STATE OF MICHIGAN

COURT OF APPEALS

RICHMOND STREET, LLC,

Petitioner-Appellant,

v

CITY OF WALKER,

Respondent-Appellee.

UNPUBLISHED
July 14, 2009

No. 286454
Michigan Tax Tribunal
Docket No. 00-337980

Before: O'Connell, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Petitioner Richmond Street, LLC, appeals as of right from the order of the Michigan Tax Tribunal (MTT) granting respondent City of Walker's motion for summary disposition. We reverse and remand for further proceedings consistent with this opinion. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Petitioner is the developer of a condominium project. The project currently provides for 17 units, but it potentially could include over 100 units. Thus, much of the project's real property remains vacant. Petitioner filed a master deed that included a reservation of development rights. Specifically, petitioner reserved a six-year right to "contract" the project by withdrawing any portion of the lands described by amending the master deed. Petitioner also reserved a six-year right to "convert" any general common element into additional condominium units or into limited common elements appurtenant to one or more units, also by amending the master deed. Exercising these rights is completely within petitioner's discretion; co-owner consent is not required unless petitioner seeks to withdraw a unit that is already owned. Thus, petitioner retained an unconditional ability to withdraw lands from the project and develop them into a wholly separate project simply by amending the master deed. The tax assessor assigned a separate permanent parcel number to a tract of vacant land designated in the master deed as "general common element and convertible area." Respondent then assessed this parcel individually, sending petitioner a 2007 summer tax bill for $20,506.11. Petitioner's protest was rejected by the board of review. The MTT agreed with respondent that the parcel could be taxed separately and granted respondent's motion for summary disposition.

We review de novo a trial court's decision to grant a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Likewise, statutory interpretation presents a question of law that we review de novo on appeal. *Detroit v Ambassador Bridge Co*, 481 Mich 29, 35; 748 NW2d 221 (2008). Nothing is read into a clear

statute "that is not within the manifest intention of the Legislature as derived from the words of the statute itself." *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002). If the statute defines a term, that definition alone controls. *Haynes v Neshewat*, 477 Mich 29, 35; 729 NW2d 488 (2007). An administrative interpretation is not controlling and cannot overcome a statute's plain meaning. *In re Rovas Complaint*, 482 Mich 90, 103, 111-112; 754 NW2d 259 (2008). Tax laws generally will not be extended in scope by implication or forced construction; when there is doubt, tax laws are to be construed against the government. *Michigan Bell Tel Co v Dep't of Treasury*, 445 Mich 470, 477; 518 NW2d 808 (1994).

Under the Michigan Condominium Act (MCA), MCL 559.101 *et seq*., a condominium project is established when the master deed is recorded. MCL 559.172(1). The MCA provides definitions for certain terms, including MCL 559.104(3): "'Condominium unit' means that portion of the condominium project designed and intended for separate ownership and use, as described in the master deed, regardless of whether it is intended for residential, office, industrial, business, recreational, use as a time-share unit, or any other type of use," and MCL 559.103(7): "'Common elements' means the portions of the condominium project other than the condominium units." Thus, under the MCA, a condominium project consists of "units" and "common elements" only. Any part of the project that is not a unit *must* be a common element.

Property taxes for condominium projects are assessed pursuant to MCL 559.231. MCL 559.231(1) provides, in pertinent part, "Special assessments and property taxes shall be assessed against the individual condominium units identified as units of the condominium subdivision plan and not on the total property of the project or any other part of the project . . . ." Each unit is assessed for its individual value and then the value of the common areas, or "common elements," is prorated by the value of each unit and added to the unit's tax bill. This is reiterated in MCL 559.161, which provides:

> Upon the establishment of a condominium project each condominium unit, together with and inseparable from its appurtenant share of the common elements, shall be a sole property subject to ownership, mortgaging, taxation, possession, sale, and all types of juridical acts, inter vivos or causa mortis independent of the other condominium units.

