

STATE OF MICHIGAN
IN THE SUPREME COURT

LIBERTY HILL HOUSING CORPORATION,

Petitioner/Appellant,

v

CITY OF LIVONIA,

Respondent/Appellee.

Supreme Court No. ~~270773~~

Court of Appeals No. 258752

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MTT Docket No. 298536

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APPLICATION FOR LEAVE TO APPEAL

OF LIBERTY HILL HOUSING CORPORATION

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CORBIN R. DAVIS
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MICHIGAN SUPREME COURT

STATEMENT OF QUESTION PRESENTED FOR REVIEW

1. Did the Court of Appeals err by holding that Petitioner/Appellant, a charitable institution that provides independent housing and related services to the handicapped and disabled persons in fulfillment of its charitable purposes, cannot be held to “occupy” a home as provided under MCL 211.7o so as to qualify for the charitable use property tax exemption because it uses a lease to provide housing to the charitable beneficiaries?

ORDER APPEALED FROM AND RELIEF SOUGHT

On May 16, 2006, the Court of Appeals issued its Opinion (Exhibit 1) reversing in part and affirming in part the Michigan Tax Tribunal's October 6, 2004 Opinion and Order (Exhibit 2) in favor of Defendant/Appellee. Petitioner/Appellant respectfully requests that this Court GRANT this application and REVERSE the Court of Appeals' Opinion.

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GROUNDS FOR APPLICATION

This Application is well grounded in MCR 7.302(B) and meets the criteria for appeal under subsections (2), (3) and (5) of that Rule. First, the question of whether a charitable organization may qualify for the charitable use property tax exemption through a tightly controlled charitable use that involves a lease of property is a major issue affecting the structure of the provision of housing and independent living arrangements for the disabled and handicapped citizens of the state of Michigan. The provision of housing and services to disabled individuals has moved from large state-owned and operated facilities through the early 1990's to single family homes provided by charitable organizations with state funding. The provision of independent living opportunities to handicapped and disabled citizens is recognized as a charitable use that relieves the burden of government. This case affects the economic viability of charitable provision of housing and services to the disabled and handicapped citizens of Michigan and, thus, involves an issue of significant public interest. This case is against one of the State's agencies. Therefore, this Application meets the criteria under MCR 7.302(B)(2) and (3).

Second, the decision below conflicts with this Court's decisions allowing leasing arrangements to qualify for the charitable use property tax exemption under MCL 211.7o and this Court's prior determinations that use by a lessee is also use by the lessor. The decision below conflicts with *Webb Academy v Grand Rapids*, 209 Mich 523; 177 NW 290 (1920); *Gull Lake Bible Conference Ass'n v Ross Twp*, 351 Mich 269; 88 NW2d 264 (1958); and *Oakwood Hospital v State Tax Comm'n*, 374 Mich 524; 132 NW2d 634 (1965). This Application thus meets the criteria under MCR 7.302(B)(3).

Third, this Application should also be granted because the decision of the Court of Appeals below is clearly erroneous and will cause material injustice. First, the Court of Appeals cited no law when determining that a lessor does not occupy property that is possessed by its lessee. The Court has held that possession by a lessee is possession by a landlord. *Wilhelm v Herron*, 211 Mich 339; 178 NW 769 (1920). Second, material injustice will result if Petitioner/Appellant is not allowed the charitable use property tax exemption. The whole structure of social services and the provision of housing to the developmentally disabled and handicapped in Michigan is predicated on the ability of charitable institutions to provide low cost independent living quarters in homes in the community. If charitable institutions are not afforded this exemption, it will jeopardize the provision of housing services by charitable organizations in place of the state government. The criteria under MCR 7.302(B)(5) are thus also met for these reasons.

I. INTRODUCTION

The Michigan Courts have set forth three requirements necessary to qualify for exemption under MCL 211.7o (“Section 7o”): (1) the real estate must be owned and occupied by the exemption claimant; (2) the exemption claimant must be a nonprofit charitable institution; and (3) the exemption exists only when the buildings and other property thereon are occupied by the claimant solely for the purposes for which it is incorporated. The Court of Appeals and the Michigan Tax Tribunal held that Petitioner/Appellant Liberty Hill Housing Corporation (“Liberty Hill”) satisfied all but the ownership and occupancy requirement. Liberty Hill was found by the lower court to be using the home solely for the charitable purposes for which it was incorporated. However, the Court of Appeals affirmed the lower court’s denial of the exemption based on Liberty Hill’s lease of the property to its disabled residents. The Court also held that the section 7o exemption would only apply to Liberty Hill’s main offices.

