

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

EASTBROOK HOMES, INC.,
Petitioner,

v

MTT Docket No. 359471

MICHIGAN DEPARTMENT OF TREASURY,
Respondent.

Tribunal Judge Presiding
Kimbal R. Smith III

FINAL OPINION AND JUDGMENT

A hearing was held in the above-captioned matter on April 15, 2010. Petitioner was represented by Gregory L. McClelland (P28894), McClelland & Anderson, LLP. Respondent was represented by Michael R. Bell (P47890), Assistant Attorney General. At the conclusion of the hearing the parties were required to submit post hearing briefs within 45 days of the hearing. At issue in this matter is whether Petitioner was lawfully assessed State real estate transfer tax on a series of real estate transactions, the assessments being set forth below:

Type of Tax: State Real Estate Transfer Tax

Assessment No(s): Assessment No(s). 0891382, 0891383, 0891384, 0891385 relate to taxable periods 2003, 2004, 2005, and 2006 respectively. Each assessment represents a series of real estate transactions that took place within the given taxable period as listed in Respondent's Exhibit 1.

Taxpayer account number: Corporation: Eastbrook Homes, Inc.
TIN: 38-1841975

Taxpayer status: Corporation

Taxpayer principal office: 1188 E. Paris Avenue SE, Suite 100, Grand Rapids, MI

Amount in controversy:

Assmt. No.	Period	Tax	Penalty	Interest*	Total
0891382	2003	139,913.00	(1,946.84)	84,431.29	222,397.45
0891383	2004	236,378.00	0.00	122,988.77	359,366.77
0891384	2005	187,455.00	0.00	78,407.23	265,862.23
0891385	2006	149,681.00	0.00	42,547.42	192,228.42
TOTAL		\$713,427.00	\$(1,946.84)	\$328,374.71	\$1,039,854.87

The totals specified in the chart above reflect the final assessments issued on February 20, 2009.

*Interest shall continue to accrue after February 20, 2009, in accordance with sections 23 and 24 of Public Act 122 of 1941.

OVERVIEW

This case concerns whether transfers of property from Petitioner, Eastbrook Homes, Inc., (also referred to herein as the “Builder”/“Building Company”) to its customers (the “Buyers”) are subject to transfer tax under the State Real Estate Transfer Tax Act (the “SRETTA”), MCL 207.521 *et seq.*, or exempt from transfer tax under MCL 207.526(d).

In order for the Tribunal to make its determination, it must first review the conveyances made prior to those at issue in this case, and determine what interest, if any, was transferred with respect to each conveyance. More specifically, the Tribunal must first review the conveyances from Eastbrook Development Company (the “Developer”/“Development Company”) to individual Buyers, and then conveyances from the individual Buyers to the Builder, before it is able to reach a conclusion in the instant matter.

Petitioner's Contentions

Petitioner contends that the Buyers' Quit Claim Deed to Petitioner was given as security in accordance with the Building Contract thus making Petitioner's Quit Claim Deed back to the Buyer a release of said security. Therefore, Petitioner's Quit Claim Deeds to its Buyers are exempt from SRETT pursuant to MCL 207.526(d).

Respondent's Contentions

Respondent contends that Petitioner and the Development Company acted in a coordinated manner for the purpose of selling improved property to the Buyers, thus making the use of the Warranty Deed originally executed and delivered between Developer and the Buyers unnecessary. Respondent further contends Petitioner's use of quit claim deeds as security were unnecessary and a tax avoidance device. (Tr, p 46). Respondent contends that the deeds convey real property interest(s) and are subject to tax under the SRETTA irrespective of whether or not they are used as a security interest. (Tr, p 44).

Respondent asserts that even if Petitioner's quit claim deed was a discharge of a security interest (i.e., evidence of indebtedness), it was a transfer of real property for which new consideration was paid; therefore, under §12 of the SRETTA, Petitioner is liable for the value of the improved lot conveyed to the Buyers. (Respondent's Post-Hearing Brief, p 12).

STIPULATION

At the commencement of the hearing the parties stipulated that Petitioner's Exhibits 1 through 4 are exemplar sets of transaction documents used to illustrate the circumstances surrounding the "typical transaction" between the Builder and the Buyers upon which Respondent based its assessments. For purposes of facilitating the witness's explanation of the

“typical transaction,” the parties agreed to use Petitioner’s Exhibit 1 (Exhibit P1). Exhibit P1 contains copies of documents used by the Developer for the sale of divisible parcels of real property, and the Builder for the sale of the construction of a new home.

