

STATE OF MICHIGAN
IN THE SUPREME COURT

LIBERTY HILL HOUSING CORPORATION,

Petitioner-Appellant,

v

CITY OF LIVONIA,

Respondent-Appellee.

Supreme Court No. 131531

Court of Appeals
Docket No. 258752

Michigan Tax Tribunal
Docket No. 298536

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**CITY OF LIVONIA'S SUPPLEMENTAL BRIEF IN
OPPOSITION TO APPLICATION FOR LEAVE TO APPEAL**

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COUNTERSTATEMENT OF QUESTIONS INVOLVED

I.

WHETHER THE COURT OF APPEALS, IN *PHEASANT RING v WATERFORD TWP*, 272 MICH APP 436; 726 NW2d 741 (2006) IGNORED NEARLY A CENTURY OF MICHIGAN JURISPRUDENCE AND INCORRECTLY HELD THAT PETITIONER WAS ENTITLED TO AN EXEMPTION FROM TAXATION.

Respondent-Appellee, City of Livonia, answers “Yes.”
Petitioner-Appellant has not answered this question.
The lower court did not address this issue.

II.

WHETHER A LANDLORD IS ENTITLED TO A TAX EXEMPTION UNDER MCL 211.7o MERELY BECAUSE IT IS A NONPROFIT CORPORATION.

Respondent-Appellee, City of Livonia, answers “No.”
Petitioner-Appellant answers “Yes.”
The lower court answered “No.”

INTRODUCTION

The only distinction between Liberty Hill and a traditional landlord is the fact that Liberty Hill is organized as a nonprofit corporation. The standard Liberty Hill “Fixed-Term Residential Lease Agreement” makes it crystal clear that the relationship between the property owner and its tenants is that of landlord and tenant (Exhibit). Liberty Hill contends that because its tenants are purportedly developmentally disabled that it should be relieved from paying real property taxes. Liberty Hill does not qualify for an exemption under MCL 211.7o and has failed to prove that it fits within the purview of the statute. This matter concerns five (5) houses situated in the City of Livonia at 15613 Green Lane (MTT Docket No. 298536), 36520 Wilshire (MTT Docket No. 298537), 17783 Deering (MTT Docket No. 298538), 14857 Inkster (MTT Docket No. 298539), and 18499 Grimm (MTT Docket No. 298540). Liberty Hill does not want to pay real property taxes for these properties, but has failed to prove that it is entitled to an exemption.

Liberty Hill is attempting to cloud the issues by pulling at our heart strings. Liberty Hill is not operating within the purview of the Adult Foster Care Facility Licensing Act, 1979 PA 218, although its purported mission is to provide independent living opportunities for handicapped and disabled citizens in our community. It appears that Liberty Hill wants the benefit of tax exemption yet it is skirting the regulations put in place by the state to protect handicapped and disabled citizens.

The claim that Liberty Hill (Landlord) is bestowing a “gift” on its tenants lacks support in the record. Market rate rents, late fees and threatened evictions for failing to comply with the terms and conditions of a lease agreement lend support to the City’s contention that a traditional landlord-tenant relationship is in place. Liberty Hill is receiving significant rents which are

comprised, in part, from federal Supplemental Security Income (SSI) benefits. Liberty Hill is receiving indirect payments from the federal government, yet it does not wish to be regulated by the state's Family Independence Agency (MCL 400.704; MCL 400.709) or pay its fair share of local property taxes. A referral for investigation to the Family Independence Agency pursuant to MCL 400.713(12), operation of an unlicensed facility, may be appropriate.

The Court of Appeals and the Tax Tribunal correctly determined that Liberty Hill does not qualify for an exemption. The decisions below should be affirmed and leave to appeal should be denied.

LAW AND ARGUMENT

I. THE COURT OF APPEALS IN *PHEASANT RING v WATERFORD TWP*, 272 MICH APP 436; 726 NW2d 741 (2006) IGNORED NEARLY A CENTURY OF MICHIGAN JURISPRUDENCE AND INCORRECTLY RULED THAT THE PETITIONER WAS ENTITLED TO AN EXEMPTION FROM TAXATION.

Following and applying the reasoning in *Holland Home v City of Grand Rapids*, 219 Mich App 384; 557 NW2d 118 (1996); *Retirement Homes v Sylvan Twp*, 416 Mich 340; 330 NW2d 682 (1982) and *Michigan Baptist Homes and Development Co v City of Ann Arbor*, 396 Mich 660; 242 NW2d 749 (1976), the panel in *Pheasant Ring, supra* should have concluded that the property was not exempt from taxation.