The Court of Appeals’ decision is contrary to a long line of cases interpreting section 7o to require use in conformity with charitable purposes, not physical possession, of the property. The Michigan courts have upheld the exemption when the property is used by employees, attendees, lessees and charitable beneficiaries of the charity. The Court of Appeals’ holding ignores this Court’s prior grants of the charitable use exemption to entities for uses other than their main offices, including recreation and rental uses in conformity with charitable purposes. The courts have held that use and occupancy are synonymous so that use of property owned by the charity, directly or indirectly under the direction and control of the charity, in furtherance of its charitable purposes has been held to constitute ownership and occupancy that satisfies the requirements of section 7o. Because Liberty Hill was found to be using the property for the charitable purposes for which it was incorporated, the Court of Appeals erred by denying the

section 7o exemption.

The Michigan Courts have held that a home for the disabled does not lose exemption because the property is leased for rent at or below cost. *Retirement Homes of Detroit Annual Conference of United Methodist Church, Inc v Sylvan Twp, Washtenaw County*, 416 Mich 340, 350; 330 NW2d 682 (1982) (holding that “a nonprofit corporation will not be disqualified for a charitable exemption because it leases those who can afford to pay for its services as long as the charges approximate the costs of the services.”);¹ *see also Webb Academy v Grand Rapids*, 209 Mich 523; 177 NW 290 (1920) (holding that lease of a portion of the property does not destroy the exemption if the lease is incidental use or part of the charitable purpose). Liberty Hill’s satisfaction of the ownership and occupancy requirement is the same whether the home is provided to low income disabled adults with or without a lease.

While this Court need not look to law outside of that interpreting section 7o, the Court of Appeals’ holding is also contrary to Michigan case law which has held that a lessee’s possession is possession by the landlord. *Wilhelm v Herron*, 211 Mich 339; 178 NW 769 (1920). This Court should grant leave to appeal and reverse the Court of Appeals error of law and grant Appellant the exemption to which the property is entitled.

II. STATEMENT OF FACTS AND LEGAL BACKGROUND

A. FACTS

The question before this Court is whether, for tax years 2003 and 2004, a Livonia, Michigan home that Liberty Hill uses to provide housing to low income disabled adults at or below cost in accordance with its charitable purposes is deemed to be occupied by Liberty Hill to qualify for

¹ *Auditor General v RB Smith Memorial Hospital Ass’n*, 293 Mich 36; 291 NW2d 213 (1940) also affirmed exemption for a non-profit hospital that charged all patients, did not collect from the indigent, and, during some years, had surpluses which were used for new equipment or additions.

property tax exemption under section 7o. On October 6, 2004, the Michigan Tax Tribunal Small Claims Division (the "Tribunal") entered an Opinion and Judgment (the "Tribunal Opinion") denying the Appellant's exemption claim under MCL 211.7o. This case was decided by the Tribunal Small Claims Division based, in part, upon testimony given on behalf of each party at a hearing on the matter, as well as documentary evidence submitted by the parties prior to the hearing. The record consists of the findings of fact as stated in the Tribunal's Opinion, as well as the documents that have become part of the record.² Appellant asserts that the Tribunal's findings of fact and Michigan case law support Appellant's eligibility for exemption.

Liberty Hill was incorporated as a Michigan non-profit corporation on August 1, 1991. Liberty Hill's stated corporate purpose is to "create integrated housing alternatives for low income individuals and families and persons with disabilities to interact with the general public, and to promote the establishment of safe, affordable and accessible as necessary housing for low income individuals and families and persons with disabilities." (Tribunal Opinion, p. 4). Liberty Hill provides housing to low income disabled individuals who are referred by Community Living Services, Liberty Hill's parent. Both Liberty Hill and Community Living Services are exempt from federal taxation as charitable institutions pursuant to IRC §501(c)(3). (Tribunal Opinion, p. 4).

