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STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals
Murray, C.J., M. J. Kelly and Rick JJ

MACK C. STIRLING,

Petitioner-Appellant,

v

COUNTY OF LEELANAU,

Respondent-Appellee.

SC: 162961

COA: 353117

MOAHR: 19-003870-TT

PETITIONER-APPELLANT MACK STIRLING'S REPLY TO THE COUNTY OF LEELANAU BRIEF IN OPPOSITION TO STIRLING'S APPLICATION FOR LEAVE TO APPEAL

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I. INTRODUCTION

At issue in this case is important statutory language concerning Michigan's principal residence exemption ("PRE") for owner-occupied residential property. That language unambiguously states that a PRE can be lost if a Michigan homeowner or their spouse "owns property in a state other than this state for which that person or his or her spouse claims an exemption, deduction, or credit substantially similar to the exemption provided under this section…." MCL 211.7cc(3)(b) ("Section 7cc(3)(b)").[1] *Appellee County Of Leelanau's Brief In Opposition To Mack Stirling's Application For Leave To Appeal* ("Leelanau's Brief"), urges the Court to decide this case based on statutory frameworks and other considerations. That, however, violates the statute's unambiguous language, which makes controlling whether "an **exemption**…substantially similar to the (PRE)" was claimed by Dixie Stirling, the spouse of Appellant Mack Stirling ("Stirling").

Leelanau's Brief concedes that Dixie Stirling claimed an exemption for rental properties that were **the tenants' residences**, not owner-occupied residences. Leelanau's Brief also concedes that rental properties cannot qualify for the PRE, which is limited to owner-occupied residences. **Yet, whether residences are owner-occupied, or a tenant's residence, makes all the difference in the world for the PRE, which is limited to owner-occupied residences. That rental properties cannot qualify for the PRE proves that rental properties are substantially different from owner-occupied properties. It also proves that exemptions for rental properties are substantially different from the PRE.**

Given the foregoing, the exemption Dixie Stirling claimed for Utah rental properties that were the tenants' residences, was not an exemption substantially similar to the PRE. That is

[1] Under sections 7cc and 7dd of the General Property Tax Act (the "Act"), MCL 211.7cc and MCL 211.7dd, the PRE is only for owner-occupied residences; rental properties do not qualify.

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what the Tax Tribunal correctly determined. Tax Trib Dkt 19, Final Opinion and Judgment, p 3, attached as Appendix 2 to Appellant Stirling's Application for Leave to Appeal (the "Application").

Leelanau's Brief makes other errors. For example, its analysis of MCR 7.305(B) is mistaken. This Court serves all Michigan residents in a very important way when it enforces the unambiguous statutory language that the peoples' elected representatives enacted. Also, this case's PRE issue will impact many Michigan residents.[2]

Leelanau's Brief also wrongly claims that the published decision below is just and sensible. These claims are untrue. The Legislature understandably limited residents to one PRE for **owner-occupied residences**. However, the Legislature treated rental properties and owner-occupied residences very differently for equally sound reasons. Surely everyone would agree that owning non-Michigan commercial or industrial rental properties that obtain exemption in another state, does not and should not jeopardize entitlement to this state's PRE. The outcome should be the same whether the rental properties are commercial, industrial or residential. That is what the Legislature established in unambiguous language.

The Tax Tribunal's decision below was correct. To enforce Section 7cc's unambiguous language, the Court should grant leave and reverse the published Court of Appeals decision.[3]

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[2] Page 1 of Appellant Stirling's Application noted that in recent times, Michigan had over 4,629,000 housing units, and over seventy percent were owner-occupied. United States Census Bureau, https://www.census.gov/quickfacts/MI (accessed April 24, 2021). With about three million owner-occupied residences, even if a small percent of these owners have rental properties in other states, it is still a sizeable number.

[3] The Court of Appeals decision is attached as Appendix 1 to Stirling's Application.

