

STATE OF MICHIGAN
IN THE SUPREME COURT

LAKE FOREST PARTNERS 2, INC.,
a Michigan corporation,

Appellee-Petitioner,

v

MICHIGAN DEPARTMENT OF TREASURY,

Appellant-Respondent. *OK,*

Supreme Court No.

Court of Appeals No. 257417

Michigan Tax Tribunal No. 0292089

*Opn 6/6/06
file 7/26/06*

APPLICATION FOR LEAVE TO APPEAL

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APPL

15/3

AG request #674

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QUESTION PRESENTED FOR REVIEW

- I. **The State Real Estate Transfer Act imposes a privilege tax on any written instrument transferring an interest in real property and the tax is payable when the instrument is offered for recordation. The amount of tax is based on the value of interests conveyed or transferred at the time of transfer. The Court of Appeals held that the tax is imposed on unrecorded purchase agreements that transfer equitable interests in vacant land and that subsequently recorded warranty deeds conveying legal title to the land and improvements affixed to the land made after the execution of the agreements but before deeding the land merely fixed the time for paying the tax which was based on the value of the vacant land. Is the Court's decision contrary to the express statutory language and the Legislature's intent?**

STATEMENT OF ORDER APPEALED FROM, GROUNDS, AND RELIEF SOUGHT

Appellant-Respondent, Michigan Department of Treasury, files this application for leave to appeal an order of the Court of Appeals, issued July 26, 2006,¹ that denied the Department's motion for reconsideration of the Court's published opinion issued on June 6, 2006.² In that published opinion the Court, in a split decision, reversed the Michigan Tax Tribunal's Opinion and Judgment, issued July 12, 2004,³ in which the Tax Tribunal upheld the Department's assessment of the State Real Estate Transfer Tax Act⁴ tax on Appellee-Petitioner, Lake Forest Partners 2, Inc., when it recorded warranty deeds that conveyed legal title to real estate.

The Court of Appeals held that the state real estate transfer tax is imposed on unrecorded purchase agreements transferring an equitable interest in vacant land, and that the subsequent recording of a warranty deed that conveyed legal title to the land and improvements (the home) only marked the time for payment of the state real estate transfer tax. Finally, the court held that the execution of purchase agreements was the transfer which fixed the value of the vacant land and the resulting tax due under the State Real Estate Transfer Act.

This application is premised on three grounds. First, this case concerns the operation of the State Real Estate Transfer Act (SRETTA) and is an issue of significant public interest to sellers' of real estate within Michigan and it involves a case against the State of Michigan.⁵

Second, the Court of Appeals ignored express statutory language in the SRETTA when it held that an unrecorded purchase agreement for vacant land is subject to the state real estate transfer tax but a warranty deed conveying fee title to an improved parcel is not. The Court's

¹ Attachment A, Order Denying Motion for Reconsideration

² Attachment B, *Lake Forest Partners 2, Inc v Dep't of Treasury*, Docket No., 257417, For Publication (June 6, 2006).

³ Attachment C, Michigan Tax Tribunal's Opinion and Judgment, Docket No., 292089, issued July 12, 2004.

⁴ MCL 256.521, *et seq.*

⁵ MCR 7.302(B)(2).

failure to abide by long established rules of statutory analysis and application of express statutory language that evinces the legislative intent involves legal principles of major significance to the state's jurisprudence.⁶

Third, the decision by the Court of Appeals is clearly erroneous and will result in material injustice because it conflicts with the Legislature's express statement that the state real estate transfer tax is imposed on recorded written instruments.⁷ Tax measures are adopted to raise revenue. In this case the State Real Estate Transfer Act was adopted to replace revenue lost by the State School Aid Fund as part of an exemption of principal residences from school operating millages. The Court's majority opinion offers a primer on how to escape or evade the real estate transfer tax.

The Department requests that this Court grant this application for leave to appeal, and that the Court ultimately reverse the June 6, 2006, published opinion by the Court of Appeals and in doing so reinstate the Tax Tribunal Opinion and Judgment upholding the assessment of the state real estate transfer tax on Lake Forest's recording of warranty deeds conveying legal title to real estate.

