

STATE OF MICHIGAN
COURT OF APPEALS

COLONIAL SQUARE COOPERATIVE,
GEDDES LAKE COOPERATIVE HOMES, INC.,
and UNIVERSITY TOWNHOUSES
COOPERATIVE,

Plaintiffs-Appellees,

v

CITY OF ANN ARBOR,

Defendant-Appellant.

FOR PUBLICATION
August 5, 2004
9:00 a.m.

No. 247226
Washtenaw Circuit Court
LC No. 00-001408-CZ

Official Reported Version

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

O'CONNELL, J.

Defendant city appeals of right from the trial court's order granting summary disposition to plaintiffs and declaring MCL 211.27a(6)(j) void as unconstitutional. We affirm in part and reverse in part.

I. Issue

The central issue in this case is whether the city may annually increase the taxable value of an entire parcel of property when individual units in that parcel are transferred.

II. Facts

Our state constitution prohibits cities and other governmental entities from increasing a single parcel's taxable value by more than a certain percentage each year if the property does not change hands. Const 1963, art 9, § 3. Plaintiffs are housing cooperatives that ostensibly own only one parcel of property shared by many members, yet experience a turnover of members involving several units a year. The Legislature defined these exchanges as transfers that allow reevaluation at the time of the exchange. The city adopted this definition as a means to reevaluate annually the cooperatives' entire parcel proportionate to the amount of turnover. Plaintiffs challenge the validity of the definition as contrary to the Michigan Constitution.

III. Application

We first address whether Const 1963, art 9, § 3 forever preserves the pre-Proposal A meaning of a property transfer for tax assessment purposes or if it permits the Legislature to define which "transfers" of property will lead to reassessment based on the property's actual value. We will then evaluate the separate issue whether the city may constitutionally accomplish the reassessments and taxation in the manner it employed against plaintiffs.

The adoption of Proposal A on March 15, 1994, amended Const 1963, art 9, § 3. The amended section caps the annual increase in a property's taxable value, except that, "[w]hen ownership of the property is transferred as defined by law, the parcel shall be assessed at the applicable proportion of current true cash value." The trial court held that the phrase, "[w]hen ownership of the property is transferred" refers to transfers defined by property law as it stood when the amendment was incorporated into our Constitution. It therefore concluded that the Legislature overstepped its constitutional bounds when lawmakers newly decreed that "property is transferred" for reassessment purposes when an owner of a unit in a cooperative housing corporation transfers the unit. MCL 211.27a(6)(j). The trial court held that the new law unconstitutionally altered the intended, immortalized definition of "transfer." We disagree.

According to MCL 211.27a(6)(j), a transfer of ownership includes, "[a] conveyance of an ownership interest in a cooperative housing corporation, except that portion of the property not subject to the ownership interest conveyed." Plaintiffs claim that this break from a traditional understanding of "transfer of ownership" violates the constitutional section that prohibits reevaluation until "ownership of the property is transferred as defined by law." Const 1963, art 9, § 3. However, in *WPW Acquisition Co v City of Troy*, 466 Mich 117, 126; 643 NW2d 564 (2002), our Supreme Court pointed to the section's phrase, "transferred as defined by law," as an illustration that "the drafters of the proposal knew how to commit the definition of certain terms to the Legislature, in this instance, what constitutes a transfer." Because the phrase "defined by law" committed the definition of a qualifying transfer to the Legislature, the Legislature did not violate Const 1963, art 9, § 3 when it expanded the definition to include the conveyance of a cooperative housing unit. MCL 211.27a(6)(j).

However, a finding that the definition does not run contrary to the Constitution does not end our inquiry. In this case, the city failed to track the individual units transferred, but rather uncapped the value of the whole parcel in proportion to the percentage of units transferred. This the city cannot do. Only by happenstance would the city arrive at an evaluation that did not affect "that portion of the property not subject to the ownership interest conveyed." MCL 211.27a(6)(j). Moreover, annual reevaluations of an entire parcel of property run contrary to the Constitution's plain meaning because they impose increasing obligations on the units in a cooperative that have not been transferred. Const 1963, art 9, § 3. The city's current estimation approach veils which units, if any, the city actually reassessed. The Constitution does not allow the city to reassess the entire parcel's value on the basis of a phantom reevaluation of the percentage of units transferred. Because of these shortfalls in the city's procedure, its application of the valid statute violated our Constitution.

Affirmed in part and reversed in part.

Donofrio, J., concurred.

/s/ Peter D. O'Connell

/s/ Pat M. Donofrio

Hoekstra, P.J., I concur in the result only.

/s/ Joel P. Hoekstra