Liberty Hill owns 51 single family homes in the Greater Detroit area, including the subject home. These homes are leased exclusively to developmentally disabled individuals whose low income and disability status qualify them to receive federal Supplemental Security Income (SSI) benefits. (Tribunal Opinion, p. 4).

The shelter, treatment and care of the disabled individuals that live in Liberty Hill's homes are funded through the individuals' "personal" budgets. These personal budgets are comprised of SSI, Medicaid waiver funds, and Home Health Funds from the State's Family Independence Agency, as well as charitable donations.

² When an appeal is from a small claims case of the Michigan Tax Tribunal, there is no transcript of the hearing and this Court decides the case by relying on the Tribunal's Opinion. *Inter Cooperative Council v Dep't of Treasury*, 257 Mich App 219, 221 n 1; 668 NW2d 181 (2003).

In addition to housing, Liberty Hill provides its disabled residents counseling on housing options, home maintenance services and accessibility modification services that make homes usable for the disabled. Liberty Hill's parent, Community Living Services, also provides additional services to the disabled individuals in Liberty Hill housing, including transportation, meals, monitoring, medication assistance and social activities. (Tribunal Opinion, p. 4). Liberty Hill's financial goal is to break even while continuing to provide necessary services to its disabled residents. However, Liberty Hill has fallen short of that goal, operating at a deficit for 2004 and each of the previous two years and for four of the previous five years. (Tribunal Opinion, p. 4).

All disabled individuals are provided with housing under a written lease. The lease includes provisions for rent payment, security deposits, late payment fees and hold-over fees. Disabled individuals and their families or guardians manage SSI payments of which about \$200 per month is paid for housing. (Tribunal Opinion, p. 4). The lease also requires that the premises may be used only for the disabled individual's private residence.

Until the early 1990s, the State of Michigan used large State owned and operated facilities to fulfill its constitutional duty to care for low income disabled adults. Const 1963, art 4, §51 and art 8, §8.³ As those institutions were closed, many of the residents were moved to large group homes. (Tribunal Opinion, p. 4). These large group homes also were state funded. While the group homes were an improvement over institutionalization, residents still had little say in who they were housed with and where they lived. The State and resident's rights advocates agreed that integration and maximum independence were worthy goals for the disabled population. This belief has led to dispersing the low income disabled throughout communities and affording them more choices regarding their care. Part of that trend is reflected in the current move away from group homes and

³ Const 1963, art 4, §51 states: "The public health and general welfare of the people of the state are hereby declared to be matters of primary public concern. The legislature shall pass suitable laws for the protection and promotion of the public health." Const 1963, art 8, §8 provides: "Institutions, programs and services for the care, treatment, education, or rehabilitation of those inhabitants who are physically, mentally or otherwise seriously disabled shall always be fostered and supported." The state's mental health code has many provisions intended to satisfy these constitutional obligations.

toward single family homes that house three or four residents each. (Tribunal Opinion, p. 4). These homes are generally owned by non-profit organizations, such as Liberty Hill, but the state continues to have responsibility for the care and treatment of disabled individuals. (Tribunal Opinion, p. 4).

B. STATEMENT OF PROCEEDINGS

Liberty Hill filed property tax appeals for the 2003 and 2004 tax years.⁴ On July 7, 2004, the Michigan Tax Tribunal Small Claims Division held its hearing in this case. On October 6, 2004, the Tribunal entered its Opinion denying Liberty Hill's exemption claim under section 7o.

The Tribunal Opinion found that (1) Liberty Hill owned the subject property, (2) Liberty Hill is a charitable organization providing a charitable gift to the low income disabled residents residing at the subject property, and (3) Liberty Hill uses the subject property solely for its charitable corporate purposes. However, the Tribunal concluded that Appellant did not "occupy" the property because the property was leased at or below cost to developmentally disabled individuals. In denying exemption, the Tribunal applied the "beyond a reasonable doubt" burden of proof.

On May 16, 2006, the Court of Appeals issued its decision reversing the Tribunal's holding that a "beyond a reasonable doubt" burden of proof applied. The Court of Appeals denied the exemption of section 7o on the basis that Liberty Hill, as the landlord, does not "occupy" property leased to the handicapped and disabled persons, even though Liberty Hill uses the property in furtherance of its charitable purposes.