⁶ MCR 7.302(B)(3).

⁷ MCR 7.302(B)(5).

STATEMENT OF PROCEEDINGS AND FACTS

Lake Forest is in the business of building single-family homes.⁸ The transactions at issue involve "purchase agreements" between Lake Forest and its customers.⁹ In each purchase agreement there is a contract to sell vacant land and an agreement to construct a home on the vacant land.¹⁰ Lake Forest paid the real estate transfer tax imposed by the SRETTA based on the value of the vacant lot at the time the purchase agreement was executed.¹¹

One form of the purchase agreements stated in part¹²:

This is a contract for the construction of a new single-family home...between Lake Forest Partners 2, Inc., a Michigan Corporation (a/k/a "Johnson Building Group"), (hereafter, "the Builder/Developer"), and ... (hereafter, "the Customer"), on Lot _____, ... to be sold to the Customer by the Developer.

Another form for these purchase agreements were pro forma Ann Arbor Board of Realtor Sales Contracts.¹³ Those forms as completed indicated possession was to be given "at closing" and that the "Seller agrees to grant and convey, as required above, by warranty deed." These forms state: "Seller will pay transfer tax when title passes."

The purchase agreements, in either form, were not recorded with the County Register of Deeds.¹⁴ Upon completion of the construction of a home and a certificate of occupancy being issued there was a closing during which title and possession of the home were transferred to the

⁸ Petition ¶¶ 4b and 4d.

⁹ Attachment C, Tribunal Opinion and Judgment, p 5, ¶ 5, incorporating verbatim the parties' Stipulation of Facts.

¹⁰ Attachment C, Tribunal Opinion and Judgment, p 5, ¶ 5, incorporating verbatim the parties' Stipulation of Facts.

¹¹ Attachment C, Tribunal Opinion and Judgment, p 5, ¶ 5, incorporating verbatim the parties' Stipulation of Facts.

¹² Appellee's Brief on Appeal, Attachment C; Respondent' Brief in Support of Motion for Summary Disposition, Exhibit F-3.

¹³ Appellee's Brief on Appeal, Attachment D; Respondent' Brief in Support of Motion for Summary Disposition, Exhibit F-1 and F-2.

¹⁴ Attachment C, Tribunal Opinion and Judgment, p 9.

customer.¹⁵ After a closing Lake Forest recorded a deed and paid the state real estate transfer tax based on the value of the vacant lot as it existed at the time the purchase agreement was executed.¹⁶

The Department conducted an audit of Lake Forest's transactions, determined that there was a deficiency in the amount of state real estate transfer tax paid, and issued tax assessment K447066, consisting of taxes in the amount of \$65,968.00, accruing interest, and penalty in the amount of \$16,492.00. The tax period audited was January 1, 1997 through September 30, 2000.¹⁷

At Lake Forest's request an informal conference was held pursuant to the Revenue Act.¹⁸ The informal conference referee upheld the assessment in a written recommendation.¹⁹ On Lake Forest's subsequent appeal to the Tax Tribunal, it too upheld the state real estate transfer tax assessment. The Tribunal understood the question for resolution to be²⁰:

Did the purchase agreements involved in this matter transfer any interest in property at the time they were entered into or did the transfer of interest occur at the time the warranty deed was executed and delivered to the purchaser at the time of closing?

The Tribunal characterized the purchase agreements as contracts for the sale of land because each agreement contained identities of the parties, described the property, stated the consideration to be paid and terms and time for payment and performance.²¹ After reviewing case law, the Tribunal determined that the signing of a contract for sale of land did not transfer

¹⁵ Attachment C, Tribunal Opinion and Judgment, p 9.

¹⁶ Attachment C, Tribunal Opinion and Judgment, pp 9-10.

¹⁷ Petition ¶ 2.

¹⁸ MCL 205.1 *et seq.*, MCL 205.21(2)(c), (d), and (e).

