

STATE OF MICHIGAN
COURT OF APPEALS

ELM INVESTMENT COMPANY,

 Petitioner-Appellant,

UNPUBLISHED
May 14, 2013

v

CITY OF DETROIT,

 Respondent-Appellee.

No. 309738
Tax Tribunal
LC No. 00-320438

Before: FORT HOOD, P.J., and FITZGERALD and O'CONNELL, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order denying plaintiff's motion for summary disposition and granting summary disposition pursuant to MCR 1.116(C)(10) in favor of defendant in this dispute over the collection of property taxes. We affirm.

There is no dispute that the property at issue, which is located in the City of Detroit, was sold pursuant to MCL 211.78h for the delinquency of the 2003 property tax assessment. These taxes became a debt due on December 31, 2002. The taxes remained unpaid on March 1, 2004, and the property was forfeited for nonpayment of the 2003 taxes. Thereafter, the county treasurer commenced a foreclosure action. The judgment of foreclosure was entered on March 31, 2005. The taxpayer failed to pay the taxes and absolute title vested to the treasurer on March 31, 2005. The property taxes for 2005 were assessed to the property on December 31, 2004, and became a debt due to the city at that time.

In September 2005, petitioner purchased the property at a tax foreclosure auction for \$1,400 and recorded the deed on October 6, 2005. Thereafter, the city billed petitioner for property taxes assessed against the property for all of 2005. Petitioner subsequently filed a property tax appeal with the Michigan Tax Tribunal. Petitioner alleged no authority existed under the foreclosure statutes, MCL 211.78 *et seq.*, for the city to hold a purchaser at a tax auction liable for the current year's property taxes that were accumulated before the purchaser received the deed to the property. Specifically, petitioner argued that all previously existing tax liens were extinguished pursuant to MCL 211.78k(5)(c) when the foreclosure judgment was entered. Therefore, petitioner argued that the taxes assessed from July 1, 2005 (the date the lien would have attached) through September 29, 2005, had been extinguished. Accordingly, petitioner sought a refund of the \$238.24 that it had already paid. The city, on the other hand, asserted that the July 1, 2005, tax lien did not yet exist at the time the judgment of foreclosure was entered and became effective and, therefore, could not have been extinguished. The parties

filed cross-motions for summary disposition. The tribunal denied petitioner's motion and granted the city's motion for summary disposition.

Absent fraud, our review of Tribunal decisions is "limited to determining whether [the Tribunal] erred in applying the law or adopted a wrong legal principle." *VanderWerp v Plainfield Charter Twp*, 278 Mich App 624, 627; 752 NW2d 479 (2008). To the extent that our review requires the interpretation and application of a statute, such review is de novo. *Title Office, Inc v Van Buren Co Treasurer*, 469 Mich 516, 519; 676 NW2d 207 (2004). "The primary goal of statutory interpretation is to give effect to the Legislature's intent, focusing first on the statute's plain language." *Klooster v City of Charlevoix*, 488 Mich 289, 296; 795 NW2d 578 (2011). The words used by the Legislature in writing a statute provide us with the most reliable evidence of the Legislature's intent. *Id.* While generally the interpretation of a statute by an agency charged with its execution is entitled to "the most respectful consideration," an agency's construction of a statute is not binding on the courts and cannot conflict with the Legislature's intent as expressed in clear statutory language. *In re Rovas Complaint Against SBC Mich*, 482 Mich 90, 103; 754 NW2d 259 (2008).

Petitioner first argues that the tribunal's conclusion that the tax lien for the 2005 property taxes survived the judgment of foreclosure violated the public policy of the State of Michigan as expressed in MCL 211.78(1), part of the General Property Tax Act (GPTA). That section states that the Legislature intended the powers of foreclosure for nonpayment of property taxes granted in the GPTA to encourage "the efficient and expeditious return to productive use of property returned for delinquent taxes." MCL 211.78(1). Petitioner argues that requiring a purchaser of foreclosed property to pay taxes due and payable before the date on which the purchaser acquired the property frustrates this policy by discouraging subsequent ownership of the property. Petitioner asserts that all liens on the property were extinguished when absolute title to the property vested with the treasurer on March 31, 2005, and, therefore, the treasurer's title was not subject to any liens. The city contends that the 2005 tax assessments did not become a lien on the property until July 1, 2005, and, therefore, the lien could not have been extinguished pursuant to MCL 211.78k(5)(c) or (6) upon entry of the judgment of foreclosure.¹

MCL 211.78k(5) provides in pertinent part that a final judgment on a petition for foreclosure filed under section 78h shall specify

(c) That all liens against the property, including any lien for unpaid taxes or special assessments, except future installments of special assessments and liens recorded by this state or the foreclosing governmental unit pursuant to natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106, are extinguished, if all forfeited delinquent taxes, interest, penalties, and fees are not paid on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section . . .

And, MCL 211.78k(6) provides in pertinent part:

¹ The city additionally notes that the auction rules and regulations clearly stated that the "new owner shall be responsible for the 2005 summer and winter taxes."