⁴ The Tribunal Opinion, at p. 9, addresses both the 2003 and 2004 tax years, because MCL 205.737(5) requires that the subsequent 2004 tax year be automatically added to this exemption case.

III. ARGUMENT

A. THE COURT OF APPEALS' HOLDING THAT LIBERTY HILL'S USE OF THE PROPERTY FOR ITS CHARITABLE PURPOSES DOES NOT CONSTITUTE OCCUPANCY IS CONTRARY TO MICHIGAN CASE LAW INTERPRETING SECTION 7o

Section 7o provides for an exemption from property tax for property owned and occupied by a charitable institution in accordance with its charitable purposes. Specifically, MCL 211.7o(1) provides:

Real or personal property owned and occupied by a nonprofit charitable institution while occupied by that nonprofit charitable institution solely for the purposes for which it was incorporated is exempt from the collection of taxes under this Act.

The Michigan Courts have set forth three requirements necessary to qualify for exemption under MCL 211.7o: (1) the real estate must be owned and occupied by the exemption claimant; (2) the exemption claimant must be a nonprofit charitable institution; and (3) the exemption exists only when the buildings and other property thereon are occupied by the claimant solely for the purposes for which it is incorporated. *Wexford Medical Group v Cadillac*, 474 Mich 192, 203; 713 NW2d 734 (2006). The Court of Appeals found that Liberty Hill satisfied all but the ownership and occupancy requirement for exemption under section 7o. The Court of Appeals has erred by denying the charitable use property tax exemption to Liberty Hill based on the fact that Liberty Hill does not have “occupancy rights during the terms of the lease.” (Court of Appeals Opinion at p 2). The Court of Appeals further limited the applicability of MCL 211.7o to “those instances where the offices and operations of the non-profit organization exist.” *Id.* This holding contradicts a long line of Michigan case law more broadly interpreting the charitable use property tax exemption.

1. Use, Not Physical Possession, of Property By the Charity is the Test for Ownership and Occupancy

The Court of Appeals has erred by denying the charitable use property tax exemption to Liberty Hill based on the fact that Liberty Hill does not have physical possession of the property and has suggested that *only* Liberty Hill's main offices housing the operations of the non-profit organization could qualify for the exemption. Nothing in the statute requires physical possession of the property by Liberty Hill. While a taxpayer must prove its entitlement to an exemption, the tax statutes must be generally construed in favor of the taxpayer and against the government. As this Court stated in *In re Dodge Brothers*, 241 Mich 665, 669; 217 NW 777 (1928):

Tax exactions, property or excise, must rest upon legislative enactment, and collecting officers can only act within express authority conferred by law. Tax collectors must be able to point to such express authority so that it may be read when it is questioned in court. The scope of tax laws may not be extended by implication or forced construction. Such laws may be made plain, and the language thereof, if dubious, is not resolved against the taxpayer.

Thus, the Court of Appeals erred by reading into the section 7o exemption statute a requirement for physical possession of the property not provided in the plain language of the statute. Moreover, the Court of Appeals' holding is contrary to numerous Michigan court cases granting the charitable exemption based on "charitable use," not physical possession. See the discussion at subsection 2. below.

The exemption under MCL 211.7o has certainly not been limited to offices and operations of the nonprofit entity. In fact, the charitable use exemption has been applied to far more than offices of the taxpayer. The Michigan Courts have found that the charitable use property tax exemption applies to 1) a building, grounds and a barn used in conjunction with a school, *Webb Academy*, 209 Mich 523; 2) a chapel, hotel building, camp ground, parking area, fellowship center, picnic area, boat dock, bathhouse and playground used in conjunction with a

bible study camp, *Gull Lake Bible Conference Ass'n v Ross Twp*, 351 Mich 269; 88 NW2d 264 (1958); 3) six houses used to provide housing to medical physicians and interns in connection with a hospital, *Oakwood Hospital v State Tax Comm'n*, 374 Mich 524; 132 NW2d 634 (1965); and 4) sand dunes used for recreational and educational use by students, *National Music Camp v Green Lake Twp*, 76 Mich App 608; 257 NW2d 188 (1977). The Courts have only denied the charitable use property tax exemption based on occupancy alone where the property has lain idle and is unused by any person. See, *Lake Louise Christian Community v Hudson Twp*, 10 Mich App 573; 159 NW2d 849 (1968) (taxpayer failed to prove lands were used by anyone in any appreciable amount for religious purposes). Thus, the test applied by the Courts has been, not physical possession of the property, but whether the property owned is 1) not idle and 2) used, directly or indirectly through the control of the charity, in furtherance of the charitable purposes for which the charity was incorporated.