Petitioner’s Exhibits

As previously stated, the parties stipulated to Petitioner’s Exhibits 1 through 4:

- P-1 Sample Transaction Documents for 5437 Clemwood Court
- P-2 Sample Transaction Documents for 9736 Sunset Ridge
- P-3 Sample Transaction Documents for 1273 Dogwood Meadows
- P-4 Sample Transaction Documents for 5596 East De Blaay Court

Respondent’s Exhibits:

Respondent’s Exhibits were admitted into evidence without objection:

- R-1 Summary of Additional State Real Estate Transfer Tax & Interest Due
- R-2 Decision and Order of Determination
- R-3 Copies of Final Assessments – Bill for Taxes Due

Petitioner’s Witness

The only witness called at the hearing, Michael A. McGraw, appeared on Petitioner’s behalf. Mr. McGraw is the CEO of Eastbrook Homes, Inc., Petitioner in this case, and has held that position for approximately 15 years. (Tr, p 11). Petitioner was incorporated in approximately 1967. *Id.* Petitioner is a residential building company in the business of the sale and construction of new homes. *Id.*

The witness further testified that he, as an individual, is an owner of Eastbrook Development Company, Inc., which was established in 1995. (Tr, p 12). However, the witness

asserted that the Building Company is a separate and distinct entity from the Development Company; the Building Company keeps separate books, records, and employees from the Development Company. *Id.* The Development Company acquires raw land from various land holding companies, and contracts for roads and underground service improvements to be installed. (Tr, pp 13-14). Once the land is developed into divisible parcels of property, the Development Company sells the parcels to either the Building Company for speculative building, other home builders, or directly to the Buyers. (Tr, pp 14-15).

The Building Company would purchase a parcel from the Development Company if the Builder intended to build speculative homes.¹ (Tr, p 15). If Petitioner were to speculatively build, it would purchase the parcels from the Development Company at “retail price” and pay the Developer “real money” for the parcel. (Tr, p 14). Once Petitioner sold a speculative home, it would pay transfer tax equal to the value of both the parcel of land and the home on the date of the transaction; however, none of the sales at issue were speculative homes. (Tr, pp 16-17).

Next, the witness explained the rationale supporting the “typical transaction,” which occurs when a property owner/Buyer, engages Petitioner to build on their land, at which time Petitioner requires the property be quit claimed to the Building Company for purposes of security. (Tr, pp 15-18). If Petitioner was going to build something on the property, it wanted an interest in the property as security; Petitioner would take a quit claim deed from the property owner to ensure final payment upon completion of construction. (Tr, pp 18-19). The witness explained that a quit claim deed allows a builder to avoid hardships commonly encountered by builders trying to collect the balance owed to them for homes constructed on property owned by

¹ A speculative building, or home in this instance, is a home built without a buyer and is defined as a home “that is built with the expectation that it will be sold . . . when completed.” Appraisal Institute, *The Dictionary of Real Estate Appraisal*, (Chicago: 4th ed, 2002.)

their customers. (Tr, p 19). The witness testified that it is not uncommon for a customer who holds title to obtain possession of the home prior to paying the balance of the building contract, and then refuse to make the final payment because of a supposed problem with the construction. (Tr, p 19). Instead, Petitioner uses the quit claim deed as security and will not close until everything is done, the customer has inspected the work, and is satisfied with the construction. (Tr, p 20). The witness attributes Petitioner's 32 years of never having a problem with its customers to its use of quit claim deeds as a strong form of security. (Tr, pp 19-20).

The witness then walked through a "typical transaction," using Exhibit P1. (Tr, p 20). The witness identified the documents contained in Exhibit P1 to be copies of records of both the Building Company and the Development Company for a particular parcel of property. (Tr, pp 21-22). As testified, the Buyer entered into a Site Condominium Unit Purchase Agreement (the "Unit Purchase Agreement") with the Development Company for the purchase of an unimproved lot. (Tr, p 22). Paragraph 8 of the Unit Purchase Agreement requires:

8. UNIT CLOSING. A) For purchases prior to new home construction, the unit will be closed before construction commences. [Developer] will execute a warranty deed, and Buyer will execute a promissory note for any unpaid balance to be paid in full not later than settlement date on the house purchase. . . .