¹⁹ Attachment D, Informal Conference Recommendation.

²⁰ Attachment C, Tribunal Opinion and Judgment, p 12.

²¹ Attachment C, Tribunal Opinion and Judgment, p 13.

any interest in property until both parties completely satisfied the terms and conditions stated in the contract.²²

The Tribunal determined that the point in time when the conditions in the contract for sale were completed occurred at the closing when Lake Forest delivered a certificate of occupancy for the home, the purchaser paid the remaining balances, and Lake Forest conveyed legal title to the real estate by warranty deed.²³ Only at that point in time did Lake Forest transfer an interest in property to the purchaser and the corresponding value of the property subject to the state real estate transfer tax included both the lot and home.²⁴

The majority decision of the Court of Appeals disagreed and reversed.²⁵ The Court viewed the purchase agreements as encompassing two separate agreements: one, a contract for sale of vacant land; and two, a written executory contract for residential construction of a home on vacant land.²⁶ And each agreement stated separately the consideration to be paid.²⁷

The Court's review of case law led it to conclude that it is "well-settled that the execution of a purchase agreement transfers an interest in property."²⁸ Further, the Court determined that the value on which the rate of the state real estate transfer tax was imposed was fixed at the time of the transfer of a property interest.²⁹ Thus, the Court held that the execution of the unrecorded purchase agreements transferred an equitable interest in vacant land, that this transfer fixed the

²² Attachment C, p 13.

²³ Attachment C, pp 13-14.

²⁴ Attachment C, pp 13-14.

²⁵ Attachment B, p 1.

²⁶ Attachment B, p 1.

²⁷ Attachment B, p 1.

²⁸ Attachment B, p 3.

²⁹ Attachment B, p 2.

value of the property interest transferred, and that it was only the value of the vacant land that determined the amount of the tax.³⁰

The dissenting opinion of the Court of Appeals, in contrast, would have held that the legislative intent of the SRETTA was to impose a tax based on the value of property at the time title was legally transferred.³¹ The dissenting opinion stated that Lake Forest's purchase agreements were not recorded but instead the warranty deeds were, and on that fact alone the unambiguous language of the SRETTA imposes a tax on the deeds.³² In addition, the dissent concluded that the majority erroneously determined that the value of the property transferred was determined at the time the purchase agreements were executed rather than when the warranty deed conveyed legal title to improved property.³³ Also, the dissent stated that the majority's decision to pick the first transfer as the transfer fixing the value of the property transferred created a complication not intended by the Legislature.³⁴ The dissent concluded that the Legislature intended that the transfer fixing the value of the property conveyed occurred with the instrument that the tax was imposed on—the warranty deed.³⁵

The Department filed a motion for reconsideration in the Court of Appeals in which it argued that the minority decision of the Court of Appeals correctly stated that the Legislature never intended the result the majority decision reached. Further, the Department argued that, in any event, the majority decision failed to consider the secondary result that an executed warranty deed conveying legal title to real estate that was different from the equitable interest in a vacant lot was, under the express language of the SRETTA, subject to the state real estate transfer tax.

³⁰ Attachment B, pp 3-4.

³¹ Attachment B-1.

³² Attachment B-1, p1.

³³ Attachment B-1, p2.

³⁴ Attachment B-1, p2

³⁵ Attachment B-1, p3.

The Court of Appeals denied that motion,³⁶ and the Department now files this application for leave to appeal.

³⁶ Attachment A.

ARGUMENT

I. **Statutory analysis of the SRETTA begins with discerning the Legislature's intent and the express statutory language is the best evidence of that intent. The Court of Appeals failed to abide by the long-established rules for statutory analysis when it held that unrecorded purchase agreements are subject to the SRETTA, that a warranty deed, when recorded, only fixed the time for payment of the state real estate transfer tax, and that the value of the vacant land transferred by the purchase agreements determined the amount of the tax.**

A. Standard of Review

Statutory interpretation is a question of law that is considered de novo on appeal.³⁷

B. The Legislature expressly stated in the SRETTA that certain executed and recorded written documents are subject to tax.

