

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

Universal Wholesale/Anita LLC,
Petitioner,

v

MTT Docket No. 352130

Township of Royal Oak,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER GRANTING SUMMARY DISPOSITION IN FAVOR OF RESPONDENT UNDER
MCR 2.116(D)(2)

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner filed a Motion for Summary Disposition under MCR 2.116(C)(10) contending that the transfer of ownership of the subject property between J.A.S.S. Incorporated and Anita, LLC in 2006 was a transfer between commonly controlled entities and that the taxable value of the subject property should not have been uncapped for 2007. Respondent provided no discussion or authority in opposition to Petitioner's motion, instead contending that because Petitioner provided no valuation evidence, the true cash values and assessed values of the subject property should be determined pursuant to valuation evidence submitted by Respondent. The Tribunal finds that it lacks jurisdiction to render a decision with respect to the taxable value of the subject property for the 2007 tax year. The Tribunal further finds that the true cash values, assessed values and taxable values of the subject property for the 2008 and 2009 tax years should be as follows:

Year	True Cash Value	State Equalized Value	Taxable Value
2008	\$1,250,000	\$625,000	\$625,000
2009	\$1,075,000	\$537,500	\$537,500

PETITIONER'S CONTENTIONS

On June 22, 2011, Petitioner filed a Motion for Summary Disposition Pursuant to MCR 2.116(C)(10), stating that:

- a. "The Petitioner alleges that the property was incorrectly uncapped in 2007. Petitioner's (sic) appeared at the Board of Review in 2008 to correct the improper uncapping pursuant to MCL 211.27a(4)."

- b. "MCL 211.27a(4) provides . . . that the "board of review may adjust the taxable value for the current year and the 3 immediately preceding calendar years."
- c. "The subject property's Taxable Value was uncapped for the 2007 tax year due to the fact that the property was transferred from J.A.S.S. Incorporated ("J.A.S.S.") to Anita, LLC, ("Anita") via a Quit Claim Deed."
- d. "J.A.S.S. Incorporated dissolved. Its President, Registered Agent, and sole member Joseph Sevany signed the quit claim deed February 9, 2006."
- e. "Joseph Sevany is the sole member of Anita, LLC, a Michigan Limited Liability Incorporation (sic)."
- f. "J.A.S.S. Incorporated and Anita, LLC are commonly controlled entities."

In support of its Motion, Petitioner argues that under MCL 211.27a(7), a "transfer of ownership" pursuant to MCL 211.27a(3) does not occur when ownership of real property is transferred between "commonly controlled" legal entities. Petitioner contends that the transfer of the subject property in 2006 from J.A.S.S. to Anita was a transfer among commonly controlled entities because Mr. Sevany was the sole owner of both entities.

RESPONDENT'S CONTENTIONS

On July 13, 2011, Respondent filed its Response in Opposition to Petitioner's Motion for Summary Disposition, stating:

- a. "The Petitioner's motion for summary disposition seeks to have this Tribunal make a dispositive order on Petitioner's appeal regarding the uncapping of the Petitioner's property and to make such an order based upon no material issue of fact remaining."
- b. To render such a ruling, the Tribunal must also make a finding "that no factual issues remain to be determined regarding the valuation of the property and based upon the values contained in the joint stipulation of facts."
- c. "Respondent relies upon its prehearing statement as well as the joint stipulation of facts which supports the assertion that there is no factual issue remaining to be determined and that an order should be entered reflecting the values in the Respondent's prehearing statement"
- d. "Should this Tribunal make a determination that there was an improper uncapping of Petitioner's property based upon Petitioner's legal argument, than (sic) this Tribunal must make a determination that valuation is the only remaining issue to be determined."
- e. "Since Petitioner indicated that it would not file any valuation disclosure and was satisfied with Respondent's submitted values, the rolls should reflect the values submitted and disclosed by Respondent's contention of True Cash Value"

In support of its Response to Petitioner's Motion for Summary Disposition, Respondent seemingly agrees with Petitioner's contention that the taxable value of the subject property should not have been uncapped for 2007. In addition, Respondent contends that the Tribunal should also confirm that the true cash values, assessed values, and taxable values of the subject

property for the tax years at issue should be as contended by Respondent in its Prehearing Statement and valuation disclosure.

