

STATE OF MICHIGAN
IN THE SUPREME COURT

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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SUPPLEMENTAL BRIEF FOR LIBERTY HILL HOUSING
CORPORATION'S LEAVE TO APPEAL

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This Brief is filed pursuant to the Order of this Court dated February 9, 2007 directing the parties to address whether *Pheasant Ring v Waterford Township*, 272 Mich App 436; 726 NW2d 741 (2006) was correctly decided.

I. *PHEASANT RING* CORRECTLY HELD THAT ACCEPTANCE OF RENTAL PAYMENTS DOES NOT DISQUALIFY A NONPROFIT CHARITY FROM THE PROPERTY TAX EXEMPTION UNDER MCL 211.7o.

On October 17, 2006, the Michigan Court of Appeals released for publication *Pheasant Ring v Waterford Township*, 272 Mich App 436; 726 NW2d 741 (2006). Pheasant Ring sought exemption under MCL 211.7o for residential property it used to provide a transitional community for persons with autism. Pheasant Ring accepted rental payments from disabled residents of the home in addition to providing services to aid these charitable beneficiaries to establish assisted, but independent, living. The Township argued that Pheasant Ring was not qualified for the nonprofit exemption under MCL 211.7o because it accepted rents and it did not occupy the property used for its charitable purposes because it leased the property to the charitable beneficiaries.

The Court of Appeals properly rejected the argument that acceptance of rental payments or imposition of fees disqualifies a nonprofit charity from qualifying for the exemption citing this Court's decisions in *Wexford Medical Group v City of Cadillac*, 474 Mich 192; 713 NW2d 734 (2006) and *Retirement Homes of Detroit Annual Conference of United Methodist Church, Inc v Sylvan Twp, Washtenaw County*, 416 Mich 340; 330 NW2d 682 (1982). This Court has long held that a nonprofit charity need not meet any monetary threshold of charity to merit the exclusion. *Wexford* at 215. Similarly, it does not matter whether the monetary remuneration is received for services or use of property, so long as the entire property is used in a manner consistent with the charitable purposes of the owning charity. See Petitioner/Appellant's

Application for Leave to Appeal at 10-13. The *Pheasant Ring* Court properly avoided an interpretation of MCL 211.7o, under which a charity could accept remuneration for services but not remuneration for the use of property by lease. The paramount concern for legislative interpretation is identifying and effecting the Legislature’s intent. *Wexford* at 204. Nothing in the plain language of MCL 211.7o indicates an intent to limit the charitable use property tax exemption to those charities that perform their charitable works without leasing any portion of the property to its charitable beneficiaries. To so hold would require courts to add an additional inquiry to the statute: Does the charity’s use of the property for its charitable purposes provide enough physical possession to the charity, rather than its charitable beneficiaries, to meet the “occupancy” requirement. Such a test would improperly attempt to differentiate between the charitable use by the employees of the charity and the use by the charitable beneficiaries. Taken to the extreme, this would require that charities that assist the government in the provision of residential care for the mentally/disabled are disqualified if they give too much possession to their charitable beneficiaries in the residence. The *Pheasant Ring* Decision correctly avoids imposing requirements not contained in the statute. *Pheasant Ring* properly upholds this Court’s oft repeated test that it is the exclusive use of the property for charitable purposes that is required, not a measurement of the value of the charity or of the form of the charitable property use.

II. *PHEASANT RING* CORRECTLY HELD THAT A NONPROFIT CHARITY OCCUPIES PROPERTY USED IN FURTHERANCE OF ITS CHARITABLE PURPOSES.

The Township specifically asserted that Pheasant Ring did not “occupy” the property because it did not maintain its offices on the property and rented the property to the disabled charitable beneficiaries as tenants. In dismissing the Township’s argument, the Court of Appeals

stated:

This interpretation of the requirements for tax exemption is too narrow and restrictive. There is no dispute that Pheasant Ring owns the subject property. Although Pheasant Ring does not use the property for its own offices, the property is occupied by tenants of Pheasant Ring in furtherance of its charitable purpose. This Court, in determining whether a charitable organization “occupied” a subject property, for the purposes of qualification for a tax exemption, has determined that “[t]he proper test is whether the entire property was used in a manner consistent with the purposes of the owning institution.” *Holland Home v Grand Rapids*, 219 Mich App 384, 398; 557 NW2d 118 (1996). Based on this criterion, Pheasant Ring “occupied” the subject residence.

Pheasant Ring at 442. The Court of Appeals decision correctly held that to require the charity to occupy the property to the exclusion of its charitable beneficiaries is too narrow a reading of the statute. The history of MCL 211.7o is rife with cases where the exemption is allowed for uses other than the charities’ offices. *See e.g., Webb Academy v Grand Rapids*, 209 Mich 523; 177 NW 290 (1920) (exemption for a school building, grounds and a barn used in conjunction with the school); *Gull Lake Bible Conference Ass’n v Ross Twp*, 351 Mich 269; 88 NW2d 264 (1958) (exemption for 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); and *Oakwood Hospital v State Tax Comm’n*, 374 Mich 524; 132 NW2d 634 (1965) (exemption for hospital and six houses used to provide housing to medical physicians and interns in connection with a hospital). *See also National Music Camp v Green Lake Twp*, 76 Mich App 608; 257 NW2d 188 (1977) (exemption for sand dunes used for recreational and educational use by students). It simply makes no sense to interpret the statute to allow exemption for a charitable office’s headquarters but not for the property where the charitable benefit is bestowed upon the public.

Moreover, the same language in MCL 211.7o requiring that the property be “owned and occupied” by the nonprofit is also included in the exemption under MCL 211.7r for theaters, libraries, schools and scientific institutions. To narrowly interpret the phrase “owned and occupied” in MCL 211.7o would also impose that narrow interpretation on the requirement on theaters, libraries, schools and scientific institutions under MCL 211.7r as well. Thus, courts would be forced to either improperly limit these exemptions to nonprofit headquarters, or to develop some measure of the quantum of possession or use of the property by the charity, versus its charitable beneficiaries, to determine if the charity meets the exemption. The courts would have to impute some threshold level of physical possession by a certain number of employees for a certain amount or percentage of time during each day to meet a nonlegislated standard of physical possession that constitutes “occupancy.” The *Pheasant Ring* Court properly rejected a narrow interpretation because there simply is no indication that the Legislature intended any quantum of possession or use by a charitable beneficiary to restrict the applicability of the charitable use property tax exemption where the entire property is used in a manner consistent and in furtherance of the charitable purposes of the nonprofit institution.

III. THE DECISION BELOW CONFLICTS WITH *PHEASANT RING* AND SHOULD BE REVERSED.

Like *Pheasant Ring*, Liberty Hill uses the property for which it seeks exemption under MCL 211.7o by renting the property to tenants in furtherance of its charitable purpose. 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 *Pheasant Ring* and this Court's prior interpretations of MCL 211.7o. The unpublished decision in Liberty Hill below directly conflicts with Court of Appeals published decision in *Pheasant Ring* and, thus, leave to appeal should be granted or the decision below should be summarily reversed.

Respectfully Submitted,

HONIGMAN MILLER SCHWARTZ AND COHN LLP

Dated: March 9, 2007

By:


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