Pheasant Run Co II Inc,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MAHS Docket No. 18-000471

City of Ann Arbor,
Respondent.

Presiding Judge
Preeti P. Gadola

ORDER REMOVING PETITIONER'S MOTION FOR SUMMARY DISPOSITION FROM ABEYANCE

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

INTRODUCTION

On June 15, 2018, Petitioner filed a motion, under MCR 2.116(C)(10), requesting that the Tribunal enter summary judgment in its favor in the above-captioned case. More specifically, Petitioner contends that there is no genuine issue of material fact relative to the unlawful uncapping of Petitioner's taxable value. Petitioner contends it is entitled to judgment as a matter of law and requested oral argument on its Motion. Petitioner's Motion was placed in abeyance, and oral argument was granted and held on August 27, 2018.

On July 20, 2018, Respondent filed a response to the Motion. In the response, Respondent contends that the Motion is premature as discovery is still open in this matter.

The Tribunal has reviewed the Motion, response, and the evidence submitted and finds that granting Petitioner's Motion for Summary Disposition is warranted at this time. As such, the taxable values for the subject parcels for the 2018 tax year are as follows:

Parcel No.	TV
09-12-09-400-028	$4,971,931
09-12-09-400-029	$3,162,785
09-12-09-400-030	$2,939,625

PETITIONER'S CONTENTIONS

In support of its Motion, Petitioner contends that there is no genuine issue of material fact relative to the unlawful uncapping of the subject properties' taxable value as the transfer of the property from Pheasant Run Co. – Phase I ("Pheasant One") to Petitioner was a conveyance between entities under common control. As such, the transfer was not a "transfer of ownership" subject to uncapping.

The subject properties consist of three contiguous parcels of commercial real property, comprising Pheasant Run Apartments, owned by Pheasant One, which is owned by Hartman and Tyner, Inc., "a corporation that controls and manages multi-family properties located throughout southeastern Michigan."[1] During the summer of 2017, Pheasant One sought to refinance the properties with Sun Trust Bank. However, Sun Trust required that a new single-purpose entity own the properties in order to move forward with the refinance. As such, Hartman and Tyner agreed that Pheasant One

[1] Petitioner's Brief in Support of its Motion for Summary Disposition ("Petitioner's Brief") at 3, Exhibit B.

could establish a new single-purpose entity to own the subject properties and Pheasant One would own all the capital of the new corporation, Pheasant Run II, Inc. ("Pheasant Two"). The agreement also made clear that Hartman and Tyner would remain the ultimate owner of the subject properties through its ownership of Pheasant One and Pheasant One's ownership of Pheasant Two.[2] Pheasant One conveyed the properties to Pheasant Two by quit claim deed executed August 16, 2017.[3] The quit claim deed was signed by Julie Melchert, Vice President and Treasurer of Hartman and Tyner, Pheasant One and Pheasant Two.[4]

When Petitioner received its 2018 Notices of Assessment, it learned that Respondent treated the transfer from Pheasant One to Pheasant Two as a transfer of ownership subject to uncapping of the properties' taxable values. Petitioner attempted to provide information to the City Assessor regarding the facts of this matter, next appealed the uncapping to the local Board of Review, but Respondent did not revise the taxable values and stated no reason for the same. Petitioner then filed a Petition with the Tribunal and again attempted to provide a complete explanation of what occurred to Respondent's assessor and its counsel, but to no avail. At oral argument, Respondent argued that it received a copy of the quit claim deed, corporations were involved, the assessor didn't know what was going on entirely, so he uncapped the properties' taxable values and Respondent now requires discovery to support the uncapping.[5] In the meantime, Petitioner is required to pay a $430,000 tax increase.

[2] See Petitioner's Brief, Exhibit D, Incorporation Agreement between Hartman and Tyner, Pheasant One and Pheasant Two.
[3] Petitioner's Brief, Exhibit C.
[4] Petitioner's Brief, Exhibits B (Affidavit of Julie Melchert) and C.
[5] See Oral Argument Transcript ("Tr.") at 10-11.

