

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

RGW RE, LLC,
Petitioner,

v

MTT Docket No. 438291

Hastings Charter Township,
Respondent.

Tribunal Judge Presiding
Kimbal R. Smith III

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY
DISPOSITION UNDER MCR 2.116(C)(10)

ORDER DENYING PETITIONER'S REQUEST FOR COSTS AND
ATTORNEY FEES

FINAL OPINION AND JUDGMENT

On June 6, 2013, Petitioner filed a Motion for Summary Disposition. In its Motion, Petitioner contends that the transfer of the subject properties on January 14, 2011, from The Randolph G. Wood Trust ("Trust") to Petitioner, via Fiduciary Deed, was not a transfer of ownership since the entities are commonly controlled, and, as such, pursuant to MCL 211.27a(7)(l), the subject properties' taxable value should not have uncapped in 2012. In its Brief in Support, Petitioner states that "[t]he facts at hand clearly meet the 'commonly controlled' criteria set forth in [Revenue Administrative Bulletin ("RAB") 1989-48] and recognized by the Michigan Court of Appeals in *C & J [Investments] of Grayling [LLC v Grayling]*, unpublished opinion per curiam of the Court of Appeals, issued November 13, 2007 (Docket No. 270989)]." Petitioner's Brief, p 4.

Respondent has not filed a Response to Petitioner's Motion for Summary Disposition.

The Tribunal has considered the Motion and the case file and finds that Petitioner failed to specify the grounds on which its Motion for Summary Disposition is based, in contravention to MCR 2.116(C). Nevertheless, the Tribunal will postulate, based on the arguments presented in its Motion, that Petitioner is seeking summary disposition pursuant to MCR 2.116(C)(10) and will therefore analyze the Motion as such.

In *Occidental Dev LLC v Van Buren Twp*, Docket No. 292745 (March 4, 2004), p 9, the Tribunal stated “[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. See *Smith v Globe Life Ins*, 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. 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 nonmoving party under MCR 2.116(C)(10). 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 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. 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).

In this case, Petitioner attached the following to its Motion: (1) A copy of the Fiduciary Deed between the Trust and Petitioner, dated January 14, 2011 (Exhibit A), (2) a Certificate of Membership Interest, which states that the Trust has a 100% membership interest in Petitioner (Exhibit B), and the Affidavit of Sally M. Wood, successor trustee of the Trust (Exhibit E).

MCL 211.27a(3) states, “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.” The statute then further provides examples of what does and does not

constitute a “transfer of ownership.” See MCL 211.27a(6) and (7). Specifically, MCL 211.27a(7)(1) states, in part, that a transfer of ownership does not include “[a] transfer of real property or other ownership interests among corporations, partnerships, limited liability companies, limited liability partnerships, or other legal entities if the entities involved are commonly controlled.”

“Commonly controlled” is not defined in MCL 211.27a or in the General Property Tax Act. Although, the State Tax Commission released STC Bulletin No. 16 on September 20, 1995, which provides, in part, that “[a]n entity under common control is as defined in the Michigan Revenue Administrative Bulletin 1989-48,” with respect to MCL 211.27a(7)(1), RAB 1989-48 was written to define “entities under common control” for single business tax purposes, which has since been repealed by 2006 PA 325, effective December 31, 2007. In a recent Court of Appeals decision, while the Court did not determine whether the Tribunal erred in imposing a business-activity requirement to MCL 211.27a(7)(1), as set forth in RAB 1989-48, see *Sebastian J Mancuso Family Trust v Charlevoix*, 300 Mich App 1, 4; ___ NW2d ___ (2013), the Court of Appeals did state:

The exception in MCL 211.27a(7)(1) applies if (1) the transaction is between legal entities, and (2) the legal entities involved are commonly controlled. Even assuming that trusts are legal entities within the meaning of the statute, the exception applies only if the legal entities are “commonly controlled.” MCL 211.27a does not define “commonly controlled.” “A court may consult dictionary definitions when terms are not expressly defined by a statute.” *Oakland County Rd Comm’rs v Mich Prop & Cas Guar Ass’n*, 456 Mich 590, 604; 575 NW2d 751 (1998). The term “common” is defined as “belonging equally to, or shared alike by, two or more or all in question.” *Random House Webster’s College Dictionary* (1997), p 264. “Control” means “to exercise restraint or direction over; dominate, regulate, or command.” *Id.* at 288. *Sebastian J Mancuso Family Trust, supra* at pp 3-4.

As such, based on the Court of Appeals’s direction in *Sebastian J Mancuso Family Trust*, a published Court of Appeals decision, the only requirements that Petitioner must establish, by a preponderance of the evidence, is that it and the Trust are legal entities and are commonly controlled.

As indicated above, Petitioner provided a Certificate of Membership Interest (Exhibit B) which states that the Trust is the 100% member (i.e., owner) of Petitioner, which is further supported by the Affidavit of Sally M. Wood (Exhibit E). As a result, since trusts are legal entities, Petitioner is a legal entity formed under the Limited Liability Company Act, and because the Trust owns 100% of Petitioner, the Tribunal finds that the Trust and Petitioner are legal entities which are commonly controlled. Therefore, the transfer of the subject properties, via Fiduciary Deed dated January 14, 2011, is not a transfer of ownership for purposes of MCL 211.27a(3), and because there is no genuine issue of material fact, the Tribunal finds that granting Petitioner's Motion for Summary Disposition under MCR 2.116(C)(10) is appropriate. The Tribunal, however, does not find that granting Petitioner costs and attorney fees is appropriate given the fact that Respondent indicated in its Answer, filed on June 22, 2012, that the "[m]akeup of LLC and trust are/were unknown to respondent," in conjunction with the fact that the issue in this case was a legal issue which required examination of applicable statutes and case law. Therefore,

IT IS ORDERED that Petitioner's Motion for Summary Disposition under MCR 2.116(C)(10) is GRANTED.

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

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 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% for calendar year 2012, and (iv) after June 30, 2012, through December 31, 2013, at the rate of 4.25%.

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

By: Kimbal R. Smith III

Entered: July 11, 2013