

STATE OF MICHIGAN
COURT OF APPEALS

ESTATE OF SHARON WALTERS,

Plaintiff-Appellant,

UNPUBLISHED
August 16, 2012

v

TOWNSHIP OF LINCOLN,

Defendant-Appellee.

No. 305374
Michigan Tax Tribunal
LC No. 00-413531

Before: TALBOT, P.J., and WILDER and RIORDAN, JJ.

WILDER, J. (*dissenting*).

I respectfully dissent.

Plaintiff (“the Estate”) argues that MCL 211.53a allows it to recover the excess taxes it paid by virtue of a mutual mistake of fact. I agree. MCL 211.53a provides:

Any taxpayer who is assessed and *pays taxes in excess* of the correct and lawful amount due because of a clerical error or mutual mistake of fact made by the assessing officer and the taxpayer may recover *the excess so paid*, without interest, if suit is commenced within 3 years *from the date of payment*, notwithstanding that the payment was not made under protest. [Emphasis added.]

A mutual mistake of fact is defined as “an erroneous belief, which is shared and relied on by both parties, about a material fact that affects the substance of the transaction.” *Ford Motor Co v City of Woodhaven*, 475 Mich 425, 442; 716 NW2d 247 (2006). Here, because it is well established that “[a] deed takes effect from the time of its delivery, and not from the time of its date, execution or record[ing],” *Ligon v City of Detroit*, 276 Mich App 120, 128; 739 NW2d 900 (2007), quoting *Power v Palmer*, 214 Mich 551, 559; 183 NW 199 (1921), there is no dispute that title to the property was not conveyed to the Estate in 2001 because delivery of the deed did not occur until 2007. It also is not disputed that both parties mistakenly believed that title had transferred in 2001. Defendant believed title was transferred in 2001 when the deed was executed by Richard Chapman, and, therefore, uncapped the property starting in 2002. And as the majority recognizes, “[t]he Estate [also] mistakenly believed that the property was transferred to Walters on August 7, 2001.” Given this mutual mistake of fact, and because taxes were paid by the Estate and accepted by defendant as the result of this mutual mistake of fact, the Estate is entitled to recover the excess erroneously paid because it timely commenced suit within three years from the date of payment.

The facts here are materially similar to the facts in *Eltel Assocs, LLC v City of Pontiac*, 278 Mich App 588; 752 NW2d 492 (2008). In *Eltel*, the state quitclaimed a series of deeds to the Pontiac Tax Increment Finance Authority, which was then to convey them to the petitioner. *Id.* at 589. All of the deeds were dated December 12, 2001; but, for reasons not pertinent here, the deeds were not delivered to the petitioner until January 24, 2002. *Id.* at 589-590. The petitioner was assessed the 2002 property taxes as the owner on “tax day,” December 31, 2001. *Id.* at 590. This Court agreed with the petitioner that a mutual mistake of fact occurred because “the assessor mistook the date on the deeds as the date of the parcels’ transfer of ownership, and petitioner was misdirected by this mistake and plenary adopted it as its own when it paid the taxes as though it had owned the property since [December 12, 2001].” *Id.* at 592. The Court held that the petitioner was not the owner as of “tax day,” had no tax liability for the 2002 taxes, and could invoke MCL 211.53a to recover the amount it paid for the taxes. *Id.*

Likewise, the Estate in the present case was erroneously taxed, and taxes were erroneously paid, because of a mutual mistaken belief as to who the owner was between 2002-2007. Consequently, just as the petitioner did in *Eltel*, the Estate here can appropriately seek to recover those excess payments under MCL 211.53a. The fact that the excess tax covers a time period outside of three years is not pertinent. Rather what is pertinent is that suit to recover the excess taxes paid was “commenced within 3 years from *the date of payment*.” (Emphasis added.) Under the plain language of the statute, the Estate is entitled to recover all of the “excess so paid” if the suit was commenced within three years of the excess payment.

I disagree with the majority’s and the tribunal’s reliance on MCL 211.27a(4). The focus of MCL 211.27a(4)¹ is on *adjusting the taxable value of property*. The Estate seeks here not to adjust the taxable value of the property, but instead to recover, as MCL 211.53a permits, excess tax payments.

In short, the statutory language of MCL 211.27a(4) does not abrogate or negate a taxpayer’s ability to utilize the provision under MCL 211.53a. Further, the Estate is entitled to recover *all* of its excess payment under MCL 211.53a because it made its payment based on a

¹ MCL 211.27a(4): “If the taxable value of property is adjusted under subsection (3), a subsequent increase in the property’s taxable value is subject to the limitation set forth in subsection (2) until a subsequent transfer of ownership occurs. If the taxable value of property is adjusted under subsection (3) and the assessor determines that there had not been a transfer of ownership, *the taxable value of the property shall be adjusted* at the July or December board of review. Notwithstanding the limitation provided in section 53b(1) on the number of years for which a correction may be made, the July or December board of review may adjust *the taxable value of property* under this subsection for the current year and for the 3 immediately preceding calendar years. A corrected tax bill shall be issued for each tax year *for which the taxable value is adjusted* by the local tax collecting unit if the local tax collecting unit has possession of the tax roll or by the county treasurer if the county has possession of the tax roll. For purposes of section 53b, an adjustment under this subsection shall be considered the correction of a clerical error.” (Emphasis added.)

mutual mistake of fact and because it filed its claim within three years of the date the excess payment was made. As such, I would reverse the tax tribunal because it erred in applying the law.

/s/ Kurtis T. Wilder