The witness explained, regardless of whether a Buyer purchases the lot from the Development Company, some other developer, or wants to build on their grandfather's property, Petitioner takes the same approach when contracted to build (*i.e.*, Petitioner takes a quit claim interest in property). (Tr, p 23). As such, the Developer executed and delivered the Buyer a warranty deed which stated on its face the consideration paid for the unimproved parcel. The warranty deed was recorded, and State transfer tax was paid. In consideration for receipt of the warranty deed

the Buyer either paid for the lot in full or executed a promissory note for the full amount less any deposits. (Tr, p 23; Exhibit P1, pp A-30 and A-32).

In a separate agreement titled Site Condominium New Home Building Contract (the “Building Contract”), the Buyer engaged Petitioner to build a house on the lot. (Tr, pp 29-30; Exhibit P1, p A-8). As testified, the sum stated in Paragraph 1 of the Building Contract does not include the value of the land. (Tr, p 30; Exhibit P1, p A-8). Rather, Paragraph 21 of the Building Contract requires the Buyer to quit claim the unimproved parcel to the Builder:

21. UNIT AS SECURITY. To secure payment for the house contract, Buyer will sign a Quit Claim Deed for the unimproved unit to [Petitioner] for security during construction. [Petitioner] will release its security and quit claim title back to buyer at the house closing.

(Tr, p 30; Exhibit P1, p A-10). As such, upon completion of the home Petitioner was obligated to release its security in the property and quit claim title back to the Buyer at closing.

Accordingly, if during the course of construction, Petitioner was propositioned to sell the property to some other party for a greater profit than agreed to in the Building Contract, Petitioner would not be able to sell because of its contractual obligation to release its security interest back to the Buyer, even though Petitioner holds title. (Tr, p 32). Petitioner’s “security interest in the property is the quit claim.” (Tr, p 32).

Furthermore, the Buyer’s quit claim deed to Petitioner indicates that the transfer is for security purposes. (Tr, p 33, Exhibit P1, p A-33). The quit claim deed states on its face that “*This transfer is made for security purposes. This transfer is exempt from transfer tax pursuant to MCLA 207.505(d) and 207.526(d).*” (Tr, p 33, Exhibit P1, p A-33) (emphasis added).

Accordingly, the Buyer filed a Property Transfer Affidavit that claimed an exemption because

the transfer was made “to establish or release a security interest (collateral).” (Tr, p 35; Exhibit P1, p A-34).

Also relevant are Paragraph(s) 13 and 14 of the Building Contract, which read:

13. SETTLEMENT DATE. For a build job, the closing will take place within (5) days after the municipality’s building inspector has approved home for occupancy. If not closed, regardless of reason, Buyer agrees to pay fee. . . commencing five (5) days after the date of the certificate of occupancy. . . .

14. POSSESSION TO BE GIVEN. Possession to be given immediately upon final payment of the total contract price. If buyer occupies the home or places personal property into the home prior to the Settlement Date, then a fee . . . will be assessed from the date of occupancy until final payment price. Buyer assumes responsibility for personal property placed in the home. At time of occupancy or Settlement, Buyer assumes all utility expenses and assumes responsibility for any damage or theft of any items on property and house.

As testified, the Settlement Date is the date in which the Buyer closed on a loan for both the purchase of the house, and to pay the balance on the Promissory Note for the lot. (Tr, p 36-37; Exhibit P1, p A-36, line 519). Accordingly, separate checks were disbursed to the Development Company for the lot balance and to Petitioner for the balance of the Building Contract. (Tr, p 37; Exhibit P1, pp A-40 and 42). As agreed, Petitioner executed and delivered a quit claim deed to the Buyer which stated on its face: “Exempt from State Transfer Tax under MCL 207.526(d). Exempt from County Transfer Tax under MCL 207.505(d).” (Tr, pp 37-38; Exhibit P1, p A-38).

The “typical transaction” also includes the use of consolidated sales statements that combine the balances owed for both the lot and the Building Contract. As testified, there were several reasons for the consolidated sales statements. First, the computer software used to draft the statements does not allow the user to tailor the documents specific to an individual business’s needs. (Tr, p 41). Secondly, a Buyer typically finances both the lot plus the improvements with one loan; lending institutions are most interested in the total value of the property as improved.

The consolidated statements provide the Buyers the information they need to obtain financing and close the loan for the home construction on the Settlement Date. (Tr, p 41). Prior to the Settlement Date, Petitioner finances the construction through its line of credit. (Tr, p 42).

