

STATE OF MICHIGAN
COURT OF APPEALS

SEBASTIAN J. MANCUSO FAMILY TRUST,

Plaintiff-Appellant,

UNPUBLISHED
February 5, 2013

v

CITY OF CHARLEVOIX,

Defendant-Appellee.

No. 309813
Tax Tribunal
LC No. 00-411641

Before: OWENS, P.J., and FITZGERALD and RIORDAN, JJ.

PER CURIAM.

Petitioner appeals as of right an order of the Tax Tribunal denying petitioner's motion for summary disposition and granting summary disposition pursuant to MCR 2.116(I)(2) in favor of defendant. By way of its order, the tribunal determined that petitioner's acquisition of real property was a transfer of ownership that uncapped the taxable value of the property under the General Property Tax Act (GPTA), MCL 211.1 *et seq.* We affirm.

I. FACTS AND PROCEDURAL HISTORY

Petitioner is the Sebastian J. Mancuso Family Trust. Edwin W. Mancuso and Sebastian D. Mancuso are the successor trustees of the trust. They are also the trustees for the Alice V. Mancuso Family Trust.¹ The trustees conveyed a condominium from the Alice trust to petitioner via warranty deed. Following this conveyance, respondent reassessed the property and raised the taxable value of the property beginning with tax year 2007.

Petitioner appealed the taxable value of the property to the Tax Tribunal. Both parties moved for summary disposition. Petitioner asserted that the conveyance of the property from the Alice trust to petitioner was not a transfer that would operate to remove the cap of the property's taxable value. Specifically, petitioner asserted that the Alice trust and petitioner are commonly controlled legal entities and, therefore, a transfer of ownership did not occur under the exception in MCL 211.27a(7)(I). On March 23, 2012, the tribunal issued an order denying petitioner's motion and granting respondent's motion. The tribunal opined in relevant part:

¹ Edwin W. Mancuso and Sebastian D. Mancuso are jointly referred to as trustees in this opinion.

As acknowledged by both parties, State Tax Commission Bulletin 16 of 1995 provides an interpretation of the statutory provisions regarding the “uncapping” of taxable value. With respect to the exception from the “uncapping” of taxable value applicable to transfers of property between commonly controlled legal entities, the STC Bulletin provides that an entity under common control is as defined in the Michigan Revenue Administrative Bulletin 1989-48. In that regard, the RAB specifically provides that for entities transferring property to be considered as “commonly controlled,” these entities must be involved in a trade or business.

The tribunal found persuasive this Court’s decision in *C & J Investments of Grayling, LLC v City of Grayling*, unpublished opinion per curiam of the Court of Appeals, issued November 13, 2007 (Docket No. 270989), and noted that no subsequent precedential authority existed contrary to this Court’s conclusion that:

RAB 1989-48 represents an authoritative interpretation of the phrase “commonly controlled” by the agency responsible for administering and enforcing the statute. A court will defer to the interpretation of statutes administered and enforced by the Tax Tribunal . . . [sic] Although tax statutes may not be extended by forced construction or implication . . . we conclude that RAB 1989-48 is not inconsistent with the plain meaning of “commonly controlled” in MCL 211.27a(7)(I).

The tribunal concluded that the provisions of MCL 211.27a(7)(I) do not apply where the entities are not involved in business activity.

II. STANDARD OF REVIEW

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 v Whitewater Twp*, 277 Mich App 403, 407; 745 NW2d 523 (2007). 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).

III. ANALYSIS

Petitioner essentially argues that the transfer of the property from the Alice trust to petitioner did not involve a “transfer of ownership” within the meaning of MCL 211.27a(6) because the transfer fell within the exception set forth in MCL 211.27a(7)(I). We disagree.

The Michigan Constitution and Michigan statutory law permit the taxable value of real property to be reassessed upon the sale or transfer of the property according to the following year’s state equalized value. Const 1963, art 9, § 3; MCL 211.27a(3); *Signature Villas, LLC v Ann Arbor*, 269 Mich App at 696–697. This is known as “uncapping” the taxable value. *Id.* at

697. Uncapping occurs whenever a “transfer of ownership” occurs. MCL 211.27a(3). “[T]ransfer of ownership” is “the conveyance of title to [sic] 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 general property tax act, MCL 211.1 *et seq.*, includes a nonexhaustive 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). The uncapping of a parcel’s taxable value typically results in a higher tax assessment, as was the case here.

