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

Donald E. & Ronald L. Lewallen,
Petitioners,

v

MTT Docket No. 431811

Township of Porter,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

ORDER TRANSFERRING CASE TO ENTIRE TRIBUNAL

ORDER DENYING PETITIONERS' MOTION FOR SUMMARY DISPOSITION

ORDER GRANTING RESPONDENT SUMMARY DISPOSITION PURSUANT TO MCR 2.116(I)(2)

ORDER GRANTING PETITIONERS' MOTION TO AMEND PETITION

ORDER DENYING PETITIONERS' MOTION TO VACATE AND RESCHEDULE TRIAL

ORDER VACATING TRIBUNAL'S APRIL 23, 2012 ORDER OF ADJOURNMENT

FINAL OPINION AND JUDGMENT

On March 29, 2012, Petitioners Donald E. and Ronald L. Lewallen filed their Motion for Summary Disposition pursuant to MCR 2.116(C)(10), contending that Respondent was not authorized to "uncap" the subject property's taxable value for tax years 2005 through 2011 as a result of the erroneous transfer of the subject property by Quit-Claim Deed dated February 13, 2004, from Lawrence E. Lewallen and Barbara M. Lewallen, husband and wife, to Donald E. Lewallen and Ronald L. Lewallen, as tenants in common, which was "corrected" by the filing of a "Corrective Quit-Claim Deed" dated February 23, 2012. Respondent, Township of Porter, filed its Brief in Opposition to Petitioners' Motion for Summary Disposition on April 17, 2012 and

request for summary judgment pursuant to MCR 2.116(I)(2), contending that the issue of whether a corrective deed "relates back to the date of the original instrument being corrected" so as to negate an uncapping of taxable value pursuant to MCL 211.27a(7)(h) is one of first impression.

Petitioners also filed a Motion for Leave to Amend Petition dated March 29, 2012, to amend their explanation for property tax appeal and to attach a copy of pertinent documents. Respondent has not filed a response to Petitioners' motion.

Also on March 29, 2012, Petitioners filed a Motion to Vacate and Reschedule Trial because their counsel "will be out of town on such date," and because Petitioners contemporaneously filed their Motion for Summary Disposition. On April 18, 2012, Respondent filed its Answer to Petitioners' motion, stating that "it has no objection" to the motion.

Finally, on April 23, 2012, Petitioners filed a Motion to Transfer Proceedings from Small Claims to Entire Tribunal. Petitioner's Motion, however, was determined to be defective for failure to pay the required motion fee.

The Tribunal finds that Respondent's "uncapping" of the taxable value of the subject property for the 2005 through 2011 tax years is supported by statute and relevant case law and, therefore, grants Respondent summary disposition pursuant to MCR 2.116(I)(2). The taxable values of the subject property for tax years 2005 through 2011 shall be as follows:

Parcel No. 14-120-285-001-00

Tax Year	Assessed Value	Taxable Value
2005	$109,300	$109,300
2006	$112,300	$112,300
2007	$114,700	$114,700
2008	$120,900	$117,338
2009	$147,900	$122,501
2010	$120,400	$120,400
2011	$131,600	$122,447

The Tribunal further finds that Petitioners' Motion to Amend Petition is appropriate and shall be granted.

The Tribunal further finds that Petitioners' Motion to Vacate and Reschedule Trial is denied because (i) the Tribunal previously adjourned the hearing scheduled for May 22, 2012, by Order dated April 23, 2012, and (ii) the need for a hearing in this matter is eliminated as a result of this Final Opinion and Judgment.

Finally, the Tribunal finds it appropriate to transfer this appeal to the Entire Tribunal pursuant to TTR 315, as the Tribunal finds that Petitioners' Motion to Transfer constitutes the "permission" required by Tribunal rules.