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II. THE LEGISLATURE UNAMBIGOUSLY ESTABLSHED THAT EXEMPTIONS FOR AN OWNER-OCCUPIED RESIDENCE AND A TENANT'S RENTED RESIDENCE ARE SUBSTANTIALLY DIFFERENT

Per Act sections 7cc and 7dd, MCL 211.7cc and MCL 211.7dd, only an owner-occupied residence obtains the PRE. Act Section 7cc(3)(a) and (b), MCL 211.7cc(3)(a) and (b), states:

> (3) Except as otherwise provided in subsection (5), a married couple who are required to file or who do file a joint Michigan income tax return are entitled to not more than 1 exemption under this section. For taxes levied after December 31, 2002, a person is not entitled to an exemption under this section in any calendar year in which any of the following conditions occur:
>
> (a) That person has claimed a substantially similar exemption, deduction, or credit, regardless of amount, on property in another state. Upon request by the department of treasury…a person who claims an exemption under this section shall, within 30 days, file an affidavit on a form prescribed by the department of treasury stating that the person has not claimed a substantially similar exemption, deduction, or credit on property in another state. A claim for a substantially similar exemption, deduction, or credit in another state occurs at the time of the filing or granting of a substantially similar exemption, deduction, or credit in another state....
>
> (b) Subject to subdivision (a), **that person or his or her spouse owns property in a state other than this state for which that person or his or her spouse claims an exemption, deduction, or credit substantially similar to the exemption provided under this section**, unless that person and his or her spouse file separate income tax returns. [Emphasis added].

Leelanau's Brief errs in claiming that the exemption Dixie Stirling claimed for rental properties is substantially similar to the PRE.

Leelanau's Brief, at pp 11-12, wrongly claims the PRE and Utah's exemption are substantially similar because both are for residences. Leelanau's Brief, at p 7, also impugns this appeal based on Stirling's purportedly accepting the Court of Appeals definition of "substantially similar."

In construing "substantially similar," the Court of Appeals, at p 5, stated:

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> First, the "substantial similarity" standard is not so demanding that it requires exactness. The meaning of the common but statutorily undefined word "substantial" is "being largely but not wholly that which is specified," while "similar" is defined as "having characteristics in common" and "alike in substance or essentials." *Merriam-Webster's Collegiate Dictionary* (11th ed.).

Exemptions for owner-occupied residences and rental residences are both for residences. However, for purposes of the PRE they are different in a way that cannot be more important: rental properties cannot qualify for the PRE. **That rental properties cannot qualify for the PRE, proves that for purposes of the PRE, rental properties are substantially different from owner-occupied properties. By limiting the PRE to owner-occupied residences, the Legislature has made as clear as it could have, that owner-occupied properties and rental properties are polar opposites and substantially different.**[4]

Leelanau's Brief, pp 12-13 asserts that Utah's exemption for primary residences is one exemption, not two, and that it simply is a broader exemption than Michigan's PRE. Critically, this ignores Section 7cc(3)(b)'s unambiguous language stating that Stirling loses the PRE **only** if Dixie Stirling had claimed "an exemption, deduction, or credit substantially similar to the exemption provided under this section…." MCL 211.7cc(3)(b). The exemption Dixie Stirling claimed was for rental properties that were the tenants' residences. As already shown, the Utah exemption claimed is not substantially similar to the PRE, which is for an owner-occupied

[4] The Application, at p 13, n 9, did not concede that the Court of Appeals properly defined "substantially similar." Instead, the point made was that it was unnecessary to resolve that. The unambiguous statutory language makes the exemptions substantially different. Therefore, under any reasonable construction of "substantially similar," an exemption for the rented residence of a tenant was not substantially similar to the PRE's exemption for an owner-occupied residence.

