

MICHIGAN REAL PROPERTY REVIEW

REAL PROPERTY LAW SECTION

STATE BAR OF MICHIGAN

Vol. 8, No. 1

February, 1981

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CONTENTS

	Page
Forfeiture Under Land Contracts: To Possess or Not to Possess by Alan M. Oravec	2
The Legislative Scene by Mary P. Levine	11
Recent Decisions by Joseph A. Lloyd	15
Section News	18
Additional Committee Appointments	19

Law is the business to which my life is devoted, and I should show less than devotion if I did not do what in me lies to improve it, and, when I perceive what seems to me the ideal of its future, if I hesitated to point it out and to press toward it with all my heart.

Oliver Wendell Holmes

**FORFEITURE UNDER LAND CONTRACTS:
TO POSSESS OR NOT TO POSSESS**

by
Alan M. Oravec

TO POSSESS . . .

The Scenario, by now, is probably all too familiar: a purchaser buys property from a seller under the terms of a land contract which provides, as most land contracts routinely do, for the seller's self-help remedy of forfeiture in the event of a default by the purchaser; the purchaser defaults, for whatever reason, and the seller, as also provided in the contract, gives notice of forfeiture; and then

In Michigan, if the purchaser is "in possession" of the property, the rest of the scene can be scripted in a relatively definite fashion. The seller will attempt to recover possession of the premises by the use of summary proceedings as spelled out in M.C.L.A. § 600.5726:

A person entitled to any premises may recover possession thereof by a proceeding under this chapter after forfeiture of an executory contract for the purchase of the premises but only if the terms of the contract expressly provide for termination or forfeiture, or give the vendor the right to declare a forfeiture in consequence of the non-payment of any moneys required to be paid under the contract or any other material breach of the contract. For purposes of this chapter, moneys required to be paid under the contract shall not include any accelerated indebtedness by reason of breach of the contract.

It is not enough that the contract provides for forfeiture. Under M.C.L.A. § 600.5728, the vendee, or person in possession, must be served with a written notice of forfeiture and have failed to cure any breach within 15 days of the notice. The parties may agree, in writing, to a longer period to cure. Further, the notice must contain the following:

- a. the names of the parties to the contract
- b. the date of contract execution
- c. the address or legal description of the premises
- d. the amount of money then due and the dates when it was due
- e. any other material breaches
- f. a declaration that forfeiture is effective in 15 days or longer if specified in the contract, unless cure takes place within that time
- g. the date and signature of the person giving notice

When one is sure that the notice satisfies the statutory requirements, it must be served according to same. M.C.L.A. § 600.5730 provides for several methods of effecting service, namely:

- a. by delivering it personally to the vendee or person holding possession under law
- b. it may be delivered on the premises to a member of his family or household or an employee, of suitable age and discretion, with a request that it be delivered to the vendee or person holding possession under him.

- c. by sending it by first class mail addressed to the last known address of the vendee or the person holding possession under him. In this case, the date of service is deemed to be the next regular day for delivering of mail after the day when it was mailed
- d. by proceeding under the provisions of M.C.L.A. § 554.301 and 554.302

M.C.L.A. § 554.301 provides for notice by publication “[w]henver the vendee in a land contract, or other persons entitled by law to receive notice of the forfeiture . . . shall be absent from the state . . . , or concealed therein, or when the whereabouts of such person cannot be determined after diligent search and inquiry” In such an event, notice may be given by:

- a. publishing the notice three successive times at weekly intervals in a newspaper printed and circulating in the county where the property is situated, or if there is no such newspaper, then,
- b. in some newspaper published in an adjoining county and circulating in the county where the property is situated.

Should publication be the method of giving notice, then under M.C.L.A. § 600.5730, the date of the third publication is the date of service.

Assuming that notice has been given and the cure period has elapsed, a fundamental question arises, as it does in any legal proceeding: In what court should the action be brought? M.C.L.A. § 600.5704 provides that the district courts, municipal courts and common pleas courts of Detroit have jurisdiction over summary proceedings.

Determining the proper venue depends upon whether or not the place where the premises are located has an operative district court. M.C.L.A. § 600.5706, as to operative district courts, provides as follows:

- a. for districts of the first class, venue is proper in the county in which the premises or any part thereof is situated
- b. for districts of the second or third class, venue is proper in the district in which the premises or any part thereof is situated

Classification of districts is found in M.C.L.A. § 600.8103.