[F]ee simple title to property set forth in a petition for foreclosure filed under section 78h on which forfeited delinquent taxes, interest, penalties, and fees are not paid on or before the March 31 immediately preceding the entry of a judgment foreclosing the property under this section, . . . shall vest absolutely in the foreclosing governmental unit, and the foreclosing governmental unit shall have absolute title to the property. The foreclosing governmental unit's title is not subject to any recorded or unrecorded lien

There is no dispute that the 2003 and 2004 tax liens that existed before title to the property vested absolutely in the treasurer were extinguished by operation of MCL 211.78k(5)(c), and that under MCL 211.78k(6) the treasurer acquired absolute title to the property without being subject to the 2003 and 2004 tax liens.

With regard to the 2005 tax lien, petitioner contends that MCL 211.78k(6) provides without exception that the foreclosing governmental unit's title is not subject to any recorded or unrecorded lien and, therefore, that the 2005 tax lien could not have arisen in July 2005² after the treasurer obtained absolute title to the property and before being sold to a private party. The tribunal concluded otherwise:

Property taxes for 2005 were assessed to the property on December 31, 2004, and became a debt due to the local unit of government at that time. The taxes were due prior to the time the county treasurer took absolute title to the property on March 31, 2005. The judgment of foreclosure did not extinguish that tax debt. The lien that secured the 2005 taxes arose by operation of law on July 1, 2005. That lien was security for the 2005 property taxes, which were already a debt due to the city. Therefore, when petitioner acquired the property at the auction on September 9, 2005, the property was subject to the lien that arose July 1, 2005, that secured the 2005 property taxes, which were imposed on the property before the treasurer took title.

. . . the tax lien that arose on July 1, 2005, was not extinguished because it was not in existence at the time the fee simple title vested in the treasurer on March 31, 2005, pursuant to the judgment of foreclosure. The statute plainly refers to all tax liens in existence as of the date of foreclosure – that is, the liens that arose on July 1, 2003 (for 2003 taxes) and July 1, 2004 (for 2004 taxes) – the liens that secured the delinquent taxes that were the subject of the judgment of foreclosure.

² Pursuant to MCL 211.2(2), the taxable status of persons and real and personal property for a tax year shall be determined as of each December 31 of the immediately preceding year, which is considered the tax day. “The amounts assessed for state, county, village, or township taxes on any interest in real property shall become a lien on the real property on December 1, on a day provided for by the charter of a city or village, or on the day provided for in section 40a.” MCL 211.40. For the tax year at issue in this case, the Detroit City Charter established July 1 as the lien date.

The plain language of MCL 211.78k(5)(c) provides that all liens against foreclosed property are extinguished, and the plain language of MCL 211.78k(6) provides that a foreclosing governmental unit's title is not subject to any recorded or unrecorded lien. It is undisputed that the liens existing on the property at the time of the judgment of foreclosure were extinguished and that the treasurer took absolute fee simple title to the property. The tax lien that went into effect on July 1, 2005, clearly arose after the judgment of foreclosure and, therefore, is not extinguished by operation of law under MCL 211.78k(5)(c).

Petitioner also argues that the tribunal erred by finding that petitioner's reliance on MCL 211.78m(12) was misplaced. We disagree.

Under the current statutory tax-foreclosure scheme, the state of Michigan has a right of first refusal to purchase any tax-foreclosed properties in the state. MCL 211.78m(1). If the state declines to purchase a property, the city, village, or township within whose limits the property is located may purchase it "for a public purpose." *Id.* The price of purchase (referred to as the "minimum bid") is set at what the minimum bid would be if the property were being auctioned off, which is determined by adding all delinquent taxes, interest, and fees owed on the property, MCL 211.78m(11)(a), so that the foreclosing governmental unit breaks even on the property. However, "[i]f a city, village, or township purchases the property, the minimum bid shall not include any taxes levied by that city, village, or township and any interest, penalties, or fees due on those taxes." And, under MCL 211.78m(12), "[f]or property transferred to this state under subsection (1), a city, village, or township under subsection (6) or retained by a foreclosing governmental unit under subsection (7), all taxes due on the property as of the December 31 following the transfer or retention of the property are canceled effective on that December 31."

The tribunal held that MCL 211.78m only applies

if the property is transferred to the state, city, village, or township or retained by the foreclosing governmental unit. By so stating, the only reasonable interpretation is that the 2005 property taxes were *not* canceled because the property was sold at auction to a private party. This statute does not refer to the vesting of title in the treasurer by operation of law on March 31, 2005, but rather only applies if the property is transferred to the state, city, village, or township or retained by the foreclosing unit, none of which occurred in this case. [Emphasis in original.]

The plain language of MCL 211.78m(11) and (12) supports the tribunal's conclusion that the cancellation of taxes due pursuant to this statutory section applies only to a transfer of ownership of foreclosed property to the state, city, village, township or to a retaining foreclosing governmental unit and does not apply to a sale to a private party.

Affirmed.

/s/ Karen M. Fort Hood
/s/ E. Thomas Fitzgerald
/s/ Peter D. O'Connell