In finding that Pheasant Ring occupied the property within the meaning of the statute, the Court of Appeals reasoned:

The Township asserts that Pheasant Ring does not occupy the property because the location of its offices is not physically on the property at issue and it rents the property to tenants. This interpretation of the requirements for tax exemption is too narrow and restrictive. There is no dispute that Pheasant Ring owns the 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 purposes. This Court, in determining whether a charitable organization "occupied" a property for purposes of qualifying 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). Under this criterion, Pheasant Ring occupied the residence.

Pheasant Ring, 726 NW2d 741 at 745-746.

Putting the *Holland Home* test in proper context, it is critical to note that this test was intended to apply in cases involving land owned by an educational institution for environmental study purposes and for houses of public worship. As the *Holland Home* Court explained:

More recently, in *Institute in Basic Life Principles, Inc v Watersmeet Twp (After Remand)*, 217 Mich App 7, 13; 551 NW2d 199 (1996), this Court adopted the criteria employed in *Nat'l Music Camp* and held that the quantum of use test should not be used to determine whether the property of a religious society qualifies for a tax exemption under the house of worship tax exemption statute. The proper test is whether the entire property was used in a manner consistent with the purposes of the owning institution. *Id*

As the cases illustrate, this Court has permitted an exception to the general rule requiring actual, physical use to obtain a property tax exemption only in cases involving land held by an educational institution for ecological or environmental study purposes, and for houses of public worship. In each of the cases, the land at issue protects a habitat site and is being held in its natural state, or the land is currently being used in a manner consistent with the purposes of owning the institution. Petitioner's land, conversely, can hardly be described as being held in its natural state when petitioner admits that RME II was under construction on the relevant tax days. Nor was it being used in a manner consistent with owning the institution. We therefore find no error in the tribunal's conclusion that RME II was not occupied on the relevant tax days.

Holland Home, *supra* at 398-399.

In *Chauncey and Marion Deering McCormick Foundation v Wawatam Twp*, 196 Mich App 179, 187-189; 492 NW2d 751 (1992), the Court explained the exemption permitted for educational institutions as previously allowed in *National Music Camp (NMC) v Green Lake Twp*, 76 Mich App 608; 257 NW2d 188 (1977):

In *Lake Louise Christian Community v Hudson Twp*, 10 Mich App 573; 159 NW2d 849 (1968), the Court found that a religious organization did not occupy or use undeveloped property in any appreciable *quantum* for the stated

purposes of the organization. *Id.* at 581-582, 159 NW2d 849. However, in *National Music Camp v Green Lake Twp*, 76 Mich App 608; 257 NW2d 188 (1977), the Court rejected the notion that certain parcels of an educational organization's property was not exempt because it was undeveloped. The Court held that the “*quantum-of-use*” test did not apply to educational organizations and noted:

Possibly such a test may have been appropriate half a century ago when environmental concerns were virtually nonexistent and nature study centers were rare. However, now our concepts of education are greatly expanded. Indeed, were such an extreme test utilized by the courts, innovative educational ideas would be stifled. [*Id.* at 611, 257 NW2d 188.]

See also *Kalamazoo Nature Center, Inc v Cooper Twp*, 104 Mich App 657; 305 NW2d 283 (1981), where the Court found that thirty-one acres of a nature center that was not open to the public was nevertheless “used” for purposes of the exemption statute. The thirty-one acres was found to be a demonstration project used to develop “a better understanding and appreciation of our natural surroundings and of the problems of wise management of our nature resources.” *Id.* at 666, 305 NW2d 283.

We adopt the approaches utilized in *National Music Camp*, *supra*, and *Kalamazoo Nature Center*, *supra*, and conclude that there was competent, material, and substantial evidence on the record to support the tribunal’s finding that the entire Headlands property was “occupied” or used in a manner consistent with petitioner’s charitable purposes. The faculty and students of the Headlands Indian Health Careers Program used the different areas of the property for educational and recreational purposes. Additionally, various groups interested in studying and observing plant and animal life utilized the property for these purposes. The groups that attended conferences or retreats at the Headlands did not confine themselves to the conference center buildings, but continued discussions while walking throughout the property. Indeed, it appears that it is the beauty and seclusion of the surrounding property that made the Headlands so desirable to these groups.

(Emphasis added.)