As to locales wherein a district court is not operative, M.C.L.A. § 600.5706 provides:

- a. that venue is proper in the municipal court or common pleas court of the city in which the premises or any part thereof is situated
- b. that venue is proper in a municipal court having jurisdiction over a township in which the premises or any part thereof is situated

As a caveat defendant vendees should be wary that unless they move for a change of venue, an improper court may try summary proceedings. M.C.L.A. § 600.5706 speaks to this matter and the fact that the court rules should be consulted.

The court rules should also be consulted as to various other procedural requirements for summary proceedings. (M.C.L.A. § 600.5708) Primary among these, at least as to district courts, is

District Court Rule 754. Some of the technicalities of this rule, and of certain procedural statutes, follow below:

Complaint

In addition to the general requirements of pleading, the complaint must have appended to it the notice of forfeiture and attachments showing the time and manner of service. It also must include allegations of the original purchase price, the principal balance due, the amount of money in arrears and must state with particularity any other material breaches claimed as the basis for forfeiture.

Process

Summons — it must conform to the requirements of DCR 102, subject to the modifications of Rule 754 and M.C.L.A. § 600.5735. Pursuant to the statute, the district court by local rule, may choose one of two alternatives. (Consult the local rules.) Under alternative one, the summons shall:

- a. set a date for the defendant's appearance at trial within 15 days of issuance, in which event service must be made not less than 10 days before the trial date. (If service is not made within this period, additional summons are to be issued upon request and with the same effect as the original);
- b. command the defendant to appear on the trial date, in person or by attorney; and
- c. advise the defendant that, in case of his failure to appear as commanded, a default may be rendered

Under alternative two, the summons shall command the defendant to appear for trial and answer, or take such other action permitted by law, within 10 days after service of the summons. Such a summons continues in effect until served or quashed, or until the action is dismissed. (Additional summons may be issued upon request.)

Service of Summons — service may be made by:

- a. any of the methods provided in DCR 105, or,
- b. in the instance of an individual, by leaving copies of the summons and complaint at the usual place of abode of such defendant, in the presence of the member of his family or household or suitable age, informing such person of the contents and requesting delivery to the defendant, or
- c. upon filing a return of service showing that, after diligent search and inquiry, service cannot be made by any of the above methods, by both attaching copies of the summons and complaint to the main entrance of the premises, and mailing copies thereof by first class mail, with a postal receipt attached to the proof of service, or,
- d. by publication of an order to answer under DCR 106, except that the order shall direct the defendant to appear within 35 days, and publication shall be made on three consecutive weeks, with mailing at least 10 days prior to the appearance date.

Appearance and Answer

The defendant or his attorney must appear and answer the complaint in a manner discussed below. The matter may then be tried unless for good cause shown the court adjourns the trial to set another date.

If the trial is adjourned at defendant's request without plaintiff's consent, or cannot be heard and determined, for any reason, within 7 days after issue is joined, the court, upon plaintiff's motion showing a clear need for protection, may order the defendant to pay to the court clerk in escrow, upon the date when payments fall due under the contract, amounts not exceeding a reasonable rental for the premises, until the determination of the issue of possession. Failure to make any escrow payment when due will cause the case to be immediately ordered to trial, and the defendant is deemed to have waived his jury demand but not to have waived any possible defenses.

Answer — may be accomplished by one of two alternative methods

- a. Written answer or motion on or before the date set in the summons — the defendant or his attorney may appear by filing a written answer or by filing a motion under DCR 115-117. Copies must be served on the opposing party and proof of such must be either filed or attested to on the record at appearance.
- b. Oral answers — on the date set in the summons or order to answer, the defendant or his attorney may appear by giving the court his oral answer. If either party is not represented by counsel, the court shall inform the parties that they may retain counsel and, when appropriate, as to the availability to free legal aid.

Defendant's Failure to Appear

If a defendant fails to appear or answer on the date set by the summons or order to answer, the court may, in its discretion, adjourn to a hearing not more than seven days hence or immediately enter defendant's default on plaintiff's motion. If the defendant fails to appear on an adjourned hearing date, the court shall then enter his default. Upon entering a default, the court shall receive the plaintiff's proof, and if it is satisfied thereby that the complaint is true, it shall forthwith enter judgment accordingly, including the statutory determination of the amount due, if any, and tax the costs.

