

STATE OF MICHIGAN
COURT OF APPEALS

LAKE FOREST PARTNERS 2, INC.,

Petitioner-Appellant,

v

DEPARTMENT OF TREASURY,

Respondent-Appellee.

FOR PUBLICATION

June 6, 2006

9:05 a.m.

No. 257417

Tax Tribunal

LC No. 00-292089

Official Reported Version

Before: Wilder, P.J., and Zahra and Davis, JJ.

DAVIS, J. (*dissenting*).

I respectfully disagree with my colleagues' interpretation of the State Real Estate Transfer Tax Act (SRETTA), MCL 207.521 *et seq.* I believe that it clearly articulates a legislative intent to impose a tax based on the value of property at the time title is legally transferred. I would therefore affirm.

MCL 207.523(1) imposes

a tax upon the following written instruments executed within this state when the instrument is recorded:

(a) Contracts for the sale or exchange of property or any interest in the property or any combination of sales or exchanges or any assignment or transfer of property or any interest in the property.

(b) Deeds or instruments of conveyance of property or any interest in property, for consideration.

Significantly, the purchase agreements involved here were not recorded. Only the subsequent deeds were recorded. On these facts, the plain, unambiguous language of the statute imposes a tax on the deeds, not the purchase agreements.

MCL 207.532(1) further provides, in relevant part, that the state real estate transfer tax "shall be paid only once" and "shall not be imposed on a written instrument that transfers property if the written instrument is given and the transfer made pursuant to a written executory contract upon which the tax was previously paid." No tax was previously paid here, nor could it

have been because the only taxable instruments under the facts of this case are the instruments actually recorded.

The majority correctly points out that "[v]alue' means the current or fair market worth in terms of legal monetary exchange *at the time of the transfer.*" MCL 207.522(e) (emphasis added). MCL 207.532(1) also refers to "the transfer." The only logical interpretation is, as the majority concludes, that the Legislature intended to impose a tax on certain instruments conveying interest in property at the time those instruments are recorded, but in an amount calculated on the basis of the value of the property when "the transfer" took place. The SRETTA does not explicitly define "transfer," other than clearly indicating that there can only be one "transfer" relevant to any given instrument. The majority erroneously concludes that, because *a* transfer (of an equitable interest) took place with the execution of the purchase agreement, that must be *the* transfer.

The state real estate transfer tax is imposed only on the instrument that is actually recorded. The majority's construction of the statute would calculate the tax on the basis of a "transfer" that took place in an entirely different instrument, even though the recorded instrument—upon which the tax is actually imposed—*also* contains a transfer. This creates a complication that the Legislature did not intend from a plain reading of the statute. Indeed, the Legislature specifically provided for certain exceptions, such as land contracts, MCL 207.526(o), or instruments "to confirm title already vested in a grantee," MCL 207.526(n). If the Legislature had intended to impose a tax based on the *first* transfer, or based on *any* transfer, it could easily have said so. Instead, it refers to *the* transfer, logically referring to the transfer embodied in the instrument being recorded and on which the tax is imposed. Here, that refers to the transfer of legal title to the improved lot with the house on it.¹

Reading the statute as a whole further indicates that the Legislature did not intend to include equitable transfers in computing the state real estate transfer tax. The majority relies heavily on the language "or any interest in the property" for its conclusion that a transfer of equitable title will suffice as a "transfer." However, the best way to determine "the current or fair market worth in terms of legal monetary exchange," MCL 207.522(e), is to examine how much money was, in fact, exchanged. When legal title passes, the seller is presumably satisfied that he or she has received full compensation, and the buyer is presumably satisfied that he or she is not paying too much. A purchase agreement conveys an equitable interest that could be enforced by filing suit for specific performance, but the transaction is not complete at that point. More significantly, the classic understanding of an "interest in the property" is what *bundle of rights* the purchaser has acquired by the transaction, not the kind of suit that would be necessary to enforce those rights. For example, fee simple absolute is an "interest in the property," as is a life estate or a possibility of reverter. The majority's focus on a partial transfer of the relevant interest, rather than on the interest itself, further defeats the Legislature's intent.

¹ Both fall within the definition of "property" under the SRETTA. MCL 207.522(b).

The plain, unambiguous language of the SRETTA imposes a tax on the value of the transfer effectuated by the instrument that is being recorded. In this case, that transfer—by deed—is of legal title to the improved property, including the lot and the house. Therefore, I would affirm.

/s/ Alton T. Davis