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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

MACK STIRLING'S REPLY TO THE COUNTY OF LEELANAU'S SUPPLEMENTAL BRIEF

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I. INTRODUCTION

The County's attempt to throw anything at the wall that sticks is front and center: now at the eleventh hour, the County claims that this isn't a question of Michigan law, but of Utah law. That's nonsense. At issue in this case is the statutory language concerning *Michigan's* principal residence exemption ("PRE") for owner-occupied residential property. This is purely an interpretive question of Michigan law, has never been treated as anything but a question of Michigan law, and the County's suggestion to the contrary is a failure to engage in meaningful legal analysis. The County also waived this argument by failing to raise it below.

The County concedes that Stirling claimed an exemption for rental properties that were **tenants' residences**, not owner-occupied residences. The County also concedes that rental properties, like those in this case, cannot qualify for the PRE, while disregarding the properties' occupancy. **Yet, whether residences are owner-occupied or tenant-occupied is dispositive of whether a property owner is entitled to the PRE, which is specifically limited to owner-occupied residences. That rental properties do not 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.**

The statutory exemptions at issue could not be more different; the Michigan exemption is for an owner-occupied residence. The Utah exemption is for tenant-occupied properties. The only substantial similarity, if there is one at all, is that they are both tax exemptions. They otherwise apply to entirely different types of property.

Further, the logical conclusion of the County's position is that a Michigan property owner will not qualify for the PRE—ever—if they also own property in another state that allows exemptions for certain residential property, regardless of who occupies the property. This violates the unambiguous language of MCL 211.7cc. And the proper interpretation and

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application of that provision is jurisprudentially significant because, among other reasons, the Court of Appeals made a mess of an otherwise sensible and easy-to-apply provision, the result of which could adversely affect countless Michiganders who own property out of state.

The Tax Tribunal got this case right. The Court should reverse the Court of Appeals judgment, reinstate the Tribunal's ruling in favor of Stirling, and order that the County's denial of the PRE be vacated.[1]

II. ARGUMENT

A. THIS CASE IS NOT CONTROLLED BY UTAH LAW.

This is a case about the interpretation and application of MCL 211.7cc. While a Utah statute necessarily must be compared to that Michigan statute, the Court need not weigh into the interpretation of the Utah provision because the exemption at issue facially applies to tenant-occupied property. That is the only analysis needed for this case and resolution of the question of whether that exemption is substantially similar to MCL 211.7cc.

The County's claim that this case "turns on a quirky question of Utah law: whether [one Utah statute] Utah Code Ann § 59-2-103(6)(b)(ii)) should be treated as part of [another Utah statute] Utah Code Ann § 59-2-103(3)…" is misleading and wrong. (Leelanau Supp Br, 1.) The only issue is whether the exemption for Stirling's rental properties is substantially similar to MCL 211.7cc. The County's Supplemental Brief is also internally inconsistent, as it subsequently warns that "[t]his Court should not wade too deeply into another state's unchartered jurisprudential waters." (Leelanau Supp Br, p 19.) Further, the County waived the issue of this being a question of Utah law by not raising that argument below. See, e.g., *People v Stanaway*, 446 Mich 643, 694; 521 NW2d 557 (1994).

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

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B. EXEMPTIONS FOR AN OWNER-OCCUPIED RESIDENCE AND TENANT-OCCUPIED PROPERTY ARE NOT SUBSTANTIALLY SIMILAR.

There can be no substantial similarity between statutory provisions where one provision governs exemptions for owner-occupied property and the other governs tenant-occupied property. Per sections 7cc and 7dd, MCL 211.7cc and MCL 211.7dd of the General Property Tax Act (the "Act"), only an owner-occupied residence obtains the PRE. Sections 7cc(3)(a) and (b) of the Act, MCL 211.7cc(3)(a) and (b), also state:

> (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].

The County wrongly claims that the PRE and Utah's exemption are substantially similar because both are for residences. The County then spends considerable time, pp 6-10, expounding on the definitions of "substantial" and "similar," including what that means in the medical malpractice context and for the admissibility of skid testing in an involuntary

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manslaughter conviction in Virgina under *Thorpe v Commonwealth*, 223 Va 609; 292 SE2d 323 (1982) (Leelanau Supp Br, 8-9), while lacking any analysis of how exemptions for rental property (the "residence of a tenant," as Utah calls it), at issue here, are substantially similar to MCL 211.7cc. But the ordinary understanding of "substantial" and "similar" are not meaningfully in dispute.