Demand for Jury Trial

Either party may demand a jury trial of any issue so triable of right by including such demand in his pleading, by filing a separate written demand on or before the date set for appearance in the summons or order to answer, or by making an oral demand before the court on such date, and by including with his demand payment of the jury fee established by law.

Joinder of Claims and Counterclaims

The parties may join claims or counterclaims for money judgment as provided in M.C.L.A. § 600.5739. Any such claims joined by the plaintiff shall be stated in a separate

count. Any such counterclaim joined by the defendant shall be included in a written answer, separately stated and denominated as a counterclaim. The rules of court generally applicable to claims and counterclaims shall apply, including the time provided for a responsive pleading.

If a claim or counterclaim for money judgment exceeds the jurisdictional amount applicable in the court where filed, it shall be removed to the circuit court, pursuant to M.C.L.A. § 600.6935 and DCR 203.5, leaving the severed claim for possession to be disposed of by summary proceedings in the court where filed.

If the defendant joins the counterclaim for equitable relief which, if granted, would defeat the plaintiff's claim for possession of the premises, the entire proceeding shall be removed to the circuit court, pursuant to M.C.L.A. § 600.6935 and DCR 203.5 and the procedure thereafter shall be governed by the General Court Rules.

Trial

On the date set for the hearing, the trial court will hear and determine any pretrial motions and will take defendant's written or oral answer. If any triable issue is joined, the court will proceed to trial forthwith.

When plaintiff has joined a claim for money judgment, it will be dismissed, without prejudice, unless personal jurisdiction of the defendant has been obtained by service of process or by defendant's appearance.

When a claim or counterclaim for money judgment is ready for trial and may be determined at the trial of the claim for possession without substantially delaying the latter, trial of both issues may be joined.

When trial of a claim or counterclaim for money damages might substantially delay trial of the claim for possession, or when such damages cannot be finally determined until after restitution of the premises, the court will proceed with trial of the claim for possession, and shall adjourn trial of the claim or counterclaim for money judgment to a new date not more than 30 days after expiration of the time for issuance of the writ of restitution. Not less than ten days before the adjourned trial date, either party may file a supplemental pleading to cover damages incurred since the date of his original pleading.

Judgment

If the judge or jury finds that the plaintiff is entitled to possession of the premises, or any part thereof, judgment may accordingly be entered and may be enforced by a writ of restitution.

If it is found that the plaintiff is entitled to possession as a consequence of failure to make contract payments, the judge or jury making the finding will determine the amount due or in arrears at the time of trial, which amount must be stated in the judgment for possession. The statement of the amount is only for the purpose of prescribing the amount which, together with taxed costs, must be paid to preclude issuance of a writ of restitution.

The judgment must also include a statement as to the date when a writ may issue unless payment of the stated amount is made or unless appeal is made within ten days.

The judgment may include an award of costs, enforceable in the same manner as other civil judgments for money in the same court.

A judgment for money damages must be stated separately from a judgment for possession, although a statement regarding possession and money damages may be contained in the same judgment.

Post-Judgment Motions

A motion to set aside a default judgment, for judgment notwithstanding the verdict, or for a new trial must be filed not later than ten days after entry of the judgment, except as provided in DCR 528, which deals with relief from clerical mistakes, lack of notice to defendant, other mistakes and excusable neglect.

If a motion is filed prior to the expiration of the period during which a writ of restitution cannot issue, the period will be tolled until disposition of the motion. If final action on the motion will occur after the time when, except for the tolling provision, the writ would have issued, the plaintiff may apply for a protective order, as stated above under the heading "Appearance and Answer."

Writ of Restitution

A writ of restitution cannot be issued until **90 days** after the entry of judgment for possession if **less than 50% of the purchase price has been paid** or until the expiration of **6 months** after the entry of judgment for possession if **50% or more of the purchase price has been paid**.

The writ shall not issue if within the above stated time, the amount as stated in the judgment, together with the taxed costs, is paid to the plaintiff and any other material breaches are cured.