Liberty Hill and Pheasant Ring are not educational institutions. Liberty Hill and Pheasant Ring, upon information and belief, do not offer unspoiled/undeveloped natural habitats for the study of plants and animal life, unlike the petitioners in *NMC*, *supra*, *Deering McCormick*, *supra* and *Kalamazoo Nature Center*, *supra*. Liberty Hill and Pheasant Ring are merely nonprofit

corporations. Liberty Hill and Pheasant Ring are merely landlords who are seeking to avoid paying property taxes.

As this Honorable Court recognized in *Michigan Baptist Homes, supra*, referencing a long-standing principle of Michigan jurisprudence, exemptions are to be strictly construed in favor of the taxing unit. The *Michigan Baptist Homes* Court explained:

Exemption from taxation effects the unequal removal of the burden generally placed on all landowners to share in the support of local government. Since exemption is the antithesis of tax equality, exemption statutes are to be strictly construed in favor of the taxing unit.³ . . .

³*St. Joseph's Church v Detroit, 189 Mich. 408; 155 NW 588 (1915). Evanston YMCA Camp v State Tax Commission, 369 Mich 1; 118 NW2d 818 (1962).*

Michigan Baptist Homes, supra at 669-670.

In finding that the Tax Tribunal's interpretation of MCL 211.7o was "too narrow and restrictive," the *Pheasant Ring* Court ignored nearly a century of Michigan jurisprudence. Strictly construing the statute, the *Pheasant Ring* Court should have affirmed the Tribunal's finding that the petitioner did not occupy the property within the purview of the statute.

Conversely, the panel below in *Liberty Hill* affirmed the Tribunal's ruling that the Petitioner-Appellant did not occupy the subject properties, in keeping with established precedent.

The Court below reasoned:

The undisputed facts demonstrate that the properties in question are leased to qualified low-income tenants, and that all of the tenants pay rent under written leases. The leases include provisions for security deposits, late payment fees, and hold-over fees. Under the plain language of the statute, we cannot say that petitioner "occupies" the properties that it leases to tenants for the tenants' personal housing purposes. The Tax Tribunal did not err in determining that petitioner did not "occupy" the properties and, therefore, was not entitled to an exemption under MCL 221.7o. [sic]

Liberty Hill, slip opinion, p 3.

A review of the “Fixed-Term Residential Lease Agreement” (Exhibit) leaves the reader to conclude that the tenants of the respective properties have possessory interests. Please refer to Sections 15, 16 and 17 of the Agreement. The tenants clearly are the occupants, not their Landlord, Liberty Hill.

II. A LANDLORD IS NOT ENTITLED TO A TAX EXEMPTION UNDER MCL 211.7o MERELY BECAUSE IT IS A NONPROFIT CORPORATION.

The Fixed-Term Residential Lease Agreement (Exhibit) shows that in 2001 a typical tenant of Liberty Hill property was paying \$1,524.36/month rent and that late charges, security deposits and returned check fees (Sections 6, 7 and 8) were also part of the anything but charitable scheme.

In the recent case of *Wexford Medical Group v City of Cadillac*, 474 Mich 192; 713 NW2d 734 (2006), this Honorable Court carefully considered the term “charitable institution” as it relates to a claim of tax exemption. The *Wexford* Court followed and applied the definition set forth in *Retirement Homes v Sylvan Twp*, *supra*.

The *Wexford* Court explained:

We conclude that the definition set forth in *Retirement Homes*, *supra* at 348-349, sufficiently encapsulates, without adding language to the statute, what a claimant must show to be granted a tax exemption as a charitable institution:

“[Charity] * * * [is] a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government.” [*Id.*, quoting *Jackson v Phillips*, 96 Mass (14 Allen) 539 (1867) (emphasis deleted; alterations in original).]

In light of this definition, certain factors come into play when determining whether an institution is a “charitable institution” under MCL 211.7o and MCL 211.9(a). Among them are the following:

(1) A “charitable institution” must be a nonprofit institution.

(2) A “charitable institution” is one that is organized chiefly, if not solely, for charity.

(3) A “charitable institution” does not offer its charity on a discriminatory basis by choosing who, among the group it purports to serve, deserves the services. Rather, a “charitable institution” serves any person who needs the particular type of charity being offered.

(4) A “charitable institution” brings people’s minds or hearts under the influence of education or religion; relieves people’s bodies from disease, suffering, or constraint; assists people to establish themselves for life; erects or maintains public buildings or works; or otherwise lessens the burdens of government.

(5) A “charitable institution” can charge for its services as long as the charges are not more than what is needed for its successful maintenance.

