden as the opposing party. It constituted merely incorrect applications of the law and conclusory allegations as to the expiration of the life estate of David Merriman and the post-Proposal A creation of the joint tenancy as causes and factors for the uncapping.

VII. JUDGMENT

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

IT IS FURTHER ORDERED that Petitioner's Motion for Summary Disposition is 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 taxable values as provided in this Final Opinion and Judgment within 20 days of entry of this 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 this Final Opinion and Judgment within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and 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 Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (ii) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (iii) after December 31, 2006, at the rate of 5.42% for calendar year 2007, (iv) after December 31, 2007, at the rate of 5.81% for calendar year 2008, (v) after December 31, 2008, at the rate of 3.31% for calendar year 2009, and (vi) after December 31, 2009, at the rate of 1.23% for calendar year 2010.

This Final Opinion and Judgment resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: April 1, 2010
jpm

Kimbal R. Smith III