RESPONDENT'S CONTENTIONS

In support of its response, Respondent contends that granting summary disposition is premature as discovery is still open in this matter. Respondent contends it may find issue with Petitioner's ownership of the subject property as Petitioner alleges Phase One owns all of Petitioner's shares and Phase One is owned by another company, Hartman and Tyner, Inc., of which no further information was provided. It further contends that additional discovery should provide facts "to help fully understand the context of the transaction that is at the heart of this case."

In its brief, Respondent provided newspaper articles, and a copy of a circuit court denial of motions for summary disposition, regarding litigation around the two owners of Hartman and Tyner relative to the company after Mr. Tyner's death.[6] Respondent alleges the circuit court case was settled in July 2017, the quit claim deed was executed in August 2017, and a Hartman and Tyner federal lawsuit was settled in April 2018.[7] Respondent contends that it requires discovery, including disclosure of the terms of the settlement agreements, to examine the composition of Hartman and Tyner ownership to determine if the corporations were under common control.

STANDARD OF REVIEW

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.[8] In this case, Petitioner moves for summary disposition under MCR 2.116(C)(10).

---

[6] See Respondent's Brief, Exhibits 2, 4 and 5.
[7] Respondent's Brief at 5.
[8] See TTR 215.

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 "when the affidavits or other documentary evidence, viewed in the light most favorable to the nonmoving party, show that there is no genuine issue as to any material fact and the moving party is therefore entitled to judgment as a matter of law."[9]

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.[10] The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider.[11] The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.[12] 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.[13] If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.[14]

CONCLUSIONS OF LAW

[9] *Lowrey v LMPS & LMPJ, Inc,* 500 Mich. 1, 5; 890 NW2d 344 (2016) (citation omitted).
[10] See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)).
[11] See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).
[12] *Id.*
[13] See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).
[14] See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

The Tribunal has carefully considered Petitioner's Motion under MCR 2.116 (C)(10) and finds that granting the Motion is warranted.

Under the General Property Tax Act ("GPTA"), MCL 211.1 *et seq.* every property is assigned two values for property tax purposes, assessed value and taxable value. Assessed value may change from year to year based on the market value of the property, but taxable value may only change year to year by the rate of inflation or 5% whichever is less. This is known as the taxable value "cap."[15] A property's taxable value, however, may be increased to its assessed value in the year after the property experiences a transfer of ownership, which is commonly known as uncapping.[16] 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."[17]

The GPTA identifies certain transactions that fit into the definition of "transfer of ownership" but are nevertheless specifically excluded from falling into the definition. MCL 211.27a(7) sets forth the transactions that are not included as transfers of ownership, including under subsection (m), which states, "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."

In *Sebastian J. Mancuso Family Trust v City of Charlevoix*,[18] the Court found MCL 211.27a does not define "commonly controlled," and as a result, referred to

[15]See MCL 211.27a, *WPW Acquisition Co v City of Troy*, 250 Mich App 287 (2002).
[16] See MCL 211.27a(3).
[17] MCL 211.27a(6).
[18] *Sebastian J. Mancuso Family Trust v City of Charlevoix,* 300 Mich App 1; 831 NW2d 907 (2013).

dictionary definitions. The Court found the term common to be defined adjectivally as "belonging equally to, or shared alike by, two or more or all in question[.]" "'Commonly' is the adverb related to that meaning. 'Control' means 'to exercise restraint or direction over; dominate, regulate, or command.'"[19]

Petitioner cites *TRJ&E Properties, LLC v City of Lansing*,[20] wherein the Court examined ownership interests in order to determine if the conveyance of property from one LLC to another is a transfer of ownership among entities under common control. The Court examined the percentage interest of each of the members and found both entities were under common control as the interests of three of the members included in each entity remained intact, relative to the power to act.

The Court noted that "commonly controlled" is not defined in the General Property Tax Act but that "under common control with" is defined in relation to personal property tax exemption. Specifically, it found that MCL 211.9o(7)(b) states in pertinent part:

> "Control", "controlled by", and "under common control with" mean the possession of the power to direct or cause the direction of the management and policies of a related entity, directly or indirectly, whether derived from a management position, official office, or corporate office held by an individual; by an ownership interest, beneficial interest, or equitable interest; or by contractual agreement or other similar arrangement.