The Legislature imposed the state real estate transfer tax on the privilege of transferring interests in real property.³⁸

Two broad categories of documents transferring an interest in property, when recorded, are subject to the SRETTA.³⁹ Section 3 of SRETTA states⁴⁰:

(1) There is imposed, in addition to all other taxes, a tax upon the following written instruments executed within this state when the instrument is recorded:

(a) Contracts for the sale or exchange of property or any interest in the property or any combination of sales or exchanges or any assignment or transfer of property or any interest in the property.

(b) Deeds or instruments of conveyance of property or any interest in property, for consideration.

(2) The person who is the seller or grantor of the property is liable for the tax imposed under this act.

The Legislature also defined the term "property" very broadly, stating in §2⁴¹:

³⁷ *Morales v Auto-Owners Ins Co*, 469 Mich 487, 490; 672 NW2d 849 (2003).

³⁸ State Real Estate Transfer Act, MCL 207.521 *et seq.*, preamble.

³⁹ MCL 207.521 *et seq.*, MCL 207.523.

⁴⁰ MCL 207.523.

⁴¹ MCL 207.522(b).

"Property" includes land, tenements, real estate, and real property and all rights to and interests in land, tenements, real estate, or real property.

The majority of the Court of Appeals stated that its primary task when construing the SRETTA was to give effect to the Legislature's intent and the words of the statute are the most reliable evidence of the Legislature's intent.⁴²

The Legislature's intent could not have been more clear than as stated in §3 of the SRETTA. The proper construction of §3(1) is that the tax is imposed on contracts for sale that transfer an interest in property if the contract is recorded; and likewise the tax is also imposed on any subsequent deeds transferring an interest in property when those deeds are recorded.

In contrast, the court's construction would limit the SRETTA to impose a tax only on that part of Lake Forest's purchase agreements transferring equitable interests in vacant lands,⁴³ that the amount of tax would be based on the value of the equitable interest in vacant land, and the tax would be payable upon the recording of a warranty deed that conveyed legal title to improved property. The court's basis for that construction turned on its conclusion that the definition of "value,"⁴⁴ in particular the phrase "at the time of transfer," meant that there could only be one transfer fixing the value of all property interests the parties intended to transfer and that occurred with the first transfer of a partial interest.⁴⁵ This was true, under the majority's decision, even if more than one written instrument for the parcel of land was executed by the seller and purchaser and those other instruments transferred other interests in that property.

The court's construction is not how the Legislature drafted §3(1) to read. The Legislature did not use the disjunctive "or" in between §3(1)(a) and §3(1)(b) which would indicate a choice

⁴² Attachment B, p 3.

⁴³ Attachment B, p3.

⁴⁴ MCL 207.522(e).

⁴⁵ Attachment B, p3.

among alternatives.⁴⁶ Rather, the Legislature drafted §3(1) to impose a privilege tax on any written instrument, whether a contract for sale, assignment or exchange of property or interests in property, a combination of sales, assignments, or exchanges of property or interests in property, and on deeds and similar instruments that transfer and convey an interest in property when such written instruments are recorded.

Using the correct construction of §3(1), the proper role for the definition of "value" is understood. That definition merely informs that the value of a property interest is set at the time a given written instrument transfers an interest in property. The definition does not establish that there can only be one transfer and one value subject to the tax imposed by the SRETTA. All that definition does is define that a property interest is valued at the time it is transferred by a written instrument.

Clearly, by its express language in §3(1) the Legislature meant to impose the state real estate transfer tax on the widest array of instruments and combinations of instruments selling, assigning, exchanging, transferring and conveying any interest in property. And based on the proper role for the definition of value, every written instrument and combination of such instruments that transfer interests in property determines the value of the interest at the time each instrument causes the transfer.

⁴⁶ *Smith v Eilliard*, 110 Mich App 25, 30; 312 NW2d 161 (1981), and The American Heritage Dictionary COLLEGE, Fourth Edition (2004), p 977, defining "or" as used to indicate alternatives.

