

STATE OF MICHIGAN  
IN THE SUPREME COURT

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LIBERTY HILL HOUSING CORPORATION,

Petitioner/Appellant,

Supreme Court No. 131531

v

Court of Appeals No. 258752

CITY OF LIVONIA,

MTT Docket No. 298536

Respondent/Appellee.

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**REPLY OF LIBERTY HILL HOUSING CORPORATION TO**  
**BRIEF IN OPPOSITION FOR LEAVE TO APPEAL**

131531  
reply

**FILED**

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CORBIN R. DAVIS  
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Pursuant to MCR 7.302(E), Petitioner-Appellant, Liberty Hill Housing Corporation (“Liberty Hill”), hereby replies to the Brief In Opposition to Application for Leave to Appeal (the “Respondent-Appellee’s Brief”) filed by Respondent-Appellee, City of Livonia.

**I. THE ISSUE PRESENTED IN THIS CASE IS IMPORTANT ENOUGH TO WARRANT THIS COURT’S ATTENTION.**

Respondent-Appellee asks this Court to deny Liberty Hill’s application for leave to appeal because 1) it does not conflict with this Court’s prior decisions as required under MCR 7.302(B)(3); and (2) the decision below is not clearly erroneous under MCR 7.302(B)(5). However, Respondent-Appellee does not deny that 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. Respondent-Appellee does not and cannot deny that 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 raised against a subdivision of the state. Therefore, this Application meets the criteria under MCR 7.302(B)(2) and (3).

**II. THE COURT OF APPEALS DECISION BELOW CONFLICTS WITH DECISIONS OF THIS COURT INTERPRETING MCL 211.7o.**

Michigan Courts have construed the term “occupied” under MCL 211.7o in numerous cases.<sup>1</sup> Yet, Respondent-Appellee asks this Court to ignore the well-developed judicial-law interpretations of Section 7o and, instead, look to cases interpreting the Migrant and Seasonal

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<sup>1</sup> See e.g., *Lake Louise Christian Community v Hudson Twp*, 10 Mich App 573, 578; 159 NW2d 849 (1968); *Huron Residential Service Youth Inc v Pittsfield Charter Twp*, 152 Mich App 54; 393 NW2d 568 (1986); *Kalamazoo Nature Center, Inc v Cooper Twp*, 104 Mich App 657; 305 NW2d 283 (1981).

Agricultural Worker Protection Act,<sup>2</sup> the Residential Builders Licensing Act,<sup>3</sup> the Michigan Condominium Act,<sup>4</sup> or the Truth in Renting Act.<sup>5</sup> However, the case law interpreting the General Property Tax Act provides guidance on “occupancy” under MCL 211.7o. Michigan Courts have held that, for the purposes of MCL 211.7o, use is synonymous with occupancy. *Lake Louise Christian Community v Hudson Twp*, 10 Mich App 573, 578; 159 NW2d 849 (1968). See Petitioner-Appellant’s Application for Leave to Appeal (“Petitioner-Appellant’s Application”) at pp 9-13. Liberty Hill uses and, thus, occupies the property solely in accordance with its charitable purposes and qualifies for exemption under MCL 211.7o.

It is misleading and unnecessary to apply definitions that were used in the context of nonproperty tax statutes to a case involving property tax exemption because the courts have defined terms differently for different statutes, depending on the purpose of the statute. To illustrate the problem with borrowing definitions developed to interpret different acts, this Court need only examine two of the cases Respondent-Appellee cites in its brief (Respondent-Appellee’s Brief pp 6 and 9). In both *Green v Ingersoll*, 89 Mich App 228; 280 NW2d 496 (1979) and *Lake Forest Estates Condominium Ass’n v Tamara and Robert C Berryman*, unpublished opinion per curiam of the Court of Appeals, decided December 14, 2004 (Docket No 249570); 2004 WL 2889886, the court was required to resolve a question of “occupancy” when that term was not defined in the given statute. In both cases, the court sought guidance

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<sup>2</sup> *DeBruyon Produce v Romero*, 202 Mich App 92; 508 NW2d 150 (1993).

<sup>3</sup> *Green v Ingersoll*, 89 Mich App 228; 280 NW2d 496 (1979).

<sup>4</sup> *Lake Forest Estates Condominium Ass’n v Tamara and Robert C Berryman*, unpublished opinion per curiam of the Court of Appeals, decided December 14, 2004 (Docket No. 249570); 2004 WL 2889886 (Exhibit 4 to Respondent-Appellee’s Brief).

<sup>5</sup> *Ann Arbor Tenants Union v YMCA*, 229 Mich App 431; 581 NW2d 794 (1998); *app den* 459 Mich 976; 593 NW2d 547 (1999).

from Black's Law Dictionary. Yet, the courts arrived at contradictory definitions of occupancy based on the purposes of each statute. *Green, supra* addressed the issue of whether a man who built a house had occupied it for purposes of the Residential Builders Licensing Act (MCL 338.1501). The court found that:

the two nights a man and his son spent in the house cannot reasonably be interpreted as substantial use of the building for the residential purpose for which it was designed. Nor do the storage of equipment and other items and the use of the house as a model home constitute occupancy clearly contemplated by the Legislature.

*Green* at 235. Even though the house was not used by anyone else, the court found that the owner did not occupy it. Yet, in *Lake Forest Estates, supra*, a case involving the Michigan Condominium Act (MCL 559.104), the court found that a man and wife "occupied" three separate condominium units because they, not the developer, owned and possessed them. The *Lake Forest Estates* set of facts would not have constituted "occupancy" under the Residential Builders Licensing Act. The different results are based on the different purposes of the Acts and the provisions within them. For this reason, it is ill advised to borrow a definition from one statute and apply it to another.