2. This Court Has Repeatedly Held That Use For Charitable Purposes Of the Taxpayer is Occupancy of the Taxpayer, Irrespective of the Person or Entity in Possession of the Property

This Court has consistently held that when property owned by a charity is used in furtherance of its charitable purposes, that property is owned and occupied by the charity, irrespective of whether the actual physical use is by the charity, its employees, or the charitable beneficiaries or donees. This interpretation credits the charitable owner for directing and limiting the use and physical possession of the property to uses that are in accord with its charitable purposes. In *Webb Academy*, 209 Mich 523, the Michigan Supreme Court was asked to decide if a property primarily used for a school was exempt where the school building was also used as a residence by the owner, his wife, her father and hired help, part of the lands were used as a private garden and a portion of the barn was occasionally rented out for automobile

storage. The Supreme Court determined that mere ownership alone of the property by an exempt organization was not enough and the exemption only applies to “ownership combined with occupation for the purposes of its incorporation.” *Id.* at 528. In addition, the Court found that there was no ability of the local assessor to limit the amount of real estate owned by the charitable institution entitled to the exemption provided that the property was in fact and in good faith solely occupied and appropriately used for the exempt purposes of the charity. *Id.* The Court found that the controlling factor was that the charitable institution had full possession and control of the premises and maintained a school thereon, even though a portion of the property was rented or used for other purpose. The incidental use of the school building for a residence and the periodic rental of the barn did not destroy the taxpayer’s possession of the property. In sum, the Court held that a use that is incident to the main purpose for which the property is held does not destroy the exemption. In this case, the use of the property by the physically handicapped and disabled under a lease, is not only a use that is incident to the main purpose for which the property is held – such use is the charitable use for which the property is held. Thus, to deny the charitable use property tax exemption is contrary to this Court’s decision in *Webb Academy*.

Use of the property by the charitable beneficiaries under the direction and control of the charity should not be deemed to destroy the exemption, even if the use is pursuant to a lease. This Court has held that use under a right of possession pursuant to a short term rental by church attendees did not destroy the exemption for a religious organization. *Gull Lake Bible Conference*, 351 Mich 269. In *Gull Lake*, the association owned various parcels of land that included an old hotel building used to house employees of the association, cottages rented to persons attending religious programs, and a trailer campsite rented to persons attending the

religious programs. The Court had no difficulty in finding that the Association owned and occupied all of the property involved given that it controlled the use of all of the property, even that rented out to its employees and attendees. Similarly, in *Oakwood Hospital*, 374 Mich 524, the Michigan Supreme Court held that houses owned by a hospital and leased to resident physicians and interns working at the hospital met the owned and occupied requirement for the exemption. The Court stated: “it cannot be escaped that the houses are owned by Plaintiff and occupied in furtherance of and for the purposes for which plaintiff was incorporated and for hospital and public health purposes.” *Id.* at 530. Thus, the use by the hospital physicians and interns was deemed to be occupancy and use of the hospital corporation.⁵ Under *Webb*, *Gull Lake*, and *Oakwood Hospital*, the use of the property by the handicapped and disabled residents should be held to be use and occupancy of Liberty Hill.

The lower court found that Liberty Hill owned the subject property, as a charitable entity providing a charitable service to its tenants and ruled that “there is no dispute that each of the single family homes owned by Liberty Hill are used solely for the purposes for which Liberty Hill was incorporated.” (Tribunal Opinion, pp. 4 & 9). Moreover, at hearing, the Appellee admitted that Liberty Hill uses the property at issue. (Tribunal Opinion, p. 3). Thus, because Liberty Hill’s use of the homes is consistent with Liberty Hill’s charitable purposes, such use must be held to be occupancy by Liberty Hill.