The Court then found in applying the exclusion from transfer of ownership for conveyances among entities under common control, the focus should be "on the actual control of the business on the basis of its corporate structure."[21]

---

[19] *Id* at 7 quoting *Random House Webster's College Dictionary* (1997).
[20] *TRJ&E Properties, LLC v City of Lansing* , 323 Mich App 664, (2018)
[21] *TRJ&E Properties, supra* at 4.

Here, the transfer of ownership allegedly subject to uncapping was from Pheasant One, Inc. to Pheasant Two, Inc., two corporations which are under common control, as Pheasant One owns 100% of the stock of Pheasant Two. Pheasant Two's incorporation agreement identified Pheasant One as the sole incorporator.[22] As such, there was no basis to uncap the properties' taxable value as a result of this transaction. Both parties, however, argue in some form that the percentage of ownership of Hartman and Tyner might be relevant to this transaction. In the Affidavit of Julie Melchert, she wrote, "Neither Hartman and Tyner nor Pheasant Run One has experienced a change in the ownership of more than 50% of the entity's stock."[23] Respondent argues that there are facts to be discovered regarding the percentage of ownership of Hartman and Tyner at the time of the transfer of ownership.

The Tribunal is not convinced that the percentage or ownership between Hartman and Tyner is relevant. If corporations are involved, one must be legally mindful of those separate corporations. In *Seasword v Hilti, Inc*., the Michigan Supreme Court found, "[i]t is a well-recognized principle that separate corporate entities will be respected. Michigan law presumes that, absent some abuse of corporate form, parent and subsidiary corporations are separate and distinct entities."[24] Further, in *Hills & Dales Gen Hosp v Pantig*, the Michigan Supreme Court found, "[a] corporation is its own 'person' under Michigan law, an entity distinct and separate from its owners, even when a single shareholder holds ownership of the entire corporation."[25] The percentage ownership of Hartman and Tyner, Inc. is immaterial, because as a corporation, it owns

[22] Petitioner's Brief at 3, Exhibit E, p. 4.
[23] See Petitioner's Brief at Exhibit B, paragraph17.
[24] *Seasword v Hilti, Inc.,* 449 Mich 542, 547; 537 NW2d 221 (1995)
[25] *Hills & Dales Gen Hosp v Pantig,* 295 Mich App 14, 20-21; 812 NW2d 793 (2011).

100% of Pheasant One. Further, though not relevant because the entities involved are corporations, whether the percentage ownership between Hartman and Tyner and/or others was 60-40, 50-50, or 10-20-70 at the time of the transfer of ownership, the percentage ownership of Hartman and Tyner in both Pheasant One and Pheasant Two was the same, as Hartman and Tyner owns 100% of Pheasant One and Pheasant One owns 100% of Pheasant Two. Respondent uncapped the taxable values of the properties based on their transfer of ownership from Pheasant One to Pheasant Two, with admittedly no reason. The Tribunal is not persuaded that it can now go back and try to support its decision. The Tribunal finds Respondent failed to present credible documentary evidence establishing the existence of a material factual dispute and Petitioner is entitled to judgment as a matter of law. It further finds there are no additional facts that could change the result in this matter.

JUDGMENT

IT IS ORDERED that Petitioner's Motion for Summary Disposition is removed from abeyance.

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 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.[26] To the extent that the final level of

[26] See MCL 205.755.

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 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 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, 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, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (vii) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, (viii) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, and (ix) after June 30, 2018, through December 31, 2018, at the rate of 5.41%.

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

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.[27] Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is $50.00 in the Entire Tribunal and $25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.[28] A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.[29] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[30]

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave."[31] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.[32] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[33]

By_ Preeti P. Gadola

Entered: October 26, 2018

---

[27] See TTR 261 and 257.
[28] See TTR 217 and 267.
[29] See TTR 261 and 225.
[30] See TTR 261 and 257.
[31] See MCL 205.753 and MCR 7.204.
[32] See TTR 213.
[33] See TTR 217 and 267.