Respondent-Appellee's attempt to inject the Residential Builders Licensing Act's definition of occupancy in *Green v Ingersoll* into this case also is inappropriate because that definition applies only to the occupancy of a dwelling by an individual. MCL 211.7o, on the other hand, applies only to non-profit organizations. Clearly, the test of occupancy of a dwelling by an individual is different than the organization's occupancy of property. One obvious difference is that organizations can "occupy" multiple parcels simultaneously. In addition, the Residential Builders Licensing Act's consumer protection purpose supports a narrow definition of occupancy, while the courts have consistently taken a much broader view of the term

“occupied” for the property tax exemption under MCL 211.7o.

Respondent-Appellant argues that Court of Appeals decision below does not conflict with this Court’s prior decisions that allow the exemption where property is leased only applies to leases that are “incidental” use that is not in furtherance of the organizations charitable purposes. Respondent-Appellant’s Brief at 12-15. 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 charitable 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 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). 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. *See* Petitioner-Respondent’s Application pp 10-13. 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. *Id* at pp 13-16. 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 Ass’n v Ross Twp*, 351 Mich 269; 88 NW2d 264 (1958).

The test applied by the Courts for occupancy has been, not physical possession of the property,<sup>6</sup> 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

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<sup>6</sup> *Kalamazoo Nature Center, Inc v Cooper Twp*, 104 Mich App 657; 305 NW2d 283 (1981).

was incorporated. *See, Lake Louise Christian Community v Hudson Twp, supra; see also* Petitioner-Respondent’s Application pp 8-10. 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 Respondent-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, the Court of Appeals decision that Liberty Hill does not “occupy” the property is contrary to this Court’s prior interpretations of MCL 211.7o.

**III. THE CHARITABLE USE PROPERTY TAX EXEMPTION IS NOT DEPENDENT UPON RECEIPT OF STATE LICENSING.**

The Respondent-Appellee’s inflammatory language suggesting that Liberty Hill is “skirting the regulation[s]” by seeking the benefit of a tax exemption while failing to obtain a state license which the Respondent-Appellee merely assumes is applicable without any knowledge or proof is grossly inappropriate. City of Livonia’s Brief in Opposition to Application for Leave to Appeal, p 1; *see also* discussion at pp 18-20. There is nothing in MCL 211.7o that conditions the receipt of the charitable use property tax exemption upon receipt of any particular state license. Moreover, the record below does not contain any facts about the applicability of the Adult Foster Care Licensing Act, because such Act is irrelevant to the application of the charitable use property tax exemption as is the fact that Liberty Hill is not required to obtain the license referred to and is in full compliance with applicable state regulations. For a state subdivision to suggest that Liberty Hill should be investigated for regulatory violations because it is seeking a property tax exemption it believes is fully applicable

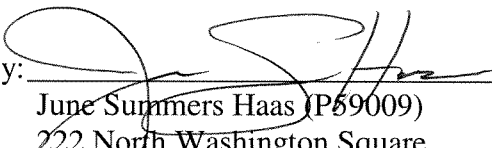
under the plain language of the statute and case law, as Respondent-Appellee did at p 19, is reprehensible.

#### **IV. CONCLUSION AND REQUEST FOR RELIEF.**

The Court of Appeals decision affects the charitable provision of housing and services to the disabled and handicapped citizens of Michigan and uniform application of the charitable use property tax exemption can only be affected by application of leave to appeal by this Court. The Court of Appeals decision erroneously limits charities that provide services to their charitable beneficiaries through a lease arrangement to a property tax exemption on their headquarters properties and disallows the exemption for property directly used for charitable purposes. This result is contrary to this Court's prior decisions which look to the charitable use as determinative of entitlement to the property tax exemption. Liberty Hill, therefore, respectfully requests that this Court issue an order reversing the Court of Appeals' decision below or, in the alternative, granting its Application for Leave to Appeal and consider the merits of this appeal.

Respectfully submitted,

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Dated: August 24, 2006

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**PROOF OF SERVICE**

The undersigned states that on August 24, 2006, she served a copy of the Reply of Liberty Hill Housing Corporation to Brief in Opposition for Leave to Appeal and this Proof of Service upon Ms. Barbara Scherr, Assistant City Attorney, City of Livonia at 33000 Civic Center Drive, Livonia, Michigan 48154-3097 by way of first-class mail, postage prepaid.

I declare under the penalty of perjury that the statements above are true to the best of my information, knowledge and belief.



Melanie K. Farnham  
Honigman Miller Schwartz and Cohn LLP

*Hand Delivery*

August 24, 2006

Mr. Corbin R. Davis  
Clerk of the Court  
Michigan Supreme Court  
Michigan Hall of Justice  
925 W. Ottawa Street  
Lansing, MI 48915

**Re: *Liberty Hill Housing Corporation v City of Livonia***  
***Michigan Tax Tribunal No. 298536***  
***Court of Appeals No. 258752***  
***Michigan Supreme Court No. 131531***

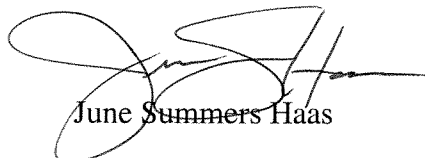
Dear Mr. Davis:

Enclosed herewith for filing, please find an original Reply of Liberty Hill Housing Corporation to Brief in Opposition for Leave to Appeal and eight copies, along with the related Proof of Service in connection with the matter referenced above. Please return one date-stamped copy of the Brief with our messenger who is delivering this document to you.

If you have any questions or comments in connection with the enclosures or this matter, please do not hesitate to contact me.

Very truly yours,

HONIGMAN MILLER SCHWARTZ AND COHN LLP

  
June Summers Haas

JSH:mkf  
Enclosures  
c w/ encs: Ms. Barbara Scherr

