STATE OF MICHIGAN

COURT OF APPEALS

CITY OF PORT HURON, Petitioner-Appellant,	UNPUBLISHED March 20, 2012
v	Nos. 301058; 301062 Tax Tribunal
STATE TAX COMMISSION, Respondent-Appellee.	LC Nos. 00-346980; 00-346979

Before: CAVANAGH, P.J., and SAWYER and METER, JJ.

PER CURIAM.

Petitioner-appellant, City of Port Huron, appeals from two orders of the Michigan Tax Tribunal denying its motions for summary disposition and granting summary disposition to respondent-appellee, the Michigan State Tax Commission. We reverse and remand. These cases are consolidated pursuant to MCR 7.211(E)(2).

I. FACTS AND PROCEDURAL HISTORY

The facts in this case are not in dispute. This dispute concerns two parcels of real property, parcel numbers 74-06-167-0055-00 and 74-06-167-0033-000, located within the City of Port Huron, and leased by Michigan Bell, a telephone company. On February 5, 2008, respondent advised petitioner in writing that the two parcels being assessed by petitioner were also being assessed by respondent as telephone operating property, and requested that petitioner remove the parcels from its local assessment rolls. Petitioner did not remove the parcels from its rolls.

On March 5, 2008, respondent ordered petitioner to remove the property from its assessment rolls and provide it with documentation confirming the property's removal. Petitioner appealed the order to the Michigan State Tax Commission, and a hearing was held with petitioner and respondent on April 17, 2008. On April 21, 2008, respondent issued Official Order 154-08-001, directing petitioner to reduce the assessed value of both parcels for 2006 and 2007 to zero. Petitioner appealed respondent's order to the Michigan Tax Tribunal.

Petitioner filed a motion for summary disposition with the tribunal pursuant to MCR 2.116(C)(10). Respondent, in its answer to petitioner's motion, also asked the tribunal to grant it summary disposition pursuant to MCR 2.116(I). The tribunal denied summary disposition to petitioner and granted summary disposition to respondent, finding as a matter of law that MCL

207.4 provides that real property leased by Michigan Bell is subject to state, and not local, assessment.

II. STANDARD OF REVIEW

A tribunal's grant of summary disposition pursuant to MCR 2.116(C)(10) is reviewed de novo. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). Statutory interpretation is a question of law that is also reviewed de novo. *Detroit v Ambassador Bridge Co*, 481 Mich 29, 35; 748 NW2d 221 (2008).

III. THE TRIBUNAL PROPERLY HELD AS A MATTER OF LAW THAT THE PROPERTY AT ISSUE WAS SUBJECT TO STATE RATHER THAN LOCAL ASSESSMENT

A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). When deciding a motion for summary disposition, a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party. *Id.* at 278. If the court determines that no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law, it may enter judgment for the moving party. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). If it appears that the opposing party is entitled to judgment, the court may render judgment in favor of the opposing party. MCR 2.116(I)(2); *Bd of Trustees of Policemen & Firemen Retirement Sys v Detroit*, 270 Mich App 74, 77-78; 714 NW2d 658 (2006).

1905 PA 282 (the Act) authorizes the State to assess the property of certain public utilities, including telephone and telegraph companies. MCL 207.1 *et seq.* MCL 207.4(d) requires the state board of tax assessors[1] to annually assess the true cash value and taxable value of telephone company property having a situs in this state. MCL 207.4(2) specifically provides that

> [f]or tax years that begin after December 31, 2005, the state board of assessors shall annually determine the true cash value and taxable value of property having a situs in this state of telegraph companies and telephone companies in the same manners as property assessed under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157.

MCL 207.5 provides the definitions of "property" and "property having a situs in this state" used in the Act. MCL 207.5(b) provides, that, for telephone companies, the word "property" means "only property that would be subject to the collection of taxes under the general property tax act, if that property were not subject to taxation under this act." MCL 207.5(4) states that

[1] In 2006, the State Board of Assessors was dissolved and its powers and duties were transferred to the State Tax Commission. Executive Order 2006-21.

> (4) As used in this act, "property having a situs in this state," includes all of the following:
>
> (a) Except as otherwise provided in subdivision (b), the property, real and personal, of the persons, corporations, companies, copartnerships, and associations subject to taxation under this act, owned, used, and occupied by them within this state, and also the proportion of their rolling stock, cars, and other property used partly within and partly outside of this state as provided in this act.
>
> (b) For telegraph companies and telephone companies only, for tax years that begin after December 31, 2005, only the tangible property, real and personal, owned, used, and occupied by them within this state.

It is the interpretation of the language of MCL 207.5(4)(b) that is at issue in the instant case.

If the property at issue satisfies the definition of "property having a situs in this state" under MCL 207.5, the property is taxed by the State rather than by local units of government. *Michigan Bell Telephone Co v Dep't of Treasury*, 445 Mich 470, 475; 518 NW2d 808 (1994).