PETITIONERS' ARGUMENT

In support of their Motion, Petitioners contend that (i) a corrective deed correcting an error in ownership interest relates back to the original date of the instrument being corrected, so long as no rights of third parties are affected, (ii) the Michigan Supreme Court has held that a corrective deed that fixes an error in property description relates back to the original deed (*Diehlman v Dwelling-House Ins Co,* 43 NW 1045, 1046 (1889)), (iii) other states have concluded that a corrective deed has the legal effect of relating back to the original deed so long as there were no new third-party rights created in the interim period (*Pittsburgh, Cincinnati, Chicago & St Louis Ry Co v Beck,* 43 NE 439, 443 (1899); *Arnold Indus Inc v Love,* 63 P3d 721,727 (2002); *SWC Baseline & Crismon Investors, LLC v Augusta Ranch Ltd P'ship,* 265 P3d 1070, 1079 (2011); *Sartain v Fid Fin Servs, Inc,* 775 P2d 161, 164 (1989)), (iv) no new rights were created between the time of the 2004 Deed and the Corrective Deed, and (v) the use, maintenance, and payment of expenses by Mr. and Mrs. Lewallen and Petitioners are consistent with the intent of the parties to have joint ownership of the property.

RESPONDENT'S ARGUMENT

In support of its Response to Petitioners' Motion for Summary Disposition, Respondent states that it agrees with the facts as presented by Petitioners, and agrees that the cases cited by Petitioners say what Petitioner contends they say. Respondent contends, however, that the case law identified by Petitioners, as well as cases cited by Respondent, does not specifically address the "unique facts" of this case. Respondent further states that "the outcome of this case clearly hinges on the Tribunal's determination of the relation-back issue."

FINDINGS OF FACT

Although the parties did not submit a Joint Stipulation of Facts, the Tribunal has reviewed the respective briefs filed by the parties, and finds the following facts:

1. The subject property is residential real property identified as Parcel No. 14-120-285-001-00, located in Porter Township, Cass County, Michigan.
2. As owners of the subject property, Lawrence E. Lewallen and Barbara M. Lewallen, husband and wife, conveyed the property to their sons, Donald E. Lewallen and Ronald L. Lewallen, by Quit-Claim Deed dated February 23, 2004.
3. Lawrence E. Lewallen and Barbara M. Lewallen intended to convey the subject property to themselves and their sons as joint tenants with rights of survivorship. (Affidavit In Aid of Title)
4. Donald E. Lewallen and Ronald L. Lewallen understood that it was the intent of their parents to convey a joint tenancy interest in the subject property to them, and their intent was not to "give up all use and possession of the real estate." (Affidavits of Ronald L. Lewallen and Donald E. Lewallen)

5. Since the transfer of the property in 2004, Lawrence E. Lewallen, Barbara M. Lewallen, Donald E. Lewallen, and Ronald L. Lewallen have all used the subject property, and have all contributed to the costs, maintenance and upkeep of the subject property. (Affidavits of Lawrence E. Lewallen and Barbara M. Lewallen, Ronald L. Lewallen, and Donald E. Lewallen)
6. On January 8, 2012, Respondent's Assessor served on Lawrence E. Lewallen and Barbara M. Lewallen a separate "Affidavit Regarding 'Uncapping' of Taxable Value" for each of the tax years 2005 through 2011.
7. On February 23, 2012, Lawrence E. Lewallen and Barbara M. Lewallen executed a "Corrective Quit-Claim Deed" to Lawrence E. Lewallen, Barbara M. Lewallen, Donald E. Lewallen, and Ronald L. Lewallen, joint tenants with rights of survivorship, stating that this deed was to correct the Quit-Claim Deed dated February 13, 2004, to reflect their intent to "create a joint tenancy with rights of survivorship with their two sons so that the Grantors and the Grantees would have the joint use and possession of the above described real estate."
8. Petitioners filed their appeal of the "uncapping" of taxable value on January 17, 2012.
9. No evidence has been provided by Petitioners that a Property Transfer Affidavit was filed by their parents at the time of the conveyance of the property in 2004.
10. The taxable values of the subject property for the tax years at issue were revised by Respondent as follows:

Parcel No. 14-120-285-001-00

Tax Year	Original Taxable Value	Revised Taxable Value
2005	$55,684	$109,300
2006	$57,521	$112,300
2007	$59,649	$114,700
2008	$61,020	$117,338

Tax Year	Original Taxable Value	Revised Taxable Value
2009	$63,704	$122,501
2010	$63,512	$120,400
2011	$64,591	$122,447

STANDARD OF REVIEW

Respondent moves for summary disposition pursuant to MCR 2.116(C)(10). In *Occidental Dev LLC v Van Buren Twp*, MTT Docket No. 292745 (March 4, 2004), 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. *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).

