STATE OF MICHIGAN

COURT OF APPEALS

MARTIN LEAVITT and JANICE LEAVITT, Petitioners-Appellants, v CITY OF NOVI, Respondent-Appellee.	UNPUBLISHED November 18, 2008 No. 279344 Michigan Tax Tribunal LC No. 00-318815

Before: Zahra, P.J., and Cavanagh and Meter, JJ.

PER CURIAM.

Petitioners appeal as of right from the Michigan Tax Tribunal's (MTT) judgment rejecting their challenges to respondent, City of Novi's (the City), denial of petitioners' request for a principal residence homestead exemption. We affirm.

Const 1963, art 6, § 28 provides, "In the absence of fraud, error of law or the adoption of wrong principles, no appeal may be taken to any court from any final agency provided for the administration of property tax laws from any decision relating to valuation or allocation." The MTT's factual findings will not be disturbed as long as they are supported by "competent, material, and substantial evidence on the whole record." *Michigan Milk Producers Ass'n v Dep't of Treasury*, 242 Mich App 486, 490-491; 618 NW2d 917 (2000). "Substantial evidence" is "evidence that a reasonable mind would accept as sufficient to support the conclusion." *Great Lakes Div of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 389; 576 NW2d 667 (1998).

Tax exemptions "upset the desirable balance achieved by equal taxation" and, therefore, they must be narrowly construed in favor of the taxing authority. *Liberty Hill Housing Corp v Livonia*, 480 Mich 44, 49; 746 NW2d 282 (2008). MCL 211.7cc provides, in pertinent part:

> (1) A principal residence is exempt from the tax levied by a local school district for school operating purposes to the extent provided under section 1211 of the revised school code, 1976 PA 451, MCL 380.1211, if an owner of that principal residence claims an exemption as provided in this section. Notwithstanding the tax day provided in section 2, *the status of property as a principal residence shall be determined on the date an affidavit claiming an exemption is filed* under subsection (2).

> (2) An owner of property may claim an exemption under this section by filing an affidavit on or before May 1 with the local tax collecting unit in which the property is located. The affidavit shall state that the property is *owned and occupied as a principal residence by that owner of the property on the date the affidavit is signed*. . . . [MCL 211.7cc (emphasis added).][1]

For purposes of section 7cc, our Legislature defined "principal residence" as:

> . . . the 1 place where an owner of the property has his or her true, fixed, and permanent home to which, whenever absent, he or she intends to return and that shall continue as a principal residence until another principal residence is established. [MCL 211.7dd(c).]

Petitioners obtained a temporary certificate of occupancy for their newly constructed home in Novi on April 26, 2005. Two days later, they filed a request to rescind the homestead exemption on their old home and filed a principal residence exemption affidavit for their new home. Petitioners gave the City's building inspector permission to visit the new home in order to ensure compliance with the remaining items needed to obtain their final certificate of occupancy. On May 6, 2005, the City's inspector walked through petitioners' new home. On June 7, 2005, petitioners received a letter from the City notifying them that their request for a homestead exemption had been denied because their new home was not yet being occupied as a principal residence. Petitioners appealed the decision to the small claims division of the MTT. After a hearing, the MTT affirmed the City's decision.

Petitioners argue that the MTT erred in allowing testimony from the City's tax assessor. Petitioners assert that the City's inspector asked if he could bring a "friend" to view the house, but did not disclose to petitioners that this "friend" was actually a tax assessor. The tax assessor found that the new home was not yet "occupied." The assessor testified at the MTT hearing that after viewing petitioners' entire house, basement, and garage, she discovered that the house did not contain any furniture, clothes, dishes, or a refrigerator. Furthermore, she found that everything in the house was covered in plastic.

Petitioners argued that there was no bed in the new home because they were still sleeping on an air mattress with sleeping bags, which they stored away every morning. They conceded that they still spent some nights at their old home and did not often eat dinners at the new home. The MTT concluded that although petitioners filed the required paperwork and even changed their driver's licenses and voter registrations, they did not qualify for the homestead exemption because they were not occupying the home as their principal residence.

Petitioners allege that the City committed fraud by "sneaking" the tax assessor onto their property. The following elements are required to establish a claim of fraud: (1) respondent made an assertion that was a material misrepresentation; (2) the assertion was false; (3) respondent knew the assertion was false when making it, or made the assertion recklessly without

[1] In this opinion we refer to the versions of the statutes in effect at the time that petitioners received the City's June 6, 2005, letter denying the homestead exemption. In any event, the subsequent amendments to the statutes do not affect our analyses or conclusion.

knowledge of its truth; (4) respondent made the assertion with the intention that petitioner would rely on it; (5) petitioner relied on the assertion; and (6) petitioner suffered injury by relying on the assertion. *Kuebler v Equitable Life Assurance Society of the United States*, 219 Mich App 1, 6; 555 NW2d 496 (1996). Each of the elements must be proved with a reasonable degree of certainty, and each must be found to exist. *Scott v Harper Recreation, Inc*, 192 Mich App 137, 144; 480 NW2d 270 (1991), rev'd on other grounds 444 Mich 441 (1993).