At the outset, we reject respondent's position that MCL 207.5(4)(b) does not govern our analysis because it only determines whether telephone company property is subject to taxation at all, not the appropriate taxing authority. This position ignores the plain language of MCL 207.4. MCL 207.4 clearly and unambiguously gives the state authority to assess "property having a situs in this state of telegraph companies and telephone companies." If a statute defines a term, that definition controls. *Haynes v Neshewat*, 477 Mich 29, 35; 729 NW2d 488 (2007). The Legislature has defined "property having a situs in this state" in MCL 207.5(4)(b). Therefore, if the property at issue fits the definition provided, it is subject to assessment by the state rather than any local taxing authority.

It is undisputed that Michigan Bell is a telephone company, and that it is the lessee, rather than the owner in fee, of the disputed properties. The question thus becomes whether the leased parcels at issue fit the definition of "only the tangible property, real and personal, owned, used, and occupied by [a telephone company] within this state." This question is one of statutory interpretation.

The primary goal of judicial interpretation of statutes is to give effect to the intent of the Legislature. *Mich Ed Ass'n v Secretary of State (On Rehearing)*, 489 Mich 194, 217; 801 NW2d 35 (2011). Statutory language should be construed reasonably, keeping in mind the purpose of the act. *CG Automation & Fixture, Inc v Autoform, Inc*, 291 Mich App 333, 338; 804 NW2d 781 (2011). Every word or phrase of a statute should be given its plain and ordinary meaning unless specifically defined in the statute. *Brackett v Focus Hope, Inc*, 482 Mich 269, 276; 753 NW2d 207 (2008). In construing a statute, this Court should presume that every word has some meaning, and should avoid any construction that would render any part of the statute surplusage or nugatory. *Hoste v Shanty Creek Mgt, Inc*, 459 Mich 561, 574; 592 NW2d 360 (1999).

The Legislature is presumed to know the rules of grammar. *Greater Bethesda Healing Springs Ministry v Evangel Bldrs & Constr Mgrs, LLC*, 282 Mich App 410, 414; 766 NW2d 874 (2009). Statutory language must be read within its grammatical context unless something else

was clearly intended. *Bush v Shabahang*, 484 Mich 156, 167; 772 NW2d 272 (2009). Generally, a modifying clause will be construed to modify only the last antecedent. *Sun Valley Foods Co v Ward*, 460 Mich 230, 237; 596 NW2d 119 (1999).

Generally, "or" is a disjunctive term indicating a choice between alternatives, while "and" means "in addition to." *Paris Meadows, LLC v Kentwood*, 287 Mich App 136, 148; 783 NW2d 133 (2010); *Amerisure Ins Co v Plumb*, 282 Mich App 417, 428; 766 NW2d 18 (2009). The literal meaning of "and" or "or" should be followed if they do not render the statute dubious. *Root v Ins Co of North America*, 214 Mich App 106, 110; 542 NW2d 318 (1995). However, if the literal meaning would render the statute dubious, one can be read in the place of the other if necessary to place the meaning in the proper context. *Id.*

Petitioner has argued for a strict construction of the statutory language at issue and relies on *Liberty Hill Housing Corp v City of Livonia*, 480 Mich 44 (2008), for the proposition that this Court must find that the phrase "owned, used, and occupied" unambiguously means "owned *and* used *and* occupied." Our Supreme Court in *Liberty Hill* held that a charitable organization did not qualify for a tax exemption under MCL 211.7o because, although it owned the property at issue, it did not "occupy" the property. 480 Mich at 59. While the opinion is largely devoted to the definition of "occupy," that determination was critical to the outcome of the case because it was necessary that the taxpayer both own and occupy the property.

In MCL 207.5(4)(b), the phrase "owned, used, and occupied" modifies "tangible property, real and personal." See *Sun Valley Foods*, 460 Mich at 237. Applying the literal meaning of the conjunctive to the modified phrase would lead to the conclusion that, in order to have a situs in this state, tangible real property must be owned and used and occupied, and tangible personal property must be owned and used and occupied. It might be argued, as respondent does, that this result is dubious because personal property can rarely be "occupied." But as the Court discussed in *Liberty Hill*, 480 Mich at 57-58, "occupy" has multiple meanings and the appropriate one must be selected in light of the type of property involved and not all definitions require physical "occupation."

There being no reason not to apply the literal meaning of "and," we conclude that, for MCL 207.5(4)(b) to apply, all three conditions of "owned, used and occupied" must be satisfied. Because that is not the case here, the Tax Tribunal erred in its decision.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. Petitioner may tax costs.

/s/ Mark J. Cavanagh
/s/ David H. Sawyer
/s/ Patrick M. Meter