C. The legislative intent expressed in § 3 that the tax imposed by the SRETTA on written instruments transferring property or an interest therein and whether effectuated by one instrument or several, is buttressed by §§ 5 and 12 of the SRETTA which bases the amount of tax on the total value of the property transferred.

Section 5(1) states that the levied rate of the SRETTA is \$3.75 for each \$500.00 or fraction of \$500.00 of the "total value of the property being transferred."⁴⁷ In § 5(2) the Legislature also required that the total value of the property transferred be stated on the face of that written instrument subject to tax under the SRETTA or an affidavit of real estate transfer attached to that recorded instrument.⁴⁸ The Legislature defined the term "value" to mean "the current or fair market worth in terms of legal monetary exchange at the time of transfer."⁴⁹ Thus, the SRETTA is a tax on written instruments that transfer interests in real property and the tax is measured by the total value of the property transferred. But before the total value of the property transferred can be determined, the total real property interest transferred must be known.

Recordation of the written instrument is the "trigger" for when the tax is paid because the recorded instrument identifies the total property interest transferred or conveyed by that instrument and as required by §5(2) either the recorded written instrument or an attached affidavit of real estate transfer must state on its face the total value of the property transferred. Based on that recorded written instrument it then is possible to calculate the tax under §5(1).

In this case then, SRETTA §§ 3 and 5 when read together reveal that the Legislature's intent was to impose the tax on written instruments conveying the total property interest agreed to by Lake Forest and its purchasers and that the rate of the tax is to be levied on the value of the total property interest transferred by the recorded written instrument.

⁴⁷ MCL 207.525(1).

⁴⁸ MCL 207.525(2).

⁴⁹ MCL 207.522(e).

Only the warranty deeds in Lake Forest's transactions satisfy the requirements of §§ 3 and 5 of the SRETTA. The warranty deed is a written instrument that is recorded. The purpose of the warranty deed is to convey title to real property,⁵⁰ and that real property includes homes affixed to land.⁵¹ In these transactions, there is a closing after the home is built during which a certificate of occupancy is issued, the purchasers pay the balance of the purchase price for the home, and Lake Forest transfers legal title by warranty deed.⁵² And only after the closing is the deed recorded. Further, either on the deed's face or in an attached affidavit of real estate transfer the total value of the property transferred is stated. The total value of the real property transferred must be based on the total property transferred, i.e., the land with a constructed home.

That result does not change even if Lake Forest had first recorded the purchase agreements and paid the tax based on the value of the vacant land. Lake Forest would still owe additional tax on the remaining value of the legal title interest conveyed by the warranty deed, when recorded, because that interest is part of the total property interest transferred, it is part of the total value of the property transferred, and that interest had not previously been subjected to tax. The reason is found in §12 of the SRETTA.⁵³

Section 12 permits the Department to require payment of the state real estate transfer tax on the total value of property transferred by a subsequent written instrument, i.e., a warranty deed conveying legal title to a home and land. That section states in part⁵⁴:

The tax imposed by this act shall be paid only once. A tax shall not be imposed on a written instrument that transfers property if the written instrument is given and the transfer made pursuant to a written executory contract upon which the tax

⁵⁰ *Goodspeed v Nichols*, 231 Mich 308, 316; 204 NW 122 (1925).

⁵¹ *Wayne County v Britton Trust*, 454 Mich 608, 615; 563 NW2d 674 (1997), and the General Property Tax Act, MCL 211.1 *et seq.*, MCL 211.2(a).

⁵² Attachment C, Tribunal Opinion and Judgment, Findings of Fact, p 12.

⁵³ MCL 207.532.

⁵⁴ MCL 207.532(1).

was previously paid. A written instrument that is evidence of indebtedness or of a contract right is subject to the tax imposed by this act only to the extent of the new consideration given for the property. A written instrument that is given to supplement, reform, or correct a prior written instrument is subject to the tax imposed by this act only to the extent of the new consideration given for the property.

