



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

Mary M Jeisel,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 19-001349

Bagley Township,
Respondent.

Presiding Judge
Steven M Bieda

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

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

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner filed this appeal disputing the uncapping of taxable value of Parcel No. 69-010-011-400-085-05 for the 2019 tax year.

On March 5, 2020, Petitioner filed a motion requesting that the Tribunal enter summary disposition in its favor. In the motion, which was filed pursuant to MCR 2.116(C)(10), Petitioner contends that there is no genuine issue of material fact that the purported transfer of ownership is exempt pursuant to MCL 211.27a(7)(m). As such, Petitioner is entitled to judgment as a matter of law.

Respondent filed a response to Petitioner's motion on March 24, 2020. In the response, Respondent contends that Petitioner's motion should be denied and judgment should be rendered in favor of Respondent pursuant to MCR 2.116(I)(2).

PETITIONER'S CONTENTIONS

Petitioner contends that it is entitled to judgment as a matter of law pursuant to MCR 2.116(C)(10) because the entities involved in the September 6, 2018 quit claim deed transaction are commonly controlled for purposes of MCL 211.27a(7)(m). The property transferred from Friel Cottage LLC to Nancy Stocker and Mary Jeisel, individually, in equal shares, who each held a 50% interest in Friel Cottage LLC. Nancy and Mary had an agreement establishing a joint venture between the two, and as such, they are a legal entity within the meaning of the statute.

RESPONDENT'S CONTENTIONS

Respondent contends that it is entitled to judgment as a matter of law pursuant to MCR 2.116(l)(2) because there was no joint venture between Nancy Stocker and Mary Jeisel. As such, there was no transfer between legal entities within the meaning of the statute, but a transfer from a limited liability company to two natural persons.

STANDARD OF REVIEW

There is no specific Tribunal rule governing motions for summary disposition. As such, the Tribunal is bound to follow the Michigan Court Rules in rendering a decision on such motions.¹

A. Motions for Summary Disposition under MCR 2.116(C)(10).

MCR 2.116(C)(10) provides for summary disposition when “there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.”² The Michigan Supreme Court has provided the following explanation of MCR 2.116(C)(10):

MCR 2.116 is modeled in part on Rule 56(e) of the Federal Rules of Civil Procedure . . . [T]he initial burden of production is on the moving party, and the moving party may satisfy the burden in one of two ways.

First, the moving party may submit affirmative evidence that negates an essential element of the nonmoving party's claim. Second, the moving party may demonstrate to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim. If the nonmoving party cannot muster sufficient evidence to make out its claim, a trial would be useless and the moving party is entitled to summary judgment as a matter of law.

In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4).

¹ See TTR 215.

² *Id.*

In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. 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. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.³

“A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ.”⁴ In evaluating whether a factual dispute exists to warrant trial, “the court is not permitted to assess credibility or to determine facts on a motion for summary judgment.”⁵ “Instead, the court’s task is to review the record evidence, and all reasonable inferences therefrom, and decide whether a genuine issue of any material fact exists to warrant a trial.”⁶

B. Summary Disposition under MCR 2.116(1)(2).

MCR 2.116(1)(2) provides for summary disposition when “it appears to the court that the opposing party, rather than the moving party, is entitled to judgment . . . ,” and as such, the court may render judgment in favor of the opposing party.⁷

CONCLUSIONS OF LAW

Having given careful consideration to Petitioner’s Motion for Summary Disposition under the criteria for MCR 2.116(C)(10), the Tribunal finds that granting the motion is not warranted at this time. Petitioner contends that her affidavit establishes the existence of a joint venture between Petitioner and her sister, Nancy Stocker, but as noted by the Michigan Court of appeals,

The elements of a joint venture are:

- (a) an agreement indicating an intention to undertake a joint venture
- (b) a joint undertaking of
- (c) a single project for profit
- (d) a sharing of profits as well as losses
- (e) contribution of skills or property by the parties

³ *Quinto v Cross and Peters Co*, 451 Mich 358, 361-363 (1996) (Citations omitted).

⁴ *West v General Motors Corp*, 469 Mich 177, 183 (2003).

⁵ *Cline v Allstate Ins Co*, unpublished per curiam opinion of the Court of Appeals issued June 21, 2018 (Docket No. 336299) citing *Skinner v Square D Co*, 445 Mich 153, 161 (1994).

⁶ *Id.*

⁷ *Id.* See also *Washburn v Michailoff*, 240 Mich App 669 (2000).

(f) community interest and control over the subject matter of the enterprise.⁸

Despite her assertions to the contrary, the affidavit provided by Petitioner does not establish any of the foregoing elements; it establishes only an agreement for Nancy to sell her interest in the property to Petitioner for \$70,000. Transfer of the property from the LLC to Petitioner and Nancy individually, and subsequent transfer from Petitioner and Nancy to Petitioner individually constitutes nothing more than the mechanics by which this agreement was executed, with Petitioner ultimately gaining sole control and ownership of the property. As such and inasmuch as there are no genuine issues of material fact regarding the nature of the disputed transaction, Respondent is entitled to summary disposition as a matter of law. Therefore,

The property's taxable value (TV), as established by the Board of Review for the tax year at issue, is as follows:

Parcel Number: 69-010-011-400-085-05

Year	TV
2019	\$230,900

The property's final TV, for the tax year at issue, is as follows:

Parcel Number: 69-010-011-400-085-05

Year	TV
2019	\$230,900

IT IS SO ORDERED.

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

IT IS FURTHER ORDERED that Summary Disposition is GRANTED in Favor of Respondent Pursuant to MCR 2.116(l)(2).

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax year(s) at issue shall correct or cause the assessment rolls to be corrected to reflect the property's taxable values within 20 days of entry of this Final Opinion and Judgment, subject to the processes of equalization.⁹ 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 within 28

⁸ *Meyers v. Robb*, 82 Mich. App. 549, 557, 267 N.W.2d 450, 454 (1978).

⁹ See MCL 205.755.

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%, (ix) after June 30, 2018, through December 31, 2018, at the rate of 5.41%, (x) after December 31, 2018 through June 30, 2019, at the rate of 5.9%, (xi) after June 30, 2019 through December 31, 2019, at the rate of 6.39%, and (xii) after December 31, 2019, through June 30, 2020, at the rate of 6.40%.

This Final Opinion and Judgment resolves all pending claims in this matter and closes this 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 Tribunal with the required filing fee within 21 days from the date of entry of the final decision.¹⁰ 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.¹¹ You are required to serve a copy of the motion 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.¹² Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.¹³

¹⁰ See TTR 261 and 257.

¹¹ See TTR 217 and 267.

¹² See TTR 261 and 225.

¹³ See TTR 261 and 257.

A claim of appeal must be filed with the Michigan Court of Appeals 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.”¹⁴ You are required to file a copy of the claim of appeal with filing fee with the Tribunal in order to certify the record on appeal.¹⁵ The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.¹⁶

By  _____

Date Entered by Tribunal: April 15, 2020

ejg

¹⁴ See MCL 205.753 and MCR 7.204.

¹⁵ See TTR 213.

¹⁶ See TTR 217 and 267.