Nothing in the record indicates that the building inspector actually made the assertions that petitioners allege, or that he did so with the intention of "sneaking" the assessor into petitioners' home. Petitioners point out the City did not sufficiently challenge the allegation that the assessor improperly gained access to the home. However, this is not the City's burden. Petitioners have the burden to support the elements of their fraud claim, *Seaboard Finance Co v Barnes*, 378 Mich 627, 631; 148 NW2d 756 (1967), and more importantly, to establish their entitlement to the homestead exemption, *Elias Bros Restaurants, Inc v Treasury Dep't*, 452 Mich 144, 150; 549 NW2d 837 (1996).

Petitioners also argue that because they consented only to the building inspector's entry into their home, the assessor's findings were the result of an illegal search under the Fourth Amendment. The Fourth Amendment's protection is clearly applicable to criminal investigations because such investigations constitute particularly intrusive actions by the government. *Widgren v Maple Grove Twp*, 429 F3d 575, 583-584 (CA 6, 2005). On the other hand, administrative or regulatory searches are less intrusive than criminal investigations. *Id*. Therefore, warantless administrative or regulatory searches are more tolerated under the Fourth Amendment. *Id*.

In *Widgren, supra* at 578, a local tax assessor entered the curtilage of Widgren's house without a warrant to determine Widgren's property tax liability. The Sixth Circuit distinguished criminal and administrative investigations, and emphasized that the sole purpose of the search at issue was to make a tax assessment. *Id*. at 585. The Sixth Circuit concluded that the tax assessor's search was not unduly intrusive and did not violate the Fourth Amendment. *Id*. While decisions by the Sixth Circuit are not binding on this Court, they may be considered as persuasive authority. *Abela v GMC*, 469 Mich 603, 606-607; 677 NW2d 325 (2004).

The City presented evidence that it is not uncommon for a tax assessor to accompany a building inspector when visiting a newly constructed home during late April. In addition, pursuant to MCL 211.24, a tax assessor is required to determine the taxable value of real property within the assessor's assigned area. Petitioners were aware that someone employed by the City would be viewing the inside of their home for administrative purposes and concededly gave the inspector permission to bring someone with him to the inspection. There is no evidence to support the conclusion that the assessor visited petitioners' home with the intent to "search" for something incriminating. Petitioners assert that the assessor did not look inside closets, drawers, or cabinets. In fact, there is no indication that the assessor did anything but walk through the house. The record does not support the conclusion that the assessor's walk-through was a "search" implicating the Fourth Amendment.

To ensure that a petitioner is afforded due process, hearings in the Tax Tribunal must be conducted in accordance with Chapter 4 of the Administrative Procedures Act, MCL 24.201 *et seq*. *Georgetown Place Co-op v City of Taylor*, 226 Mich App 33, 51-52; 572 NW2d 232

(1997). All parties involved may submit their arguments and evidence. *Id*. While the rules of evidence as applied in nonjury civil cases will be followed as far as practicable, "[t]he tribunal may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent men in the conduct of their affairs." MCL 205.746. Furthermore, an objection to an offer of evidence may be made. *Id*.

It was logical for the MTT to conclude that petitioners were not yet using the new home as their "principal residence," when they filed the affidavit for the homestead exemption. Petitioners testified that they knew they must establish that the new home was being used as their principal residence by May 1, 2005. The MTT concluded that if petitioners were specifically attempting to "occupy" the house as their principal residence because they knew they must do so to qualify for the homestead exemption, then they would have made evidence of their occupancy apparent instead of storing that evidence out of sight. The MTT gave greater weight to the tax assessor's testimony, finding it unlikely that the assessor's findings were erroneous.

Because it is likely that the MTT commonly relies on the testimony of tax assessors, the MTT did not err in considering the testimony that petitioners challenge. Furthermore, the record contains "substantial evidence" to support the MTT's conclusion.