Respondent's Cross-Examination of Petitioner's Witness

Respondent cross-examined Petitioner's witness, and relied on Exhibit P1 to establish its case. During the course of Respondent's cross examination, it raised several issues. First, Respondent questioned the witness regarding the ownership structure of the various companies involved in land acquisition, site improvements, and residential home building. The witness testified that "[he] as an individual" has an ownership interest in both the Development Company and in various land holding companies. (Tr, p 48).

Respondent then examined the witness regarding the transaction documents contained in Exhibit P1. The witness testified that the document titled Eastbrook Development Companies, Real Estate Agency Disclosure applies to both Petitioner and the Development Company. (Tr, p 49; Exhibit P1, p A-1). The witness explained the disclosure lets the Buyer know that the salesperson represents both the Builder and Developer. (Tr, p 47). Accordingly, the same sales agent signed several documents contained within Exhibit P1 on behalf of both the Developer and the Builder. (Tr, pp 50-51). Although Petitioner maintains separate employees from the Developer, it uses the same sales agent; the sales agent is a licensed real estate agent in the State of Michigan and works as an independent contractor on behalf of both the Development Company and the Building Company. (Tr, p 51).

Respondent further questioned which company the Disclosure Statement Sitework document referred to by use of the words "we" and "our." (Tr, pp 58-61). The witness asserted

that he did not create the document; therefore, he could not testify to what the words “we” and “our” were intended to include. (Tr, pp 59-61). However, the rationale for the document was to clarify the lot clearing and building process to the Buyer. (Tr, p 59).

The witness was then questioned about Paragraph 7 of the Site Condominium Unit Purchase Agreement, which states:

7. TITLE INSURANCE. Developer will select title insurance company and will provide Buyer with an Owner’s policy of title insurance with exceptions to be paid for by Developer at the new construction rate.

The witness was asked why the Developer would provide the Buyer an Owner’s Policy of title insurance with exceptions to be paid for at new construction rates. (Tr, p 63). The witness testified that the Developer had a fixed price for insurance policies. (Tr, p 63).

The witness also testified that once the Buyer obtains a warranty deed from the Development Company the Buyer is responsible for the property taxes for the property. (Tr, p 80-81).

Lastly, the witness was examined with regard to Paragraph 20 of the Building Contract:

20. UNIT PURCHASE AGREEMENT. This New Home Building Contract is not valid unless signed simultaneously with an Eastbrook Development company Purchase Agreement.

(Exhibit P-1, p A-10). The witness explained the rationale behind this provision was to assure that its Buyers had a parcel to build a home. Whether the Buyer has its own lot, or wants to build in a new subdivision or condo development, Petitioner wants to make sure there is a place to put the house. (Tr, p 82).

ISSUES PRESENTED

- I. Were the Buyers' quit claim deeds to Petitioner "given as security," or were they a conveyance of property or any interest in property, as contemplated in §3 of the SRETTA?
- II. Were Petitioner's subsequent quit claim deeds back to the Buyers a "discharge of a security interest. . ." and therefore exempt from State real estate transfer tax pursuant to §6 of the SRETTA?

APPLICABLE LAW

Petitioner appeals as of right the final decision of the Department's assessment under the State Real Estate Transfer Tax Act (SRETTA). The SRETTA governs the imposition of the tax at issue in this case. MCL 207.521 *et seq.* In relevant part, § 3 of the SRETTA provides:

(1) There is imposed, in addition to all other taxes, a tax upon the following written instruments executed within this state when the instrument is recorded:

* * *

(b) Deeds or instruments of conveyance of property or any interest in property, for consideration.

* * *

(2) The person who is the seller or grantor of the property is liable for the tax imposed under this act.²

However, Petitioner contends that both Petitioner's and Buyers' quit claim deeds are exempt from taxation under § 6 of the SRETTA, which states:

The following instruments and transfers of property are exempt from the tax imposed by this act:

* * *

(d) A written instrument given as security or an assignment or discharge of the security interest.³

² MCL 207.523.

³ MCL 207.526(d).

Also relevant is § 12 of the SRETTA, which states:

(1) The tax imposed by this act shall be paid only once. A tax shall not be imposed on a written instrument that transfers property if the written instrument is given and the transfer made pursuant to a written executory contract upon which the tax was previously paid. A written instrument that is evidence of indebtedness or of a contract right is subject to the tax imposed by this act only to the extent of the new consideration given for the property. A written instrument that is given to supplement, reform, or correct a prior written instrument is subject to the tax imposed by this act only to the extent of the new consideration given for the property.

