

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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THOMAS HALL II and LORAINÉ HALL,

Plaintiffs-Appellants,

v

INDEPENDENCE TOWNSHIP,

Defendant-Appellee.

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UNPUBLISHED

August 14, 2001

No. 216521

Michigan Tax Tribunal

LC No. 00-243284

Before: Doctoroff, P.J., and Saad and Wilder, JJ.

PER CURIAM.

Plaintiffs appeal as of right an order of the Michigan Tax Tribunal determining the value of plaintiffs' property based on uncapping of the property tax rate pursuant to a 1994 amendment to Const 1963, art 9, §3, commonly referred to as Proposal A. We affirm.

Plaintiffs occupied a residence on two landlocked lots in Oakland County since 1966. When they purchased the lots, they had access to the property through an easement to a highway. In a 1989 consent judgment, plaintiffs agreed to relinquish the easement to a developer in exchange for two lots in the adjacent development. However, the developer did not deliver the deeds to the lots until 1996. The township assessor treated the delivery of the deeds as a transfer of property and uncapped the tax on the parcels pursuant to Proposal A, resulting in a taxable value increase from \$1,400 to \$116,000. In October 1998, the Tax Tribunal affirmed the township's determination that the tax was properly uncapped after the 1996 transfer.

Plaintiffs argue that the 1989 consent judgment acts as a land contract; therefore, the property was transferred in 1989 and should remain capped. Whether the consent judgment constituted a transfer of ownership under Proposal A is a question of law we review *de novo*. *Auto Owners Ins Co v Amoco Production Co*, 245 Mich App 171, 175; \_\_\_ NW2d \_\_\_ (2001).

Under Proposal A, property tax rates are capped at five percent until ownership of a property is transferred any time after 1994. Const 1963, art 9, §3; MCL 211.27a *et seq*. The statute defines a transfer of ownership as

the conveyance of title to 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:

(a) A conveyance by deed.

(b) A conveyance by land contract. . . . [MCL 211.27a(6).]

Contrary to plaintiffs' assertion, we find that the 1989 consent judgment between plaintiffs and the developer was not a land contract, but rather a purchase agreement for a future interest in property. We have delineated the difference between a contract for the sale of land and an actual land contract:

A contract for the sale of land is, quite simply, a purchase agreement . . . . The term "land contract" is commonly used in Michigan as particularly referring to "agreements for the sale of an interest in real estate in which the purchase price is to be paid in installments (other than an earnest money deposit and a lump-sum payment at closing) and no promissory note or mortgage is involved between the seller and the buyer." . . . A land contract is therefore an executory contract in which legal title remains in the seller/vendor until the buyer/vendee performs all the obligations of the contract while equitable title passes to the buyer/vendee upon proper execution of the contract. [*Zurcher v Herveat*, 238 Mich App 267, 291; 605 NW2d 329 (1999) (citation omitted).]

If the agreement contained within the consent judgment was synonymous with a land contract, plaintiffs' performance of relinquishing the easement would have executed the contract and vested title in plaintiffs. However, title did not vest until the deeds were delivered. Therefore, the consent judgment was not the equivalent of a land contract, and the assessor and Tax Tribunal did not err in concluding that the transfer of ownership occurred in 1996.

Plaintiffs also say that they had a present interest in the subject property before 1995 because they took beneficial use of the property by walking it and keeping it free of litter. We disagree.

For the purpose of Proposal A, beneficial use is defined as "the right to possession, use, and enjoyment of property, limited only by encumbrances, easements, and restrictions of record." MCL 211.27a(11)(b).<sup>1</sup> Here, plaintiffs were clearly restricted by factors other than "encumbrances, easements, and restrictions of record." Plaintiffs had no deed nor official legal description of the property. They were unable to mortgage or sell the property. It could not be put into trust, nor could they have legally built on the property without approval of the owner of record. Mere enjoyment of the property combined with a future interest does not rise to definition of beneficial use in the statute.

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<sup>1</sup> MCL 211.27a was amended by 2000 PA 260, resulting in the renumbering of several subsections of the statute. The definition of "beneficial use" which is currently contained within subsection (11), was formerly found in subsection (9); however, the definition was unchanged by the amending legislation.

Additionally, plaintiffs allege that that the consent judgment was not excluded from being a transfer of property under MCL 211.27a because the 1989 relinquishment was valuable consideration. We disagree.

Under Proposal A, the term “transfer of ownership” does not include “[a] transfer pursuant to a judgment or order of a court of record making or ordering a transfer, unless a specific monetary consideration is specified or ordered by the court for the transfer.” MCL 211.27a(7)(g). Where the language of a statute is clear, it is presumed that the Legislature intended what it plainly expressed. *Nation v WDE Electric Co*, 454 Mich 489, 494; 563 NW2d 233 (1997). Here, we find the language of the statute to be clear and unambiguous. Only court ordered transfers that are supported by “specific monetary consideration” are considered as true transfers of ownership. While the easement may have had considerable value, it was neither monetary nor specific. Therefore, the Tax Tribunal did not err when it found that the court ordered transfer was excluded from transfers of property under MCL 211.27a(7)(g).

Finally, plaintiffs assert that the assessor abused his discretion when he did not take into account the parties’ intent to transfer the property in 1989. We disagree. In *Guardian Industries Corp v Dep’t of Treasury*, 243 Mich App 244; 621 NW2d 450 (2000), this Court held that intent was not an element in determining the use tax, MCL 205.91 *et seq.* *Id.* at 255. We further reasoned that even if intent was an element, the most probative evidence of intent would be what actually occurred, rather than the objective state of minds of the parties. *Id.*

Similar to the use tax, Proposal A does not reflect any element of intent as a consideration for determining when property is transferred. Further, plaintiffs’ objective actions show an intent for a future transfer of the property. Plaintiffs took seven years to acquire and record the deeds, did not acquire accurate surveys until they attempted to acquire the deeds, and did not pay taxes on the property until the deeds were delivered. The assessor and the Tax Tribunal correctly determined that plaintiffs’ actions evinced an intent for a future transfer of property.

Affirmed. We do not assess taxable costs pursuant to MCR 7.219 because a policy question is involved.

/s/ Martin M. Doctoroff  
/s/ Henry William Saad  
/s/ Kurtis T. Wilder