The Legislature states in the first sentence that the tax shall be paid only once. But the tax paid only once must be based on the "total value of the property transferred."⁵⁵ Thus, in the subsequent sentences of §12(1), the Legislature also provides that the state real estate transfer tax shall be imposed on written instruments transferring property where the total value of the property transferred had not previously been subjected to the tax. The Legislature's wording in §12(1) clearly discloses that intent.

So, in the second sentence of §12(1), the Legislature prohibits imposing tax on a written instrument that transfers property made and given pursuant to a written executory contract on which the tax was previously paid. In other words, the tax may be imposed on a written instrument that transfers property made and given pursuant to a written executory contract on which the tax had **not** previously been paid.

Next, in the third sentence, the Legislature authorizes imposing the tax on a written instrument evincing indebtedness but only to the extent of new consideration. And in the fourth sentence, the Legislature permits taxing written instruments that supplement, reform, or correct prior instruments on which the tax has been paid, but again, only to the extent of new consideration paid for the property.

The legislative intent is obvious; the Legislature is seeking to impose the state real estate transfer tax on the total value of the property transferred.

⁵⁵ MCL 207.525.

Pursuant to §12(1), Lake Forest must still pay the state real estate tax on the total value of the property transferred when the warranty deed is recorded even if its purchase agreement consists of two separate agreements, one for a contract to sell land, and the second a written executory contract for residential construction.

Lake Forest paid the state real estate transfer tax only on the equitable interest transferred by the contract for sale of vacant land. But, the written executory contract for residential construction was not previously subjected to the tax. Pursuant to the second sentence in §12(1), the subsequent warranty deed transferring legal title to the home and made and given pursuant to the executory contract would be subject to the tax on the value of the property transferred that had not previously been taxed.

Viewed in another context under the fourth sentence in §12(1), warranty deeds executed by Lake Forest supplement both the contract for sale of land and the written executory contract and there is new consideration paid for the warranty deed at the closing. Again, as the Court of Appeals stated, each separate agreement under the purchase agreement states the separate corresponding consideration for the land and for the home.⁵⁶ Further, the purchasers must pay for the completed home at closing and in return Lake Forest then executes a warranty deed conveying legal title to the home.⁵⁷ The result therefore is that the executed warranty deed conveying legal title to the home and the consideration paid at the closing are part of the total value of the property transferred and subject to the state real estate transfer tax.

⁵⁶ Attachment B, p 1.

⁵⁷ Appellee's Brief on Appeal, Attachment C; Respondent' Brief in Support of Motion for Summary Disposition, Exhibit F-3, Purchase Agreement. Appellee's Brief on Appeal, Attachment D; Respondent' Brief in Support of Motion for Summary Disposition, Exhibit F-1 and F-2, Sales Contracts.

D. The Legislature has already deemed that sales agreements for property involving residential construction are subject to the tax imposed by the SRETTA.

Finally, §6 of the SRETTA⁵⁸ further supports the above result that both the value of the vacant land and the value of the residential construction embodied in the warranty deed conveying legal title constitutes both the total property transferred and the total value of the property transferred and are subject to the tax.

In §6 there are 25 exempt instruments and transfers of property.⁵⁹ The Legislature in subsection (r) exempted from the SRETTA bona fide sales agreements involving residential construction, provided these agreements were entered into before the effective date of the SRETTA, April 1, 1994. Section 6(r) states⁶⁰:

The following written instruments and transfers of property are exempt from the tax imposed by this act:

* * *

(r) A transfer made pursuant to a bona fide sales agreement made before the date the tax imposed under sections 3 and 4, if the sales agreement cannot be withdrawn or altered, or contains a fixed price not subject to change or modification. However, a sales agreement for residential construction may be adjusted up to 15% to reflect changes in construction specifications.

The express words of this exemption provision show that the Legislature was very aware of the existence of sales agreements transferring property and for residential construction. By this exemption the Legislature did two things. First it exempted sales agreements transferring property and involving residential construction, if these agreements were made before April 1, 1994, and if those agreements could not be withdrawn or altered, or the price was fixed and unchangeable. Second, the Legislature permitted such agreements to retain exempt status even if

⁵⁸ MCL 207.626.