(2) A written instrument that would be subject to the tax imposed by this act except for the provisions of this section shall state on its face that the instrument is exempt by reason of the prior payment or partial payment of the tax on another written instrument executed on part of the same transaction and the date of payment.⁴

The Legislature amended § 2 of the SRETTA with the passage of P.A. 473 of 2008, which was applied retroactively, taking effect January 1, 2007.⁵ However, the transactions at issue took place prior to the amended effective date (taxable periods 2003 through 2006); therefore, said amendment was not contemplated in this decision.

When the Tribunal is required to interpret a statute:

[o]ur primary obligation is to ascertain and effectuate the intent of the Legislature. To do so, we begin with the language of the statute, ascertaining the intent that may reasonably be inferred from its language. When the language of a statute is unambiguous, the Legislature's intent is clear and judicial construction is neither necessary nor permitted.

Lash v Traverse City, 479 Mich 180; 735 NW2d 628 (2007).

If the statute repeatedly uses the same term in a statute, that term should be given the same meaning throughout the statute. *Travis v Dreis & Krump Manufacturing Co*, 453 Mich

⁴ MCL 207.532

⁵ MCL 207.522

149; 551 NW2d 132 (1996). Statutory language may not be read in isolation, but must be construed in the context of the entire statute. *Id.*

The Court in *Nowell* stated that, in construing a statute, the plain language must be applied as written, and if provisions of the statute could conflict, they must be read harmoniously if possible. *Nowell v Titan Insurance Co*, 466 Mich 478; 648 NW2d 157 (2002).

The objective in interpreting a deed is to give effect to the parties' intent as manifested in the language of the instrument. To ascertain that intent, a court must consider the entire deed; if possible, all language of the deed must be harmonized and construed so as to make all of it meaningful. *Huntington Woods v Detroit*, 279 Mich App 603; 761 NW2d 127 (2008), lv den 483 Mich 887; 759 NW2d 875 (2009).

A mortgage is a “conveyance of an interest in real estate to secure the performance of an obligation.” *In re Van Duzer*, 390 Mich 571, 577; 213 NW2d 167 (1973). “[A]n instrument in the form of an absolute deed of conveyance may be construed as a mortgage if given as security.” *Alber v Bradley*, 321 Mich 255, 262; 32 NW2d 454 (1948). “The principal question at issue . . . is the intention of the parties at the time they entered into their agreement.” *Id.* In *Spitzley v Holmes*, 256 Mich 559, 562; 240 NW 81 (1932), it was said: “[w]hen a deed given as security for an indebtedness and is accompanied by a contract to repurchase, from the grantee to the grantor, the transaction is regarded as a mortgage.”

“The continued possession of the grantor long after the recording of his deed to another is sufficient to raise a presumption that the right to same has been retained.” *Hulin v Stevens*, 53 Mich 93, 96; 18 NW 569 (1884).

With regard to equitable mortgages the Court in *Cheff v Haan* provides:

In order to lay the foundation for an equitable lien upon real estate, there must be a contract in writing out of which the equity springs, indicating an intention to make particular property identified in the written contract security for the debt or obligation, or whereby it is promised to assign, transfer, or convey the property as security. In the absence of such written contract, equity from the relations of the parties may declare an equitable lien out of considerations of right and justice based upon the fundamental principles of equity jurisprudence, such as cases where one joint owner improves property for the benefit of both; where a party innocently makes permanent improvements and repairs which presently enhance the value of the property; but in all cases, the person seeking to establish the lien must show that in equity, in good conscience, he is entitled to the lien claimed.

Cheff v Haan, 269 Mich 593, 598-99; 257 NW 894 (1934), citing *Kelly v Kelly*, 54 Mich 30, 19 NW 580; 3 Pom Eq Jur §§ 1233, 1234, 1238 and 1243.

FINDINGS OF FACT

Based upon the evidence and testimony presented at the hearing, the Tribunal makes the following findings of fact:

1. Petitioner (i.e., the Building Company) is in the business of residential construction.
2. The Development Company (i.e., Eastbrook Development Company, Inc.) is in the business of taking raw unimproved land and developing it into divisible parcels of property.
3. The Building Company and the Development Company are separate and distinct entities.
4. Mr. McGraw, as an individual owner, has interests in both entities and a legitimate business purpose, other than avoiding transfer tax, to maintain the Building Company and Development Company as separate entities including but not limited to the provisions set forth in the Condominium Act, MCL 559.101 *et seq.*, and Land Division Act, MCL 560.101, *et seq.*, and tort liability.
5. Pursuant to Paragraph 21 of the Building Contract, Petitioner and the Buyers expressly intended to use the Buyers quit claim deed for a specified parcel of property, as security for payment of improvements made.
6. During the course of construction, Petitioner has a legitimate business interest to maintain physical possession of the property including but not limited to the lack of a

certificate of occupancy (see Paragraph 13 and 14 of the Building Contract), tort liability, and expeditious completion of the project.