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property. Rather, Utah's exemption for rental property that could not qualify for the PRE, is an exemption that is substantially different from the PRE.[5]

Appellant Stirling also vehemently disagrees with the Leelanau Brief contention that the Utah statute has one exemption, and that, therefore, the Utah exemption is substantially similar to the PRE. Utah law has an exemption for rental properties, and another exemption for owner-occupied properties. Furthermore, it would not have mattered if the Utah legislature had unambiguously specified that there is one Utah exemption that broadly includes owner-occupied properties and rentals. Utah law does not supersede Michigan law. The Michigan Legislature has unambiguously provided that the PRE is lost only if the exemption claimed in the other state is substantially similar to the PRE. It does not matter how the other state describes its exemption. What matters is whether the exemption claimed is in fact, substantially similar to the PRE. The exemption claimed for rental properties that were tenant residences substantially differs from the PRE, given that rental properties cannot qualify for the PRE.[6]

III. THE APPLICATION SATISFIES THE MCR 7.305(B) STANDARDS FOR GRANTING LEAVE TO APPEAL

MCR 7.305(B) states in pertinent part:

> **(B) Grounds**. The application must show that
>
> ***
>
> (2) the issue has significant public interest and the case is one by or against the state or one of its agencies or subdivisions or by or against an officer of the state or one of its agencies or subdivisions in the officer's official capacity;
>
> (3) the issue involves a legal principle of major significance to the state's jurisprudence;

---

[5] Utah's exemption for leased property that is the tenant's residence is found in Utah Code section 59-2-103(6)(b)(ii).

[6] Leelanau Brief's claim that Utah has one exemption for both owner-occupied and rental residences also is undermined by its contention that whether there is one or two exemptions is so obscure that Utah courts have not yet addressed this. Leelanau Brief, p 7.

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(5) in an appeal of a decision of the Court of Appeals,

(a) the decision is clearly erroneous and will cause material injustice, or

(b) the decision conflicts with a Supreme Court decision or another decision of the Court of Appeals . . . .

Leelanau's Brief fails to refute what the Application established: this case satisfies these standards. Application, pp 15-17.

Leelanau's Brief, at p 7, argues that this case is not important to this state for several reasons, in particular, because this case involves a question of Utah law, and an issue that would impact few Michigan residents. Leelanau's Brief could not be more wrong.

The Tax Tribunal held that Utah's exemption for rental properties that were the residences of tenants was not substantially similar to Michigan's PRE. When it comes to the PRE, rental properties are substantially different from owner-occupied properties. Rental properties cannot qualify for the PRE. In this most important of ways, rental properties and owner-occupied properties are the proverbial night and day opposites.

When the Court of Appeals nullified the controlling unambiguous statutory language, it substituted its policy decision for the Legislature's. Anytime a Michigan court does this, it is an important matter for this state's jurisprudence. In our democracy, it is the Legislature that expresses the will of the people through its policy decisions and language. This is especially important here because the decision below is published. No precedent is more dangerous than such a published decision that has nullified the Legislature's unambiguous statutory language, and the will of the people.

Leelanau's Brief, at p 14, also errs in claiming that there has been no material injustice because the Stirlings have received Utah exemption on two rental properties. Whatever Utah

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decided regarding the subject rental properties, Stirling's owner-occupied Michigan residence qualifies for the PRE. Stirling is entitled to be taxed accordingly.

Leelanau's Brief wrongly disregards that in unambiguous statutory language, the Legislature made owner-occupied and rental properties as different as could be, and that terminating Stirling's PRE is blatantly unlawful. This is not only a material injustice to Stirling, but is an injustice that will be repeated over and over given the millions of Michigan residents who qualify for the PRE and that the decision below is published.[7]

This case involves a state subdivision. The issues are of significant public interest, and significant to our jurisprudence. MCR 7.305(B)'s standards are fully satisfied in multiple ways.

IV. CONCLUSION AND RELIEF REQUESTED

For the reasons described above, Stirling asks the Court to grant his application for leave to appeal. In the alternative, Stirling requests that the Court enter an order that peremptorily reverses the Court of Appeals Opinion, affirms the Tax Tribunal's Opinion and Judgment, which granted Stirling summary disposition and ordered that the tax rolls be corrected so that the subject property obtained the principal residence exemption under MCL 211.7cc, and grant Stirling such other relief as the Court deems just and proper.

Respectfully submitted,

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[7] As noted above, with about three million owner-occupied residences in Michigan, a sizeable number of the state's residents would be adversely impacted by the published Court of Appeals decision, even if a relatively small percent owned rental properties in other states.

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