The MTT determined that since the land in question could be withdrawn from the project or developed without the other co-owners' consent, the land could not be considered "inseparable from" the units. It used its own definition of "common elements," rather than the one provided by statute, and decided that "common elements" could only include land over which all co-owners had equal control, so the land was not a common element. This reasoning is clearly contrary to the plain language of the MCA. Under the definition provided in MCL 559.103(7), *every* part of a project that is not part of a unit is a "common element." Notably, some of these common elements might include "limited common elements," which by definition are not subject to the use of all co-owners equally. MCL 559.107(2). Although a developer may retain rights to withdraw or develop land within the project, until it records an amended master deed the land remains part of the project and, under MCL 559.231, no part of the project is taxed separately from the units. The MTT failed to recognize that although units and their appurtenant common elements are inseparable, the MCA fully contemplates that the size of common elements can be altered through the means set forth in the Act. The MTT seemed to find an irresolvable conflict between petitioner's reserved rights and the MCA's provision in MCL

559.137(5) that a transfer of an interest in common elements separate from a unit is void, but that provision is only applicable "[e]xcept to the extent otherwise expressly provided by this act . . . ."[1] Because the MCA expressly provides for the withdrawal or conversion of common elements, the MTT erred in finding that petitioner's reservation of such rights was contrary to the MCA.

Finally, we note that several states with similar acts expressly provide for the separate taxation of common elements for which the developer has reserved development rights.[2] These acts typically include a provision noting that any portion of the common elements for which the declarant has reserved any development right must be separately taxed and assessed against the declarant, and the declarant alone is liable for the payment of those taxes. The MCA includes no comparable provision, and the MTT erred in imposing its view of what the statute should read instead of simply reading the definitions and provisions that the Legislature included in the act. Under the MCA, the MTT has no authority to tax any part of a condominium project separately from the units unless that part has been withdrawn according to the procedures set forth in the MCA. The MTT should have denied respondent's motion for summary disposition and entered judgment in favor of petitioner.

In the alternative, respondent argues that it is authorized to tax petitioner under the general property tax act because petitioner is the co-owners' "agent." Respondent relies on MCL 211.3, which states,

> Real property shall be assessed in the township or place where situated, to the owner if known, and also to the occupant, if any; if the owner be not known, and there be an occupant, then to such occupant, and either or both shall be liable for the taxes on said property, and if there be no owner or occupant known then as unknown. A trustee, guardian, executor, administrator, assignee or agent, having control or possession of real property, may be treated as the owner. The real property which belonged to a person deceased, not being in control of an executor or administrator, may be assessed to his heirs or devisees jointly, without naming

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[1] The provision states:

> Except to the extent otherwise expressly provided by this act, the undivided interest in the common elements allocated to any condominium unit shall not be altered, and any purported transfer, encumbrance, or other disposition of that interest without the condominium unit to which it appertains is void. [MCL 559.137(5).]

[2] These states include Alabama, Code of Ala § 35-8A-105(c); Alaska, Alaska Stat § 34.08.720(c); Connecticut, Conn Gen Stat § 47-204(c); Delaware, 25 Del C § 81-105(c); Maine, 33 MRS § 1601-105(c); Missouri, § 448.1-105(3) RS Mo; Nebraska, RRS Neb § 76-829(b); New Mexico, NM Stat Ann § 47-7A-5(B); Rhode Island, RI Gen Laws § 34-36.1-1.05(c); Texas, Tex Prop Code § 82.005(b); Vermont, 27A VSA § 1-105(b); Virginia, Va Code Ann § 55-428(B); Washington, Rev Code Wash (ARCW) § 64.34.040(3); and West Virginia, W Va Code § 36B-1-105(c).

> them, until they shall have given notice of their respective names to the supervisor, and of the division of the estate.

In this case, there is no need to determine whether petitioner is the "agent" of the unit owners because the owners are known: they are the ones in possession of the real property and thus they are taxed directly.

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Peter D. O'Connell
/s/ Richard A. Bandstra
/s/ Pat M. Donofrio