7. The parties acted consistent with their intentions set forth in the transaction documents and Building Contract; Petitioner did not act as though he possessed fee simple title in the property and the Buyers still retained an interest in the property by paying the property taxes, and making additional decisions with regard to change orders and addendums made during the course of construction.
8. As expressed in the Building Contract, upon completion of the home Petitioner “would release its security and quit claim title back to the Buyer.”
9. The Buyers’ quit claim deeds and Petitioner’s quit claim deeds both indicate on their face the parties’ intention to use the deed as a security; the deeds corroborated the parties intentions set forth in the transaction documents contained in Petitioner’s exhibits.
10. The Buyers’ quit claim deeds are found to be an effective method of making certain that the Builder is paid in full upon completion of construction of a home, and provides a strong form of security.

CONCLUSIONS OF LAW

The central issue in this dispute is: Whether all the transactions at issue (as illustrated in Petitioner’s Exhibits 1 through 4, and stipulated by the parties), which were the basis of Respondent’s assessments, are subject to the SRETTA, or exempt, thus entitling Petitioner to cancellation of the assessments.

Based upon the standards set forth in the above statutes, relevant case law, the evidence and testimony produced at hearing, which the Tribunal deems credible as set forth in the Findings of Fact, the Tribunal concludes:

The quit claim deeds from Petitioner to its respective customers are clearly deeds or instruments of conveyance of property or any interest in property, which are subject to the tax imposed under the SRETTA, *but for the fact that the quit claim deeds were given as security or an assignment or discharge the security interest and thus exempt under § 6 of the SRETTA:*

It is apparent from clear unambiguous language used within the documents in Petitioner's Exhibits that the parties intended the conveyance of property interests, by way of quit claim deeds from the Buyers to Petitioner and from Petitioner to the Buyers, were to be treated as creating a security interest in the properties. More specifically, Petitioner and the Buyers expressly intended in their respective Building Contracts that the Buyers' quit claim deeds be given to Petitioner as "security during construction." Furthermore, Buyers' quit claim deeds expressly corroborate the parties' intentions by stating "This transfer is made for security purposes" on the face of the deed, and by specifically identifying the property used to secure the debt. Therefore, the Tribunal finds that the Buyers' quit claim deeds to Petitioner created a security interest (i.e., an equitable mortgage) on the Buyers' respective parcel of property.

Respondent makes the argument that Petitioner and the Buyers could have selected an alternative approach to accomplish the same end (i.e., a construction mortgage), which would not necessitate the exchange of quit claim deeds. Though this may be true, the Tribunal's determination is limited to those transactions properly before it and whether said transactions are subject to the SRETTA.

The statute is clear and unambiguous that written instruments that transfer property given as security and the assignment or discharge of the security interest are exempt from SRETT. MCL 205.26(d). The statute does *not* require the security interest be created by way of mortgage in order to be exempt. If the Legislature would wish to limit the exemption contained in § 6 of the SRETTA to mortgages it is free to do so.

Notwithstanding the above, Petitioner's relationship with the Buyers, as their builder and financier, further supports the conclusion that Buyers' quit claim deeds served as an equitable

mortgage. Accordingly, Petitioner's quit claim deeds back to the Buyers are a release of said security. Therefore, Petitioner's quit claim deeds to the Buyers are exempt from State transfer tax pursuant to MCL 207.526(d).

As evidenced in the transaction documents, the witness's testimony, and the deeds themselves, the deeds were given to Petitioner as security to repay Petitioner for financing the construction of the Buyer's home. Had the Buyers financed the construction of the home with a construction loan through a third party commercial lender, such a transaction would not be subject to SRETT; therefore, the transactions at issue are equally exempt.

The plain language of the SRETTA as written, prior to the 2008 amendment, affirms the Tribunal's finding that Petitioner's quit claim deeds are exempt from State transfer tax.

JUDGMENT

IT IS ORDERED that Assessment Nos. 0891382, 0891383, 0891384, 0891385 shall be CANCELED.

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

MICHIGAN TAX TRIBUNAL

Entered: July 27, 2010

By: Kimbal R. Smith III, Tribunal Judge