(6) A “charitable institution” need not meet any monetary threshold of charity to merit the charitable institution exemption; rather, if the overall nature of the institution is charitable, it is a “charitable institution” regardless of how much money it devotes to charitable activities in a particular year.

Wexford, supra at 214-215.

Examining Liberty Hill’s status under these factors, this Honorable Court should conclude that:

Factor One:

Liberty Hill, although a Michigan nonprofit corporation, is not an “institution,” as that term has been defined in *Alliance for Mentally Ill of Michigan v Dept of Community Health*, 231 Mich App 647, 658-659; 588 NW2d 133 (1998), *app den* 461 Mich 935; 603 NW2d 248 (1999). The *Alliance* Court referenced this Honorable Court’s decision in *City of Livonia v Dept of Social Services*, 423 Mich 466; 378 NW2d 402 (1985), wherein the Court found that a licensed “adult foster care facility” is an “institution” because it falls within the purview of the Adult Foster Care Facility Licensing Act (AFCFLA) 1979 PA 218; MCL 400.701 *et seq.* **The subject**

properties, five (5) houses owned by Liberty Hill are not licensed under the AFCFLA, with the possible exception of the house at 18499 Grimm (notably, licensed by Domel Inc. -- not the Petitioner).

Factor Two

Although Liberty Hill was incorporated in 1991 purportedly for “charitable” purposes, it is not a charitable “institution,” as discussed above. (Michigan Corporate ID No. 796399.)

Factor Three

Liberty Hill discriminates on the basis of who can afford to pay for its services, requiring security deposits from its tenants, charging monthly rents, assessing late fees and hold-over fees. This Honorable Court should conclude that the tenants living in the subject properties are not receiving a gift, just as the residents of Hillside Terrace in *Michigan Baptist Homes v City of Ann Arbor, supra*, were not receiving a gift. As the *Michigan Baptist Homes* Court reasoned at page 670, “exempt status requires more than a mere showing that services are provided by a nonprofit corporation.” Likewise in *Retirement Homes, supra*, the Court concluded that the residents of the apartments therein were not receiving a gift. The *Retirement Homes* Court noted that the residents were paying monthly fees which were designed to cover operating costs. Finding against exemption, the Court therein reasoned:

The question presented can thus be rephrased: Does Retirement Homes operate the apartments in such a way that there is a “gift” for the benefit of “the general public without restriction” or “for the benefit of an indefinite number of persons”?

We conclude that there is no “gift” for the benefit of an indefinite number of persons or for the benefit of the general public without restriction in the operation of the apartments. The monthly fee is designed to cover all operating costs as well as to recover the construction costs of the apartments. While it does not appear that the apartments are operated for a profit,¹⁵ neither does it

appear that the residents receive any significant benefit that they do not pay for. There is no “gift” to the residents.

¹⁵A corporation does not qualify for a tax exemption merely because it is structured to be non-profit and in fact makes no profit. By the same token, 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 cost of the services. *Michigan Sanitarium & Benevolent Ass’n v Battle Creek*, 138 Mich 676, 683, 101 NW 855 (1904); *Auditor General v R.B. Smith Memorial Hospital Ass’n*, *supra*, 293 Mich p 39, 291 NW 213; *Gull Lake Conference v Ross Twp*, *supra*.

Retirement Homes, *supra* at 349-350.

Factors Four and Five

Petitioner-Appellant has not met its burden of proving, by a preponderance of the evidence, that it meets the criteria set forth in Factors Four and Five. Exemptions are never presumed. The burden is on the claimant, not the government, to establish a clear entitlement to an exemption. Please refer to *Pro Med Healthcare v City of Kalamazoo*, 249 Mich App 490; 644 NW2d 47 (2002). Absent any regulation, including but not limited to licensing and periodic inspections under the AFCFLA, we are left to speculate as to what is really happening at the subject properties. Petitioner-Appellant has failed to meet its burden under Factors Four and Five.

Factor Six

Petitioner-Appellant has failed to meet its burden of proof.


CONCLUSION AND RELIEF REQUESTED

WHEREFORE, for the reason that the lower court and the Tax Tribunal correctly ruled that Liberty Hill was not entitled to an exemption from real property taxation, the City of Livonia respectfully requests that leave be DENIED and the decisions below be AFFIRMED.

Respectfully submitted,

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Dated: March 8, 2007

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PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorney of record to the above cause via Federal Express at her business address on the 8th day of March 2007. I declare that the statement above is true to the best of my information, knowledge and belief.