CCONCLUSIONS OF LAW

The Tribunal has reviewed the case file, including the respective briefs filed by the parties, and finds that Petitioners have failed to demonstrate that they are entitled to judgment as a matter of law pursuant to MCR 2.116(C)(10). The Tribunal further finds that MCR 2.116(I)(2) allows the court to render a judgment where the proofs show that there is no genuine issue of material fact. For the reasons discussed below, the Tribunal finds that Respondent is entitled to summary disposition as a matter of law.

MCL 211.27a(6) provides that a "transfer of ownership" means "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." Transfer of ownership of property includes, but is not limited to, the following:

(a) A conveyance by deed.

MCL 211.27a(7)(h) provides that a transfer of ownership does not include

> [a] transfer creating or terminating 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 and, 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.

The Tribunal agrees with both Petitioners and Respondent that if the original Quit-Claim Deed had been a conveyance from Lawrence E. Lewallen and Barbara M. Lewallen to themselves and their sons as joint tenants with rights of survivorship, there would have been no "uncapping" of taxable value pursuant to MCL 211.27a(6) because of the exclusion found in MCL 211.27a(7)(h). Thus, the sole issue in this dispute is simply whether the "Corrective Quit-Claim Deed" executed by Lawrence and Barbara Lewallen in February, 2012, is retroactive to 2004. In this regard, both parties agree that "[n]o Michigan case has directly addressed the issue of whether a corrective deed that corrects an error in ownership interest relates back to the original date of the instrument being corrected . . . ." (Petitioners' Memorandum of Law in Support of Motion for Summary Disposition, p. 7). Petitioners essentially rely on *Diehlman v Dwelling-House Ins Co,* 43 NW 1045, 1046 (1889), which held that a corrective deed fixing an error in the property's description relates back to the dates identified in the original deed. Petitioners further contend that courts from Indiana, Utah, Idaho, and Arizona have held as a general rule of real property law that a corrective deed has the legal effect of fully relating back in time to the original deed so long as there were no new third-party rights created in the time period between the execution of the original deed and the corrective deed. (Petitioners' Memorandum of Law, p. 7, 8) Respondent does not disagree with Petitioners' statement of the holdings of the out-of-state cases or the decision in *Diehlman.*

The Tribunal finds that a distinction exists between the facts of this case (i.e., the corrective deed substantially changes the grantees of the subject property) and *Diehlman*, which simply allows a corrective deed to be retroactive where the property's description needs fixing.

The Tribunal specifically relies on Standard 3.3 of the Michigan Land Title Standards, Sixth Edition, May 2007[1], which establishes the following Standard:

> A Grantor who has conveyed real property by an effective, unambiguous instrument cannot, by executing a subsequent instrument, make a substantial change in the name of the grantee, decrease the area of the real property or the extent of the estate granted, impose a condition or limitation upon the interest granted, or otherwise derogate from the first conveyance, even though the subsequent instrument purports to correct or modify the former.

Standard 3.3 contains an example applicable to this case:

> Problem B: George Davis deeded Blackacre to Jane Doe and Ruth Roe as tenants in common. Later, Davis deeded Blackacre to Jane Doe and Ruth Roe, 'as joint tenants with right of survivorship.' Jane Doe then deeded an undivided one-half interest in Blackacre to Simon Grant. Did Grant acquire marketable title to an undivided one-half interest in Blackacre notwithstanding Davis's later deed?
>
> Answer: Yes, Jane Doe had acquired an undivided one-half interest through Davis's first deed.

Finally, in a comment to Standard 3.3, the Committee "recognizes that there are circumstances under which a later 'corrective' deed, not inconsistent with the prior instrument and intended to clarify some ambiguity contained in the deed, may be effective."

Thus, the Tribunal finds that the Michigan Land Title Standards clearly concludes that a "substantial change in the name of the grantee" cannot be accomplished by executing a subsequent corrective instrument.[2] While the Committee comments that a "corrective" deed may be appropriate where it is intended to "clarify some ambiguity

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[1] The Sixth Edition of Michigan Land Title Standards has been prepared by the Land Title Standards Committee of the Real Property Law Section of the State Bar of Michigan and published by the Real Property Law Section. First published in the 1950s, the Michigan Land Title Standards is a series of selected statements of the law of land titles, as supported by applicable statutes and case law. Each Standard is a concise statement of a principle of law, accompanied by problems which illustrate the proper application of the principle. Each Standard includes specific references to the statutes and cases which provide the legal authority for the principle addressed. The Committee has taken care to include only those principles of land title law which are clearly supported by the law of Michigan or, where applicable, by the law of the United States, and for which there are supporting statutes or cases which are definitive in their effect or holding. Points of law that are subject to dispute or uncertainty, or as to which there are conflicting opinions, have not been included in the Standards, even if a particular interpretation may be commonly accepted in practice. (Preface to the Sixth Edition, Land Title Standards)

