

## MSC Opinion: Klooster v City of Charlevoix

14. March 2011 By Julie Lam

On March 10, 2011, the Michigan Supreme Court issued a unanimous opinion in *Klooster v City of Charlevoix*. Regarding the “uncapping” of property for tax purposes under the General Property Tax Act (GPTA), the Court held that: (1) a “conveyance” for purposes of MCL 211.27a does not require a written instrument; and (2) the termination of a joint tenancy caused by the death of a cotenant was not a transfer of ownership that uncapped the property, but a subsequent conveyance from the resulting sole property owner to a joint tenancy did uncapped the property.

In 1959, James and Dona Klooster acquired title to a parcel of property in Charlevoix as tenants by the entirety. Dona subsequently quitclaimed her interest in the property to James, so that James was the sole owner. In August 11, 2004, James quitclaimed the property to himself and his son, the petitioner. On January 11, 2005, James died, and by operation of law the petitioner became the sole owner. On September 10, 2005, the petitioner quitclaimed the property to himself and his brother as joint tenants with rights of survivorship. In 2006, the City of Charlevoix issued a notice of assessment indicating that, because of a transfer of ownership, the property’s taxable value had been reassessed, and had increased.

After an unsuccessful appeal to Charlevoix’s board of review, Petitioner then appealed to the Tax Tribunal, which affirmed the assessment on the grounds that the transfer of ownership by operation of law from James Klooster to the petitioner was a transfer of ownership for the purpose of the GPTA. The Tax Tribunal also held that the joint tenancy exception of MCL 211.27a(7)(h), which exempts transfers of joint tenancies involving an original owner and continuous tenancy, did not apply to the January 2005 transfer from James to petitioner because petitioner was not an original owner or an already existing joint tenant before the joint tenancy between James and the petitioner was created. Petitioner appealed as of right to the Court of Appeals, which reversed the Tax Tribunal and held that the conveyance from James to petitioner by operation of law did not constitute a conveyance under the GPTA that would uncapped the property because a “conveyance” requires a written instrument, and there was no written instrument in this case. The Michigan Supreme Court reinstated the decision of the Tax Tribunal, concluding that the Tax Tribunal had reached the correct result, albeit for the wrong reason.

The Court determined that the Court of Appeals erred by holding that a conveyance for the purpose of the GPTA required a written instrument. In an opinion written by Justice Cavanagh, the Court reasoned that the conveyance upon the death of the only other cotenant fits the dictionary definition of “conveyance.” Furthermore, other examples of transfers of ownership found within the GPTA, such as conveyances by intestate succession, illustrate that a writing is not required for a transfer of ownership to occur.

Regarding the joint tenancy exception, the Court noted that in order for the termination of a joint tenancy to be exempted from uncapping, it must meet the “original ownership requirement” and the “continuous tenancy requirement.” The Court explained

that under the “continuous tenancy requirement” of MCL 211.27(a)(7), at least one of the persons in the joint tenancy being terminated must have been “a joint tenant when the joint tenancy was initially created,” and that person must have “remained a joint tenant since the joint tenancy was initially created.” The Court concluded that for the purposes of the joint tenancy exception, “when” means “the moment in time when the joint tenancy was initially created.” Accordingly, the 2005 vesting of James’ interest in the petitioner met the “continuous tenancy requirement” because petitioner was a joint tenant “when” James initially created the joint tenancy in August of 2004. This conveyance also met the “original ownership requirement” because James was an original owner at the last uncapping event. Therefore, the January 2005 conveyance fit within the joint tenancy exception and was not a transfer of ownership under MCL 211.27a(7)(h) that would uncapse the property.

However, the Court determined that the September 2005 conveyance from the petitioner to himself and his brother as joint tenants did not fall within the joint tenancy exception and did uncapse the property. The Court explained that this conveyance did not meet the “original ownership requirement” because petitioner was not an “original owner” at the time of the most recent uncapping event, which occurred when the property was conveyed to James and Dona Klooster.

We posted on the COA opinion [here](#).