JOINT STIPULATION OF FACTS

The parties filed the following Joint Stipulation of Facts on June 9, 2011, which is adopted by the Tribunal:

1. "Taxpayer is a Michigan Limited Liability Company with a registered office address of 10570 Galaxie, Ferndale, Michigan 48220."
2. "The subject of this matter involves an industrial building in Royal Oak Township, Michigan. The appeal was filed in 2008, and the Petition was amended to include subsequent tax years 2009 and 2010¹."
3. "The Property Identification Number of the subject property is 63-S-25-32-276-056. The Assessment, True Cash Value and Taxable Value on the tax rolls for 2006 through 2010 are" as follows:

Year	Assessed Value	Taxable Value	True Cash Value
2006	\$652,690	\$455,070	\$1,305,380
2007	\$651,560	\$651,560	\$1,303,120
2008	\$651,490	\$651,490	\$1,302,980
2009	\$613,870	\$613,870	\$1,227,740
2010	\$516,990	\$516,990	\$1,033,980

4. "The Petitioner alleges that the property was incorrectly uncapped in 2007. Petitioner's (sic) appeared at the Board of Review in 2008 to correct the improper uncapping pursuant to MCL 211.27a(4)."
5. "The subject property's Taxable Value was uncapped for the 2007 tax year due to the fact that the property was transferred from J.A.S.S. Incorporated to Anita, LLC, via a Quit Claim Deed."
6. "J.A.S.S. Incorporated dissolved. Its President, Registered Agent, and sole member Joseph Sevany signed the quit claim deed February 9, 2006. This document was recorded at the Oakland County Register of Deeds, Liber 37152 Page 838."
7. "Joseph Sevany is the sole member of Anita, LLC, a Michigan Limited Liability Incorporation (sic)."

FINDING OF ADDITIONAL FACTS

¹ Petitioner is represented by other counsel for the tax year 2010. Petitioner's appeals relating to the 2010 and 2011 tax years have been assigned Docket No. 395109.

1. Petitioner's initial appeal in this matter was filed on May 28, 2008 as a valuation appeal and did not raise any issue with respect to the uncapping of the taxable value of the subject property for the 2007 tax year.
2. Petitioner's counsel's correspondence to Petitioner dated January 2, 2008 discusses the uncapping of taxable value issue and attaches a copy of the December 2007 tax bill for the subject property.
3. The 2007 taxable value issue was identified in the Counsel Conference Summary submitted to the Tribunal on May 18, 2009.
4. Petitioner's Prehearing Statement, dated March 7, 2011, did not raise the uncapping of 2007 taxable value issue.
5. Petitioner's Valuation Disclosure dated March 7, 2011 stated that Petitioner would rely on the Valuation Disclosure filed by Respondent and that Petitioner's issue related only to the improper uncapping of the 2007 taxable value of the subject property.
6. Petitioner's Second Set of Interrogatories to Respondent dated May 6, 2009 first raised the issue of the uncapping of taxable value for the 2007 tax year.

APPLICABLE LAW

Petitioner 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).

CONCLUSIONS OF LAW

The Tribunal has carefully considered Petitioner's Motion under MCR 2.116(C)(10) and finds that denying Petitioner's Motion is appropriate as it lacks jurisdiction over the purported uncapping of the subject property's 2007 taxable value. Nevertheless, MCR 2.116(A) permits summary disposition where "parties have stipulated to facts sufficient to enable the court to render judgment in the action." MCR 2.116(I) allows the court to render a judgment where the proofs show that there is no genuine issue of material fact. The Tribunal finds that the parties have filed a stipulation of facts that prove there are no genuine issues of material fact. Thus, Respondent is entitled to summary disposition as a matter of law, under MCR 2.116(I)(2).

MCL 211.27a(3) provides that upon a transfer of ownership of property, 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.

MCL 211.27a(4) provides that if the taxable value of property is adjusted under subsection (3), a subsequent increase in the property's taxable value is subject to the limitation set forth in subsection (2) until a subsequent transfer of ownership occurs. If the taxable value of property is adjusted under subsection (3) and the assessor determines that there had not been a transfer of ownership, the taxable value of the property shall be adjusted at the July or December board of review. Notwithstanding the limitation provided in section 53b(1) on the number of years for which a correction may be made, the July or December board of review may adjust the taxable value of property under this subsection for the current year and for the 3 immediately preceding calendar years. A corrected tax bill shall be issued for each tax year for which the taxable value is adjusted by the local tax collecting unit if the local tax collecting unit has possession of the tax roll or by the county treasurer if the county has possession of the tax roll. For purposes of section 53b, an adjustment under this subsection shall be considered the correction of a clerical error.

MCL 211.27a(6) provides that "transfer of ownership" includes the "conveyance of title to or a present interest in property," and includes "a conveyance by deed."

MCL 211.27a(7) excludes certain "transfer of ownership" from the taxable value uncapping process, including

(1) 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. . . ."

As identified by Petitioner, the State Tax Commission's "Transfer of Ownership and Taxable Value Uncapping Guidelines" specifically address the issue of transfers between "commonly controlled" entities. The State Tax Commission relies upon Michigan Revenue Administrative Bulletin 1989-48 to determine whether entities are "commonly controlled." In addition to the guidelines established in the RAB, the State Tax Commission takes the position that even though entities may not qualify as "entities under common control" under the RAB,

property that is conveyed from “one entity to another entity and both entities are owned by the same individual(s) with the same percentage of ownership” would constitute a common control situation and such transfer would be exempt from taxable value uncapping. The Tribunal finds that the subject property was conveyed by Quit-Claim Deed from J.A.S.S. to Anita in 2006 and that both entities were 100% owned by Joseph Sevany. As a result, the Tribunal finds that the taxable value of the subject property should not have been “uncapped” for the 2007 tax year.