[2] The Committee cites as authorities *Stead v Grosfield*, 67 Mich 289, 34 NW 871 (1887) and *Akers v Baril*, 300 Mich 619; 2 NW2d 791 (1942).

contained in the deed," such is not the case here. Further, although the Tribunal recognizes that neither *Stead* nor *Akers* is directly on point, the Tribunal relies on the Standards and what seems to be the intent of the cases cited to conclude that corrective deeds are proper only in limited circumstances to correct minor defects in prior deeds.

Finally, the Tribunal is not persuaded by Petitioners' contention that the cited out-of-state cases support giving full retroactive legal effect to a corrected deed "so long as there were no new third-party rights created in the time period between the execution of the original deed and the corrective deed," since no new rights were created between the 2004 Deed and execution of the Corrective Deed, and because the Lewallen Family's use and maintenance of the property, including a sharing of costs, are consistent with Lawrence and Barbara Lewallen's intent to create a joint ownership of the property with their sons. Again, the Tribunal finds that the addition of their two sons to the deed as joint tenants constitutes the "substantial change" contemplated by the Committee in drafting Standard 3.3.

Lastly, while not specifically addressed by Petitioners, the Tribunal recognizes that a deed may be reformed based on mutual mistake of the parties. *Johnson Family Ltd Partnership v White Pine Wireless, LLC*, 281 Mich App 364, 379; 761 NW2d 353, 362 (2008). Reformation is an equitable remedy couched in a contract claim to amend the contract to show the intent of the parties at the time the contract was entered into. The Tribunal, however, does not have jurisdiction over contract claims. *Highland-Howell Development Co, LLC v Township of Marion*, 469 Mich 673, 678; 677 NW2d 810, 813 (2004). The Tribunal's powers are limited to those authorized by statute and do not include powers of equity. *Electronic Data Systems Corp v Township of Flint*, 253 Mich App 538, 547-548; 656 NW2d 215, 221 (2002); *VanderWerp v*

Plainfield Charter Tp, 278 Mich App 624, 634; 752 NW2d 479, 485 (2008).[3] Therefore, the Tribunal finds that it cannot by law "reform" the deed consistent with the intent of the parties.~~the issue of reformation is not one to be addressed before this court.~~ The Tribunal's authority is limited to making a determination~~ may only determine~~ whether the change to the deed relates back to the original transfer of ownership that occurred on February 23, 2004, and whether that original transfer of ownership, with the "Corrective Quit-Claim Deed" dated February 23, 2012, would negate the uncapping of the taxable value that occurred in tax years 2005 through 2011.

Therefore,

IT IS ORDERED that Petitioners' Motion for Summary Disposition is DENIED.

IT IS FURTHER ORDERED that Respondent is GRANTED Summary Disposition Pursuant to MCR 2.116(I)(2).

IT IS FURTHER ORDERED that the property's taxable values for the tax years at issue are as set forth above.

IT IS FURTHER ORDERED that the subject appeal is transferred from the Small Claims Division to the Entire Tribunal.

IT IS FURTHER ORDERED that Petitioners' Motion to Amend Petition is GRANTED.

IT IS FURTHER ORDERED that Petitioners' Motion to Vacate and Reschedule Trial is DENIED.

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[3] The Tribunal may exercise its equitable powers to retain jurisdiction; however, the Tribunal does not have powers of equity. While "nothing in the Tax Tribunal Act prohibits one from seeking equitable relief to enforce a tribunal decision" (*Wikman v City of Novi*, 413 Mich 617, 648; 322 NW2d 103, 114 (1982)), an action cannot be maintained in equity if there is an adequate remedy at law. As was the case in *Wikman* and is the case herebefore us today, Petitioners have not demonstrated that the Tribunal has been granted equitable powers to reform the subject deed.~~an appeal to the Tax Tribunal is inadequate to justify an equitable remedy~~

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

MICHIGAN TAX TRIBUNAL

Entered: May 4, 2012 By: Steven H. Lasher