STATE OF MICHIGAN

COURT OF APPEALS

TERRIE TAYLOR,

Petitioner-Appellant,

v

CITY OF TRAVERSE CITY,

Respondent-Appellee.

UNPUBLISHED
February 16, 2010

No. 287565
Michigan Tax Tribunal
LC No. 00-321766

Before: Beckering, P.J., and Markey and Borrello, JJ.

PER CURIAM.

In this action regarding the taxation of real property, petitioner appeals as of right from the August 12, 2008, decision by the Michigan Tax Tribunal granting judgment in favor of respondent. The Tribunal ruled that the taxable value of the subject residential property was properly uncapped and reassessed for the 2006 tax year pursuant to MCL 211.27a(3). The Tribunal rejected petitioner's argument that the transaction was exempt from the provisions of MCL 211.27a(3) under MCL 211.27a(7)(h). For the reasons set forth in this opinion, we reverse and remand. This case has been decided without oral argument pursuant to MCR 7.214(E).

The parties stipulated to the facts of this case. Dr. Kenneth C. Taylor (petitioner's father) owned the residence at 873 Peninsula Drive (the subject property) prior to his death. On August 3, 2005, Dr. Taylor quitclaimed the residence to himself and to petitioner as joint tenants. Dr. Taylor was an original owner of the subject property prior the creation of the joint tenancy, but petitioner was not.

Dr. Taylor died on September 26, 2005. Title to the subject property then transferred solely to petitioner by right of survivorship. Respondent considered this transfer of title to be an uncapping transfer of ownership under MCL 211.27a(6)(a) because petitioner was not an original owner of the property. Respondent therefore reassessed the taxable value of the property.

Petitioner filed a petition with the Tribunal, protesting the reassessment. An administrative law judge issued a proposed opinion and judgment on December 11, 2007, upholding the reassessment. The ALJ found that the exception in MCL 211.27a(7)(h) did not apply because petitioner was not an original owner before the creation of the joint tenancy. Petitioner filed exceptions to the proposed order of judgment on December 28, 2007, claiming that this Court's subsequent decision in *Moshier v Whitewater Twp*, 277 Mich App 403; 745

NW2d 523 (2007), mandated reversal. The Tribunal affirmed the proposed order, finding that petitioner's reliance on *Moshier* was misplaced and that the case was distinguishable on its facts.

Our review of the Tax Tribunal's decision is limited to determining "whether the tribunal erred in applying the law or adopted a wrong principle . . . ." *Moshier*, 277 Mich App at 407. Further, to the extent that we must construe the meaning of a statute, our review is de novo. *Signature Villas, LLC v Ann Arbor*, 269 Mich App 694, 699; 714 NW2d 392 (2006). Our goal in interpreting a statutory provision is to ascertain the Legislature's intent. *Cain v Waste Mgt, Inc (After Remand)*, 472 Mich 236, 245; 697 NW2d 130 (2005). This is accomplished by first looking to the language used in the statute itself. *Id.* If the language is plain and unambiguous, then we must apply the statute as written. *Signature Villas*, 269 Mich App at 699. In such instances, judicial construction is neither necessary nor permitted. *Beattie v Mickalich*, 284 Mich App 564, 570; 773 NW2d 748 (2009).

The outcome of this case is dictated by this Court's recent decision in *Klooster v Charlevoix*, ___ Mich App ___; ___ NW2d ___ (December 15, 2009; Docket No. 286013). The facts in *Klooster* are almost identical to the facts presented in this case. In *Klooster*, the petitioner's parents had owned certain real property as tenants by the entirety since 1959. *Id.*, slip op at 1. In 2004, the petitioner's mother quitclaimed her interest to petitioner's father, James, who then quitclaimed the property to himself and petitioner as joint tenants with full right of survivorship. *Id.* In 2005 James died and the petitioner became the sole owner of the property by operation of law. *Id.* Later, the petitioner executed a quitclaim deed creating a joint tenancy with full rights of survivorship with his brother. *Id.*