There appears to be no dispute that the conveyance in this case is covered by the general rule in § 27a(6)(c), which provides:

“[T]ransfer of ownership” means the conveyance of title to [sic] 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. Transfer of ownership of property includes, but is not limited to, the following:

* * *

(c) A conveyance to a trust after December 31, 1994, except if the settlor or the settlor’s spouse, or both, conveys the property to the trust and the sole present beneficiary or beneficiaries are the settlor or the settlor’s trust, or both.

Accordingly, the conveyance was a “transfer of ownership” under MCL 211.27a(6)(c) unless one of the exceptions of MCL 211.27a(7) was applicable. Tax exception statutes are generally construed narrowly in favor of the taxing authority, and we generally defer to the tax tribunal’s interpretation of a statute that it is charged with administering and enforcing. *Moshier*, 277 Mich App at 40.

Under MCL 211.27a(7)(l), transfer of ownership does not include:

A transfer of real property or other ownership interests among corporations, partnerships, limited liability companies, limited liability partnerships, or other legal entities if the entities involved are commonly controlled. Upon request by the state tax commission, a corporation, partnership, limited liability company, limited liability partnership, or other legal entity shall furnish proof within 45 days that a transfer meets the requirements of this subdivision.

The exception in MCL 211.27a(7)(l) applies if (1) the transaction is between legal entities, and (2) the legal entities involved are commonly controlled. Even assuming that trusts are legal entities within the meaning of the statute, the exception applies only if the legal entities are “commonly controlled.” MCL 211.27a does not define “commonly controlled.” “A court may consult dictionary definitions when terms are not expressly defined by a statute.” *Oakland County Rd Comm’rs v Mich Prop & Cas Guar Ass’n*, 456 Mich 590, 604; 575 NW2d 751 (1998). The term “common” is defined as “belonging equally to, or shared alike by, two or more or all in question.” *Random House Webster’s College Dictionary* (1997), p 264. “Control” means “to exercise restraint or direction over; dominate, regulate, or command.” *Id.* at 288.

Petitioner argues that the trusts in this case are commonly controlled because they have the same trustees and that the tribunal erred by concluding that the trusts are not commonly controlled because RAB 1989-48 states that entities must be engaged in business activity in order to be commonly controlled. Even assuming, without deciding, that the tribunal erred by imposing a business activity requirement, petitioner still cannot prevail because the Alice trust and petitioner are not “commonly controlled” within the meaning of MCL 211.27a(7)(l). Statutory provisions must be read in the context of the entire statute. *Robinson v City of Lansing*, 486 Mich 1, 15; 782 NW2d 171 (2010). The goal is to produce a harmonious whole. *CG Automation & Fixture, Inc v Autoform, Inc*, 291 Mich App 333, 338; 804 NW2d 781 (2011). Simply having the same trustee does not satisfy the statutory requirement because the statute does not look to a change in the property managers, it looks for a change in the *ownership* of the property. A trustee manages trust property held in trust for the benefit of the trust beneficiaries. Although the trustee has extensive control over the trust, he or she is ultimately liable to the beneficiaries. See MCL 700.7816 (listing the general powers of a trustee); MCL 700.7817 (listing specific powers of a trustee); MCL 700.7901 (listing remedies for a breach of trust); MCL 700.7902 (noting that a trustee is liable to the trust beneficiaries for a breach of trust). Further, MCL 211.27a(6)(e) specifically provides that a transfer of ownership occurs if the beneficiaries of a trust are changed. There is no similar provision where the trustees of a trust are changed because, quite simply, the trustees do not own the property.

Looking at MCL 211.27a(6), it is apparent that a “transfer of ownership” occurs when the property is transferred from one owner to a wholly new owner. Exceptions are made for transfers from a trust settlor where the settlor is the sole present beneficiary because ownership in such a situation does not change. See MCL 211.27a(6)(c). Exceptions are also made for transfers of property that substitute the transferor for the transferor’s spouse. See MCL 211.27a(6)(d), (e), and (f). The exceptions in § 7 are similar in nature; they are triggered when property is transferred from one owner to a wholly new owner. Reading the statute as a whole, it is apparent that petitioner simply does not fall within the definition of “commonly controlled” by virtue of having the same trustees for both the transferring trust and the receiving trust. Thus, we conclude that the Alice Trust and petitioner are not commonly controlled and that the exception in MCL 211.27a(7)(l) does not apply.

Affirmed.

/s/ Donald S. Owens
/s/ E. Thomas Fitzgerald
/s/ Michael J. Riordan