⁵ The Legislature subsequently amended the Property Tax Act to make such physician housing taxable. The Michigan Supreme Court recognized this in *Oakwood Hospital Corp v Dearborn*, 385 Mich 704; 190 NW2d 105 (1971). However, as this Court noted in *Baker v Michigan State Tax Comm’n*, 43 Mich App 513; 204 NW2d 538 (1972), the reversal was based solely on the fact that the legislature had since amended the statute (now MCL 211.7r) to exclude real estate and dwellings which were used by resident physicians and their families from the exemption. The legislature did not change the definition of “occupied” generally, its amendment only required the taxation of hospital related dwellings for resident physicians and their families.

3. As a Matter of Law, Occupancy and Use Are Synonymous

The Court of Appeal's decision requiring Liberty Hill to physically possess the property to be entitled to the exemption is contrary to established Michigan case law interpreting occupancy in section 7o. In *Lake Louise Christian Community*, 10 Mich App 578, this Court stated that it found no semantic quarrel with the allegation that "occupy" is synonymous with "use" in popular meaning. Thus, as long as the property is being used solely for the purposes for which the owner was incorporated and the owner controls this use, the owner should be deemed to occupy the property for purposes of MCL 211.7o. In this case, the lower court found that Liberty Hill uses the property for its charitable purposes. Tribunal Opinion at 9. Under *Lake Louise Christian*, the Court of Appeals erred by adopting too narrow an interpretation of the term "occupy." Liberty Hill's use is synonymous with occupancy and compels this Court to find that Liberty Hill's property qualifies for the exemption under section 7o.

4. Property Leased in Accordance with Charitable Purposes Is Eligible for the Charitable Use Property Tax Exemption

The Michigan Court of Appeals has repeatedly affirmed exemption under MCL 211.7o where, as here, the charitable organization charges a fee that recovers the cost of housing. *Huron Residential Service Youth, Inc v Pittsfield Charter Twp*, 152 Mich App 54; 393 NW2d 568 (1986) (exemption granted to a residential treatment facility for troubled youths charging a fee based on cost of services that was primarily paid by the State); *Redford Opportunity House v Redford Twp*, unpublished opinion per curiam of the Court of Appeals, issued January 27, 2004 (Docket No. 241478) (exempting a facility for developmentally disabled adults where cost based fees were paid from a variety of sources including social security, and housing assistance payments); *Retirement Homes v Sylvan Twp*, 416 Mich 350 n 15 (holding that "a non-profit corporation will not be disqualified for a charitable exemption because it charges those who can

afford to pay for its services as long as the charges approximate the costs of the services.”). If Liberty Hill housed the disabled adults for a service fee rather than under a lease, there would be no basis to deny Liberty Hill the charitable use exemption under section 7o. Liberty Hill does not “occupy” the property less because it receives payments from the low income, disabled residents of the subject property at or below Liberty Hill’s cost of providing services under a lease. Liberty Hill’s occupancy of the property and exemption entitlement do not change because Liberty Hill provides its charitable beneficiaries the dignity of a lease. The Michigan Courts have held that a technical analysis of section 7o that upholds form over substance is not warranted and is contrary to the legislative intent of the statute to provide benefit to charitable entities. In *National Music Camp*, 76 Mich App 614-615,⁶ the Court of Appeals noted:

A liberal and not a harsh or strained construction is to be given to the terms “educational,” religious,” and “charitable” in order that the true intent of the constitutional and statutory provisions may be realized. The judicial interpretation of such statute should always be reasonable.

(citing *Evangelical Lutheran Good Samaritan Society v Bd of County Commissioners*, 219 NW2d 900, 905 (ND, 1974). The Michigan Courts have repeatedly allowed the charitable use property tax exemption where property was leased or rented. *Webb Academy*, 203 Mich 523 (allowing exemption for property including a leased barn); *Gull Lake*, 351 Mich 269 (allowing exemption for property including a leased hotel, cottages and trailer campsite); *Oakwood Hospital*, 374 Mich 524 (allowing exemption for rented private residences).