⁵⁹ MCL 207.526.

⁶⁰ MCL 207.526(r).

the cost of construction changed due to construction specifications but only allowing an adjustment of 15% for such costs.

The fact that the Legislature expressly allowed for an adjustment of the costs associated with residential construction underscores that, but for the exemption in §6(r), the Legislature intended that both the land and the home to be built constituted real property and the total value of the property transferred for purposes of the SRETTA. If this were not true then there would be no need for the Legislature to even mention residential construction or costs associated with residential construction in §6(r).

A cardinal rule of statutory construction is *inclusio unius est exclusio alterius*, the express mention of one thing in a statute implies the exclusion of other similar things unexpressed.⁶¹ The corollary to the Legislature's recognition of sales agreements transferring property and for residential construction being exempt if such agreements were made before April 1, 1994, is that the Legislature intended to impose the tax on sales agreements transferring property and for residential construction made after April 1, 1994, and that the total value of the property and construction constituted the total value of the property transferred and subject to the rate of tax.

Therefore if Lake Forest recorded its purchase agreements, Lake Forest would be liable for the state real estate transfer tax on the total value of the property transferred because they are sales agreements transferring property and for residential construction and were made after the effective date of the SRETTA.

⁶¹ *Houghton Lake Area Tourism & Convention Bureau v Wood*, 255 Mich App 127, 150; 662 NW2d 758 (2003); *Huggett v Department of Natural Resources*, 232 Mich App 188, 196; 590 NW2d 747 (1998); OAG 1998, Opinion 6988, 1998 Mich. AG LEXIS 27, *7.

E. The decision by the majority of the Court of Appeals will only result in further litigation.

The majority's decision creates uncertainty. The court's decision ignores a significant body of real property law that indicates that deeds convey title to real property,⁶² and that real property includes homes affixed to land.⁶³ But under the court's decision that area of law becomes irrelevant.

Most significantly, the court's decision causes uncertainty with applying the express language of the SRETTA. Although there is in these transactions a warranty deed conveying legal title to real property that is both executed in this state and recorded, the tax will never be imposed on such instruments. The reason is that the decision by the majority creates a legislatively unintended opportunity for a sophisticated seller to pay tax on only a portion of the total property interest actually conveyed. All the seller has to do is create a purchase agreement transferring only an equitable interest in unimproved land even though both seller and purchaser fully intend the transfer of legal title to improved property by warranty deed. Under the decision by the majority of the Court of Appeals only the partial value of the property transferred is subjected to the tax. That result created by the majority's decision is directly contrary to the express language in §§3 and 5 of the SRETTA.

Because the majority of the Court of Appeals did not apply the express statutory language more litigation must needlessly occur.

⁶² *Goodspeed v Nichols*, 231 Mich 308, 316; 204 NW 122 (1925).

⁶³ *Wayne County v Britton Trust*, 454 Mich 608, 615; 563 NW2d 674 (1997).

CONCLUSION

This Court should grant this application for leave to appeal because the Court of Appeals did not give effect to the Legislature's express statutory language, that is, that the SRETTA imposes a tax on a written instrument that transfers property and that is executed in this state and then recorded. By ignoring that express language the lower court also created uncertainty in the application of the SRETTA.

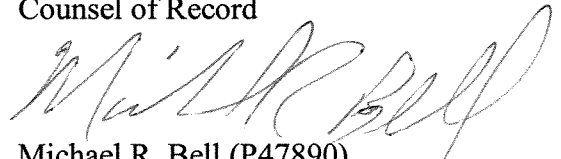
RELIEF

The Department respectfully requests that this Court grant the application for leave to appeal, and overturn the June 6, 2006, decision by the majority of the Court of Appeals and thereby reinstate the Tax Tribunal's opinion and judgment holding that the SRETTA is correctly imposed on executed and recorded instruments conveying the total property interest.

Respectfully submitted,

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