

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

NM Investment Company,
Petitioner,

MTT Docket No. 320918

v

Leelanau Township,
Respondent.

Tribunal Judge Presiding
Kimbal R. Smith III

FINAL OPINION AND JUDGMENT

I. INTRODUCTION

A prehearing conference was held on April 12, 2007, at which time it was determined that this case should be heard on briefs. On June 8, 2007, Petitioner filed its brief contending that the date of “transfer of ownership” of the subject properties was, January 3, 2005, the date specified on the land contract. Further, on June 8, 2007, Respondent filed its brief contending that the “transfer of ownership” took place on the date of signing of the land contract, December 30, 2004. Therefore, the legal issue to be determined is the time at which, under the General Property Tax Act, MCL 211.1 *et seq*, a “transfer of ownership” occurred.

II. FINDINGS OF FACT

Petitioner purchased the subject properties from the seller, American Bancorporation of Minnesota Inc., by a land contract executed on December 30, 2004. The nine subject parcels are located in Leelanau Township, Leelanau County, Michigan. The parcel numbers are 008-114-007-00, 008-111-002-00, 008-113-002-00, 008-114-010-00, 008-110-020-00, 008-115-004-01, 008-140-001-00, 008-115-010-10, 008-115-022-00. All parcels are classified residential.

The land contract stated the effective date as January 3, 2005. Accordingly, Respondent

uncapped the taxable values for the subject properties in 2005. Following the uncapping, Petitioner appealed the 2005 taxable value to the Board of Review, requesting a reduction in the taxable value. The Township Board of Review denied Petitioner's appeal.

III. PETITIONER'S CONTENTIONS

Petitioner contends that, at the time of signing of the land contract on December 30, 2004, it had no right to use, possess, or obtain beneficial ownership of the properties. Further, Petitioner contends that it had no right to a conveyance of the properties prior to January 3, 2005. Petitioner asserts that the first page of the land contract states "[t]his agreement is made on January 3, 2005 . . ." Paragraph 22, page 6 of the contract provides that contract ". . . shall be effective as of the date listed at the beginning of this agreement." Therefore, although Petitioner signed the land contract on December 30, 2004, Petitioner contends that the seller and Petitioner mutually intended for this land contract to become effective on January 3, 2005. Moreover, Petitioner contends that the document on December 30, 2004, is the equivalent of a purchase agreement and it does not constitute a "transfer of ownership."

IV. RESPONDENT'S CONTENTIONS

Respondent contends that the "transfer of ownership" of the subject property occurred on the date the land contract was signed, December 30, 2004, because transfer of ownership under a land contract occurs when the vendor and vendee execute a land contract. Respondent asserts that the right to possession of the subject property is a "benefit" to Petitioner; therefore, Petitioner received a "beneficial use" on December 30, 2004. Moreover, Respondent contends that the land contract suggests Petitioner made a down payment of \$900,000 on or before

December 30, 2004. Therefore, Respondent argues that Petitioner should have received some consideration for the down payment other than the expectancy of an enforceable contract on January 3, 2005.

V. APPLICABLE LAW

Pursuant to the Michigan Constitution, Article 9 § 3:

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not, after January 1, 1966, exceed 50 percent; and for a system of equalization of assessments. For taxes levied in 1995 and each year thereafter, the legislature shall provide that **the taxable value of each parcel of property adjusted for additions and losses, shall not increase each year by more than the increase in the immediately preceding year in the general price level, as defined in section 33 of this article, or 5 percent, whichever is less until ownership of the parcel of property is transferred.** When ownership of the parcel of property is transferred as defined by law, the parcel shall be assessed at the applicable proportion of current true cash value.

Furthermore, pursuant to section 27a of the General Property Tax Act, 1893 PA 206, MCL 211.27a(2)(a) indicates that taxable value is determined by taking “[t]he 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.” However, the property’s taxable value in the year after a transfer of ownership (i.e., uncapping) is the property’s state equalized valuation for the calendar year following the transfer. MCL 211.27a(3). Additionally:

[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 . . . [a] conveyance by land contract.

MCL 211.27a(6).

VI. CONCLUSIONS OF LAW

The Tribunal, having given due consideration to the case file, finds that pursuant to MCL 211.27(a)(6), a transfer of ownership of property includes conveyances by land contracts. Further, the execution of a land contract requires mutual assent or a meeting of the minds on all the essential terms. *Zucher v Herveat*, 238 Mich App 257, 291; 605 NW2d 329 (1999). A meeting of the minds is judged by an objective standard, looking to the expressed words of the parties and their visible acts, not their subjective states of mind. *Kamalnath v Mercy Memorial Hosp Corp*, 194 Mich App 543, 558; 487 NW2d 499 (1992). Therefore, based on the express language of the land contract, it is evident that Petitioner and Seller “mutually intended” for the land contract to become effective on January 3, 2005. Because Petitioner had no right to use, possession, or beneficial ownership of the properties and had no right to a conveyance of the properties prior to January 3, 2005, the Tribunal finds that the transfer of ownership occurred on January 3, 2005, the contract’s effective date. More importantly, “. . . [a] court may not alter the express terms of a contract; contractual language must be enforced according to its plain meaning.” *McDonald v Farm Bureau Insurance Co.*, 480 Mich 191; 747 NW2d 811 (2008). Therefore, since the land contract expressly indicates the effective date of the contract is January 3, 2005, the plain meaning of the contract must be enforced and recognized by the Tribunal. As such, the taxable values of the subject properties were not “uncapped” as of December 31, 2004, for the 2005 tax year. The “uncapping” of the taxable value for the subject properties must occur as of December 31, 2005, for the 2006 tax year. The subject properties’ taxable value for 2005

are, therefore, the 2004 taxable value plus the inflation rate multiplier of 1.023, which are reflected in the table below.

The property's true cash, state equalized and taxable values for the tax years at issue are as follows:

PARCEL #	TAX YEAR	TCV	SEV	TV
008-110-020-00	2005	\$ 198,000	\$ 99,000	\$ 65,943
008-111-002-00	2005	\$ 396,816	\$ 198,408	\$ 105,076
008-113-002-00	2005	\$4,350,410	\$2,175,205	\$1,626,437
008-114-007-00	2005	\$ 120,286	\$ 60,143	\$ 44,148
008-114-010-00	2005	\$ 54,776	\$ 27,388	\$ 15,992
008-115-004-01	2005	\$ 77,400	\$ 38,700	\$ 31,975
008-115-010-10	2005	\$ 100,980	\$ 50,490	\$ 33,755
008-115-022-00	2005	\$ 707,400	\$ 353,700	\$ 144,575
008-140-001-00	2005	\$ 74,550	\$ 37,275	\$ 23,152

VII. JUDGMENT

IT IS ORDERED that the subject property's true cash, state equalized, and taxable values for the tax year at issue are as set forth in this Final Opinion and Judgment.

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 shown 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 90 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 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

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December 31, 2006, at the rate of 5.42% for calendar year 2007, and (iv) after December 31, 2007, at the rate of 5.81% for calendar year 2008.

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

MICHIGAN TAX TRIBUNAL

Entered: September 17, 2008
ek/sms

By: Kimbal R. Smith III