The Tribunal further finds, however, that it does not have jurisdiction over the 2007 tax year. Pursuant to MCL 205.735a(6), the jurisdiction of the tribunal is invoked by a party in interest, as petitioner, filing a written petition within 35 days after the final decision, ruling, determination, or order that the petitioner seeks to review. Here, Petitioner seemingly first became aware that the taxable value for 2007 had been uncapped by Respondent upon receipt of the December 2007 tax bill. Petitioner’s counsel was aware of the taxable value uncapping issue as of January 2, 2008. However, Petitioner did not file an appeal of any kind until May 18, 2008 and did not raise the taxable value uncapping issue with Respondent until May 6, 2009. Petitioner clearly did not file an appeal of the 2007 taxable value of the subject property within 35 days of receipt of the December 2007 tax bill.

The Michigan Supreme Court, in *Michigan Properties, LLC v Meridian Township*, ___ Mich App __; ___NW2d ___ (2011), stated that:

We conclude that the MTT erroneously concluded that MCL 211.30 permitted the uncapping of petitioner’s property for the tax years in question. In doing so, we acknowledge that MCL 211.29 and 211.30 do grant broad power to the March Board of Review to ensure that the assessment roll complies with the provisions of the GPTA. However, we further conclude that while the March Board of Review possesses broad power, that power must be limited by the other express provisions of the GPTA. In other words, while the March Board of Review may modify assessed values and tentative taxable values to be consistent with a provision of the GPTA, it may not make a modification that will contradict an express GPTA provision. Our conclusion is required by a well-established principle of statutory interpretation: this Court must avoid interpreting a statute in a way that would render statutory language nugatory. *Robinson v City of Lansing*, 486 Mich 1, 21; 782 NW2d 171 (2010). If the March Board of Review was statutorily permitted to uncap a property’s value for a year that was not immediately subsequent to a year of transfer, MCL 227.11a(2) and (3) would essentially be rendered meaningless.

Thus, the Tribunal is precluded from changing the taxable value of a property for a tax year over which it did not have jurisdiction. As such, the Tribunal cannot recalculate the taxable value for the 2008 and 2009 tax years, based on the corrected 2007 taxable value, as it does not have proper jurisdiction over the uncapping claim and the year in which the uncapping purportedly occurred. Petitioner may have been able to raise this claim to the July or December Boards of Review, under MCL 211.53b; however, there is no evidence to indicate that Petitioner protested to either the July or December Boards of Review regarding its uncapping claim.

Further, Petitioner's reliance on MCL 211.27a(4) is misplaced. Specifically, MCL 211.27a(4) provides that, in part, for this statutory provision to apply, the assessor must determine that there had not been a transfer of ownership and the assessor must then take the issue to the July or December board of review. There is no evidence in this case that Respondent's assessor took the uncapping issue to Respondent's July or December board of review. Instead, the Joint Stipulation of Facts simply states that "Petitioner's (sic) appeared at the Board of Review in 2008 to correct the improper uncapping pursuant to MCL 211.27a(4)." No evidence is provided by Petitioner regarding which Board of Review was presented with this issue, and the presentation of this issue to the Board of Review by Petitioner is not an event which invokes jurisdiction under MCL 211.27a(4). The Tribunal finds that it lacks jurisdiction over the taxable value uncapping issue for the 2007 tax year. See *Michigan Properties, supra*.

Separately, the Tribunal finds that the parties agreed at the Prehearing Conference held on March 8, 2011, that the sole issue before the Tribunal in this matter was the issue relating to the uncapping of the taxable value of the subject property for the 2007 tax year. As was reiterated by Petitioner in its correspondence to the Tribunal dated March 22, 2011, "no contention of true cash value or SEV has been made." Therefore, the substance of the argument contained in Respondent's Response to Petitioner's Motion for Summary Disposition is unnecessary and not relevant to the pending Motion. The Tribunal finds that Respondent's contention of values for the 2008 and 2009 tax years are supported by the evidence.

Therefore,

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

IT IS FURTHER ORDERED that Summary Disposition is GRANTED in favor of RESPONDENT.

IT IS FURTHER ORDERED that the true cash values, assessed values and taxable values for the subject property for the tax years at issue shall be as detailed in the Introduction section above.

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 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 Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2007, at the rate of 5.81% for calendar year 2008, (ii) after December 31, 2008, at the rate of 3.31% for calendar year 2009, (iii) after December 31, 2009, at the rate of 1.23% for calendar year 2010, and (iv) after December 31, 2010, at the rate of 1.12% after calendar year 2011.

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

MICHIGAN TAX TRIBUNAL

Entered: August 5, 2011

By: Steven H. Lasher