

STATE OF MICHIGAN  
COURT OF APPEALS

---

MARK G. RYZYI, WILLIAM P. RYZYI, and  
HELEN RYZYI,

UNPUBLISHED  
June 28, 2012

Petitioners-Appellants,

v

No. 295759  
Tax Tribunal  
LC No. 360631

TOWNSHIP OF BAGLEY,

Respondent-Appellee.

---

AFTER REMAND

Before: TALBOT, P.J., and SAWYER and M. J. KELLY, JJ.

PER CURIAM.

This matter is again before us following a remand for the Michigan Tax Tribunal (MTT) to clarify its December 2, 2009, order dismissing petitioners' appeal relating to the taxable value of their single-family residence. The MTT did so, this time holding in favor of petitioners. The MTT concluded that respondent improperly retroactively uncapped the taxable value beginning in tax year 2005 based upon a property transfer that occurred in 2004. The MTT then established the taxable value of petitioners' property based upon a recapping of the taxable value. We affirm the MTT's decision on remand in part, reverse in part and remand.

This case is now controlled by the Supreme Court's recent decision in *Michigan Properties, LLC v Meridian Twp*, \_\_ Mich \_\_; \_\_ NW2d \_\_ (Nos. 143085, 143086, 14308 and 143281, rel'd June 14, 2012). We read that decision as holding that, while the taxable value cannot be retroactively uncapped, the March board of review does possess the power to prospectively uncap the taxable value to correct an error in failing to previously uncap the taxable value. *Slip op* at 16, 24. Accordingly, we conclude that the MTT in the case at bar correctly determined that the taxable values for tax years 2005 through 2008 could not be retroactively uncapped. Therefore, we affirm the determination by the MTT on remand of the taxable values for those years. But the MTT did err in concluding that the March board of review in 2009 could not uncap the taxable value beginning in 2009.

We believe that another remand to the MTT is in order to ensure that a correct taxable value for 2009 is established. The odd procedural path that this case has taken leaves open the possibility that issues previously raised were not fully addressed, or may have been decided differently in light of the Supreme Court's recent decision. But also, care must be taken to

correctly calculate the 2009 taxable value. As the Supreme Court noted in *Michigan Properties, slip op* at 16, we must prevent a windfall to either the taxpayer or the municipality. Accordingly, we do not believe that the taxable value can merely be reset to the 2009 state equalized value, as that would potentially result in a windfall to the municipality if that figure is higher than what the taxable value would have been in 2009 had it been properly uncapped in 2005. Rather, we believe that petitioners are entitled to the protections of the limitations on the increase in the taxable value contained in MCL 211.27a as if the taxable value had been uncapped in 2005 following the 2004 transfer. That is, it must be determined what the taxable value would have been in 2009 had the taxable value been uncapped in 2005, with the required annual adjustments thereafter, as set forth in MCL 211.27a(2). Then the lesser of that figure or the 2009 state equalized value shall be the 2009 taxable value.

Affirmed in part, reversed in part and remanded for further proceedings consistent with this opinion and the Supreme Court's opinion in *Michigan Properties*. We do not retain jurisdiction. No costs, neither party having prevailed in full.

/s/ Michael J. Talbot

/s/ David H. Sawyer

/s/ Michael J. Kelly