In fact, there is no meaningful distinction between Liberty Hill’s home for disabled and the disabled adult home whose exemption this Court affirmed in *Redford Opportunity House*. Because Liberty Hill and its parent, Community Living Services, provide services to meet the

⁶ In *National Music Camp*, the Court held there was ownership, occupancy and a charitable use by four corporations that worked together but were not technically one corporate owner.

extraordinary needs of the disabled residents, Liberty Hill is anything but a typical standard landlord. Liberty Hill and Community Living Services provide counseling, maintenance, accessibility modifications, transportation, meals, monitoring, assistance with medication and social activities to the residents of Liberty Hill's homes. (Tribunal Opinion, p. 4). Between Liberty Hill and Community Living Services, an agent must be present at the home on a regular, consistent basis to provide these services.⁷ Additionally, Liberty Hill's lease requires that the home be used only for the private residence of the disabled individual, which means that the home must be used in conformance with Liberty Hill's charitable purpose of providing housing to the disabled.

Liberty Hill uses and is physically present at the home for disabled individuals providing services. However, even if it were not, Michigan courts have found that physical use by the property owner is not a condition precedent for the section 7o exemption. *Kalamazoo Nature Center, Inc v Cooper Twp*, 104 Mich App 657; 305 NW2d 283 (1981). Here, too, Liberty Hill's occupancy and use of the property, through its low income disabled adult residents and service providers, qualifies the property for exemption. To condition exemption on a Liberty Hill employee residing at the home full time would only unnecessarily drain Liberty Hill of charitable resources needed to provide more housing to those in need. Such a ruling would be counter to the laudable goal, shared by the State of Michigan, Liberty Hill and Community Living Services, of cultivating an independent living environment for low income disabled adults.

⁷ Liberty Hill occupies the property in its own right by housing low income disabled adults, and having its employees or contractors providing services at the home. Because Liberty Hill and Community Living Services are merely functioning arms operating under the same corporate umbrella, Liberty Hill's occupancy is augmented by Community Living Services' presence and activities in the home. *See National Music Camp*, 76 Mich App 608, where the Court found that the substance of an arrangement rather than its form should be the guiding principle in determining ownership and exemption.

In finding that Liberty Hill owns and uses, but does not occupy, the subject home, the Court of Appeals unduly restricted the charitable use property tax exemption in direct conflict with this Court's prior interpretations of section 7o. Liberty Hill's use of the home to provided disabled individuals housing satisfies the ownership and occupancy criteria because the handicapped and disabled person's use is the physical manifestation of Liberty Hill's charitable "operations." The Court of Appeals' decision is contrary to this Court's mandate that the permissible uses of exempt property under section 7o "must necessarily embrace all which are proper and appropriate to effect the objects of the institution claiming the benefits of the exemption." *Webb* at 542. This Court should grant leave to appeal and reverse the Court of Appeals' error of law and grant Liberty Hill the exemption to which the property is entitled.

B. UNDER LANDLORD TENANT LAW, POSSESSION BY THE LESSEE IS POSSESSION BY THE LESSOR

There is no need for this Court to look outside the wealth of court cases interpreting the proper application of section 7o. However, even under landlord tenant law, this Court has held that possession of property by a lessee is possession of the property by the landlord. *Wilhelm*, 211 Mich 339. In *Wilhelm*, the Wilhelms claimed title by adverse possession to a disputed strip of land owned by the Herrons. In reviewing the title and use of the land, the Court held that a tenant's use of the land was for the benefit of the landlord and any use by the tenant was also use by the landlord. *Id.* at 342. Similarly, the use by Liberty Hill's tenants, the handicapped and disabled citizens of Michigan, must also be held to be use and possession of Liberty Hill. Thus, the Court of Appeals' statement that "to find that the non-profit corporate owner/lessor occupies the properties by virtue of leasing them to tenant-occupants, even though the tenancy is consistent with the non-profit's corporate purposes, requires a 'significant stretch'" is incorrect. Under the landlord tenant law, finding that the disabled persons' occupancy is the occupancy of

Liberty Hill is not only not a stretch, it is grounded in the well-established precedent of this Court.

RELIEF REQUESTED

Petitioner/Appellant respectfully requests that this Court grant it leave to appeal the decision of the Court Appeals in this case.

Respectfully submitted,

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