This Court in *Klooster* set forth the historical background for such cases and the issue to be decided, stating:

> Historically, real property in Michigan was reassessed according to its true cash value on a yearly basis. However, in 1994, Michigan adopted the "Proposal A" amendment to Const 1963, art 9, § 3. Proposal A limited increases in property taxes absent a transfer in ownership, "by capping the amount that the 'taxable value' of the property may increase each year, even if the 'true cash value,' that is, the actual market value, of the property rises at a greater rate." *Moshier v Whitewater Twp*, 277 Mich App 403, 405; 745 NW2d 523 (2007), citing *WPW Acquisition Co v Troy*, 466 Mich 117, 122; 643 NW2d 564 (2002).
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> Consequently, the GPTA[1] was enacted in order [to] carry out the mandate of Proposal A, and it now governs the processes by which property is taxed consistent with Proposal A's mandate. Thus, under the GPTA, when a transfer of ownership of a parcel of property does not occur, the taxable value of a parcel of property will be the lesser of (1) the property's current state equalized value or (2) the prior year's taxable value less any losses, "multiplied by the lesser

[1] GPTA refers to the General Property Tax Act, MCL 211.1 *et seq.*

of 1.05 or the inflation rate, plus all additions." MCL 211.27a(2). This provision functions to limit, or "cap," property tax increases when there has been no transfer of ownership. However, when there is a transfer of ownership, the taxable value is "uncapped" and a reassessed taxable value is set based on the state equalized value in the year following the transfer of ownership. MCL 211.27a(3); *Signature Villas LLC v City of Ann Arbor*, 269 Mich App 694, 697; 714 NW2d 392 (2006). "Uncapping" typically results in a higher tax assessment, as is the case here.

Given the foregoing, whether a property's taxable value remains capped is intrinsically linked to whether there has been a "transfer of ownership." The GPTA defines "transfer of ownership" to mean "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." MCL 211.27a(6). The GPTA provides a non-exhaustive list of events that will constitute a transfer of ownership, MCL 211.27a(6), and events that do not constitute such a transfer, MCL 211.27a(7).

Significantly, for purposes of this case, the GPTA includes the creation and termination of joint tenancies amongst those transfers that do not constitute a transfer of ownership, provided certain conditions are met. Specifically, § 27a(7)(h) of the GPTA states 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. A joint owner at the time of the last transfer of ownership of the property is an original owner of the property. For purposes of this subdivision, a person is an original owner of property owned by that person's spouse. [MCL 211.27a(7)(h).]

Accordingly, when there is a transfer between two or more persons that creates or terminates a joint tenancy, it will not constitute a transfer of ownership within the meaning of MCL 211.27a(3) if (1) at least one of the persons was an original owner of the property before the joint tenancy was initially created and, (2) *if the property is held as a joint tenancy at the time of conveyance*, at least one of the persons was a joint tenant when the joint tenancy was initially created and that person has remained a joint tenant since that time. See *Moshier*, *supra* at 409-410. The second requirement is a conditional requirement: it need only be met in instances where the property was held as a joint tenancy at the time of the conveyance; if the property was not so held, this requirement is inapplicable. [*Klooster*, slip op at 2-3.]

In deciding that no transfer of ownership had occurred, this Court held in *Klooster*:

> Here, the first requirement of § 27a(7)(h) is satisfied. James and petitioner created a joint tenancy in 2004 by a quitclaim deed. Before this joint tenancy was created, James was an original owner of the property: He and his wife acquired the property by warranty deed in 1959. Thus, as the parties do not dispute, "at least 1 of the persons involved in the transfer was an original owner of the property before the tenancy was created." MCL 211.27a(7)(h).
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> With respect to the second conditional requirement of § 27a(7)(h), we conclude that it is not applicable because the condition triggering the second mandate is not present in this matter. Specifically, and contrary to respondent's argument on appeal, James' death does not constitute a "conveyance" within the meaning of § 27a(7)(h). As already noted, under the plain language of § 27a(7)(h), the conditional requirement is only mandated in instances where the property was held as a joint tenancy "*at the time of conveyance*." *Id*. The GPTA does not define the term conveyance and, in such instances, we give undefined terms their plain and ordinary meaning and we may rely on dictionary definitions. *TMW Enterprises Inc* [*v Dep't of Treasury*, 285 Mich App 167, 172; ___ NW2d ___ (2009)]. We must also be cognizant of legal terms of art, which are to be accorded their peculiar and appropriate meanings. *Priority Health v Comm'r of the Office of Financial & Ins Services*, 284 Mich App 40, 45; 770 NW2d 457 (2009); MCL 8.3a. It is well established, as a legal term, that "conveyance" means every instrument *in writing* which affects the title to any real estate. See MCL 565.35 (defining conveyance); *McMurty v Smith*, 320 Mich 304, 307; 30 NW2d 880 (1948). Further, Black's Law Dictionary (8th ed) defines "conveyance" as "[t]he transfer of an interest in real property from one living person to another, by means of an instrument . . . [or] the document . . . by which such a transfer occurs." Accordingly, the term conveyance, as that term is used in the second element of § 27a(7)(h) and giving it its peculiar and appropriate meaning, requires that there be some instrument *in writing* affecting the title of the real property. [*Klooster*, slip op. at 3-4.]

Our review of *Klooster* leads us to conclude that the Tribunal erred when it determined that the transfer of ownership in the subject property, which occurred when Dr. Taylor died and ownership transferred solely to petitioner as the surviving joint tenant, did not qualify for the exemption set forth in MCL 211.27a(7)(h).

In *Klooster*, it was undisputed that the father was an original owner in the subject property, thus satisfying the first requirement set forth above. Because it was undisputed that the petitioner and his father were also joint tenants at the time the second joint tenancy was created, the transfer also met the second requirement set forth above. Accordingly, the exemption statute requirements were both fulfilled and the transfer of ownership at issue was exempt from being uncapped and reassessed.

The taxable value of petitioner's subject property was improperly uncapped and reassessed under MCL 211.27a(3) because the transfer of ownership was exempt from that statutory section under MCL 211.27a(7)(h). As previously noted in *Klooster*, the plain language of MCL 211.27a(7)(h) contains two requirements in order for the exemption to apply: First, at least one of the persons involved in the transfer was an original owner of the property before the

joint tenancy was created. In this case, Dr. Taylor was the original owner of the property prior to quitclaiming his interest to himself and the petitioner as joint tenants. Thus, as in *Klooster*, the first prong of the § 27a(7)(h) exemption test is met.

The second prong of the test requires that if the property was held as a joint tenancy at the time of the transfer, at least one of the persons involved in the transfer was a joint tenant at the time the joint tenancy was originally created and has remained a joint tenant since that time. *Klooster*, slip op at 3. Contrary to the Tribunal's decision, petitioner also meets this second requirement. As was the case in *Klooster*, it is undisputed that the subject property was held as a joint tenancy at the time of the second transfer being Dr. Taylor's death. Identical to the facts presented to this Court in *Klooster*, both petitioner and Dr. Taylor were joint tenants when the joint tenancy was originally created, and both remained as such until the joint tenancy was dissolved upon Dr. Taylor's death. Contrary to the arguments of respondent and amici curiae, this Court clearly held in *Klooster* that the joint tenant exception of MCL 211.27a(7)(h) does not require a joint tenant to be an original owner for the exception to apply.

Reversed and remanded for entry of an order in favor of petitioner. We do not retain jurisdiction. Petitioner, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Jane M. Beckering
/s/ Jane E. Markey
/s/ Stephen L. Borrello