Petitioners next argue that the MTT erred by not applying equitable estoppel against the City. Petitioners received the City's notice of denial letter on June 7, 2005. The letter stated, in pertinent part:

> Due to the incomplete construction status of your Novi residence on December 31, 2004, a field visit was made by a Novi Assessing Department Appraiser on May 6, 2005. Following a review of the property, it was determined that the building was not being inhabited. On that day, the building lacked appliances, furniture and other items expected in a principal residence.
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> . . . Please provide the Novi Assessing Department all documentation that would confirm that as of May 1, 2005, you owned and occupied this property as your principal residence. Acceptable documentation would be a driver's license or voter's registration card. Your request for a principal residence homestead exemption has been denied by the City of Novi Assessor pending your response to this letter. If you choose, further appeal of the City's denial may be made to the small claims division of the Michigan Tax Tribunal within 35 days of this notice.

Petitioners had already changed their driver's licenses and voter registration cards to reflect their new address and they forwarded copies of those documents to the City. Petitioners argue that because they believed that they had satisfied the requirements of the letter, they did not make additional efforts to establish that they were entitled to the homestead exemption. Therefore, petitioners assert that the City should be equitably estopped from requiring them to provide additional proof of entitlement to the exemption.

Unless expressly authorized by statute, a legislative tribunal does not have equitable jurisdiction. *Bd of Ed of Benton Harbor Area Schools v Wolff*, 139 Mich App 148, 156; 361 NW2d 750 (1984). After reviewing the MTT's statutorily authorized powers, this Court has

concluded that the MTT does not have the power to grant equitable remedies. *Electronic Data Systems Corp v Flint Twp*, 253 Mich App 538, 547-548; 656 NW2d 215 (2002). Therefore, petitioners' argument that the MTT should have found that equitable estoppel applies lacks merit.

Petitioners additionally argue that if the MTT cannot provide equitable relief, this Court should do so. Equitable estoppel is a doctrine, which precludes a party from asserting or denying the existence of a particular fact. *Conagra, Inc v Farmers State Bank*, 237 Mich App 109, 140-141; 602 NW2d 390 (1999). The factors which establish equitable estoppel are as follows: (1) a party, by representations, admissions, or silence intentionally or negligently induces another party to believe facts; (2) the other party justifiably relies and acts on that belief; and (3) the other party is prejudiced if the first party is allowed to deny the existence of those facts. *Id*. at 141.

The MTT found that the items listed in the City's letter did not constitute a comprehensive list of what is required for the homestead exemption. The MTT pointed out that the letter described acceptable forms of documentation, but that the specific requirements to qualify for the exemption may vary depending on the circumstances of each case. The MTT findings included the following statement: "If, for example, the home is vacant with absolutely no furniture, appliances, utilities, or ventilation, a voter registration card is of little value in determining whether the property is occupied as a principal residence." The MTT concluded that the documentation provided by petitioners would normally be sufficient to qualify them for the homestead exemption, however, the City's findings from the walk-through of the home indicated that a denial was justified.

There is no evidence to support the conclusion that the City intentionally induced petitioners to rely on its letter and, therefore, to forgo additional efforts to obtain the homestead exemption. However, it is arguable that the City's notice of denial letter contained misleading information. A reasonable reading of this letter may indicate that the request was denied, but only tentatively. It does not seem unreasonable for petitioners to conclude that if they provided the additional documentation listed, their request for the exemption would be approved.

While the City's negligent inducement and petitioners' justifiable reliance may present close questions, we cannot conclude that petitioners would be prejudiced if the City is permitted to enforce the letter as the MTT interpreted it. First, petitioners knew that the law required them to establish their occupancy in the new home by May 1, 2005. On April 28, 2005, petitioners filed a principal residence exemption affidavit for the new home. MCL 211.7cc(1) expressly dictates that the status of the property as a principal residence will be determined on the day the affidavit requesting the principal residence exemption is filed.

Petitioners received the notice of denial letter on June 7, 2005. However, the City had already discovered that the home was unoccupied on May 6, 2005, when the walk-through was conducted. If the house appeared unoccupied during the walk-through on May 6, 2005, petitioners clearly were not occupying the house as their principal residence on April 28, 2005, when they filed the affidavit for the exemption. Therefore, the City was entitled to deny petitioners' request for the homestead exemption regardless of what additional documentation the notice of denial letter listed.

Based on the MTT's ruling, additional documentation would not negate the findings from the walk-through. Petitioners could not possibly have taken any other measures that would change the City's findings from the walk-through that had already occurred. The MTT still would have ruled that the City properly denied the exemption because the house was not occupied as petitioners' principal residence on the day that the affidavit was filed. Therefore, petitioners are not prejudiced if the City is permitted to deny that its letter provided an exclusive list of what was required to obtain the homestead exemption. Accordingly, equitable relief is not warranted.

Affirmed.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Patrick M. Meter