Perhaps most tellingly, the County never explicitly acknowledges that the Utah exemption under Utah Code Ann § 59-2-103(6)(b)(ii) is only for tenant-occupied property. The County also extensively examines various provisions both before and after Utah Code Ann § 59-2-103(6)(b)(ii), yet it offers no analysis of Utah Code Ann § 59-2-103(6)(b)(ii), providing exemption for the "residence of a tenant," as compared with MCL 211.7cc. It only refers to Utah Code Ann § 59-2-103(6)(b)(ii) once in the body of its argument (p 15), when citing what Stirling claims.

Further, the County 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:

> 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. But for purposes of the PRE, the difference in occupant status cannot be overstated: rental properties occupied by tenants do not qualify for the PRE. **That rental properties do not qualify for the PRE, proves that for purposes of the PRE, rental properties are substantially different from owner-occupied properties. By making owner-occupancy a principal requirement of**

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the PRE, the Legislature has made as clear as it could have, that exemptions for rental properties are substantially different from the PRE.[2]

The County asserts at pp 12-13 that Utah's exemption for primary residences is one exemption (not two), and that it is simply 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 Stirling had claimed "an exemption, deduction, or credit substantially similar to the exemption provided under this section…." MCL 211.7cc(3)(b). The exemption Stirling claimed was for rental properties that were tenants' residences (not owner-occupied). As already shown, that Utah exemption is not substantially similar to the PRE, which is for owner-occupied 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.[3]

Stirling also disagrees with the County's argument 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. But 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 Michiganders only lose the PRE if the exemption claimed in another state is substantially similar to the PRE. It does not matter how the other state describes its exemption. What matters is

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[2] Stirling's Supplemental Brief, 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.

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

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whether the exemption claimed is substantially similar to the PRE. The exemption claimed by Stirling for rental properties substantially differs from the PRE, given that rental properties do not qualify for the PRE.[4]

C. THE COUNTY'S INTERPRETATION AND APPLICATION OF MCL 211.7CC WOULD LEAD TO ABSURD RESULTS.

The County wrongly claims that Stirling's position would unduly restrict MCL 211.7cc(3), which allows Michigan residents to claim one PRE. (Leelanau Supp Br, p 16.) In fact, it is the County's conclusion that would unduly restrict Michiganders from rightfully claiming the PRE for the one place they call home if they purchase occupied rental property that is subject to exemption in another state. This, in turn, would lead to absurd results.

The Legislature understandably limited residents to one PRE for **owner-occupied residences**. But 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. There is no reason that the Legislature would be concerned about a taxpayer obtaining tax benefits in other states for rental properties where tenants reside; and that is what the Legislature established in unambiguous language. Yet, the logical conclusion of the County's position is that a Michigan property owner will not qualify for the PRE—ever—if they also own property in another state that allows

[4] The County's claim that Utah has one exemption for both owner-occupied and rental residences is undermined by its contention that whether there are one or two exemptions "remains a question of Utah law that Utah courts should resolve" (Leelanau Supp Br, p 19) and by its caution that "[t]his Court should not wade too deeply into another state's unchartered jurisprudential waters" (*Id*).

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exemptions for certain residential property, regardless of who occupies the property. That cannot be.

D. THIS CASE IS JURISPRUDENTIALLY SIGNIFICANT.

This case is absolutely critical to ensuring that Michigan property owners, now and in the next 1,000 cases, are properly afforded the PRE to which our Legislature determined they are entitled. Nothing more, nothing less. The County argues at p 19 that this case is not jurisprudentially important because, among other reasons, it would supposedly impact few Michigan residents. The County could not be more wrong. This Court serves all Michigan residents in a very important way when it enforces the Legislature's unambiguous statutory language; and this case's PRE issue will impact many Michigan residents.[5]

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 statutory language. This is especially important here because the Court of Appeals opinion is published. No precedent is more dangerous than such a published decision that has nullified the Legislature's unambiguous statutory language.

The County 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 for receiving rental property exemptions is blatantly unlawful. This is not only a

[5] 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 (most recently accessed May 22, 2022). 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.

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material injustice to Stirling, but is an injustice that will be repeated over and over given the countless Michigan residents who qualify for the PRE and own property in other states.[6]

In short, the issues in this case are of significant public interest and significant to our jurisprudence.

III. CONCLUSION AND RELIEF REQUESTED

For these reasons, Stirling asks the Court to reverse the Court of Appeals judgment, reinstate the Tax Tribunal's decision, and order that the County's denial of PRE be vacated.

Respectfully submitted,

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[6] 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.