If payment is not made within the proper time period, application may be made to the court for a writ of restitution, and it will be issued upon averment or affidavit of the party seeking the writ that no sums of money due under the writ have been paid. The writ must be entitled in the names of the parties, directed to the process server, and command him to place the party entitled thereto in possession of the premises forthwith.

On conditions determined by the court, the writ of restitution may be issued forthwith upon the entry of judgment for possession when any of the following is pleaded and proved, with notice, to the satisfaction of the court:

- a. The premises are subject to inspection and certificate of compliance under Act No. 167 of the Public Acts of 1917, as amended, being section 125.401 to 125.543 of the Compiled Laws of 1948 and the certificate or temporary certificate has not been issued and the premises have been ordered vacated.

- b. Forcible entry was made contrary to law.
- c. Entry was made peaceably but possession is unlawfully held by force.
- d. The defendant came into possession by trespass without color of title or other possessory interest.
- e. The tenant, wilfully or negligently, is causing a serious and continuing health hazard to exist on the premises or is causing extensive and continuing injury to the premises and is neglecting or refusing either to deliver up possession after demand or to substantially restore or repair the premises.

In the above-stated situations, the court will issue the writ only when it is satisfied that the statutory conditions have been pleaded and proved, with notice to the defendant, and may prescribe such conditions for issuance of the writ as are necessary and appropriate to protect the defendant from irreparable harm. The court, in its discretion, may suspend execution of the writ for a time not to exceed ten days from entry of the judgment if the defendant informs the court of his intention to appeal, perfects his appeal from the judgment, and posts any bond or security as required by the court. If a writ of restitution has been issued and not yet executed, execution shall be suspended immediately when the officer holding the same receives notice that a claim of appeal with the required bond has been filed.

Issuance of a writ of restitution will foreclose any equitable right of redemption which the purchaser might have or claim in the premises.

Appeal

An appeal of right from a judgment of possession may be taken not more than ten days after notice of the judgment, or denial of a timely post-judgment motion.

An appeal of right from a money judgment may be taken not more than 20 days after notice of the judgment.

If the plaintiff appeals, the bond will be conditioned that, if defendant prevails, plaintiff will pay the costs of the action. If the defendant appeals, the bond will be conditioned that, if plaintiff prevails, defendant will pay the costs of the action and, if the suit is for possession for non-payment of a sum of money, that the defendant will pay the rental or contract amount found due. When it shall appear by affidavit that appellant is unable to obtain sureties or make a cash deposit in lieu thereof, appellant may have the bond without sureties or cash deposit upon such reasonable conditions as may be determined by the court. If a judgment for possession has been entered for plaintiff, the reasonable condition for a defendant-appellant will be that he shall pay into the trial court within five days of the date rent or payment are due under the lease or contract, a sum equal to the reasonable rental value of the premises, as determined by the court, as it becomes due after the time the appeal is filed and during the pendency of the appeal.

The filing of a claim of appeal together with a bond or bond order of the court will stay all proceedings including writs of restitution issued but not executed, and will toll the time within which a writ of restitution will not be issued if filed before the expiration of such time.

Fees and Costs

The applicable fees and costs are provided for in M.C.L.A. § 600.5756, 600.5757 and 600.5759.

Election of Remedies

The remedy provided by summary proceedings is in addition to, and not exclusive of, other remedies, either legal, equitable or statutory. However, a judgment for possession will merge and bar any claim for money payments due or in arrears under the contract at the time of trial and a judgment that results in the issuance of a writ of restitution will also bar any claim for money payments which would have become due under the contract subsequent to the time of the issuance of the writ.

The plaintiff obtaining a judgment for possession is entitled to a civil action against the defendant for damages from the time of the notice of forfeiture.

. . . OR NOT TO POSSESS

As stated, the above is the method by which one must proceed if a buyer, who is in possession under a land contract, defaults and the seller wishes to declare a forfeiture. As can be seen, it is the functional equivalent of the equity of redemption, with a few statutory twists built in. But, what occurs if the buyer is not in possession? Obviously, summary proceedings need not be used as there is no one to oust from possession. Is the seller, then, free to retake possession and keep all previous payments, and is the buyer out in the cold without any right of redemption to warm him? The result in this situation is uncertain and pretty much at the whim of equity, though some guidelines can be gleaned from court decisions on the subject.

It has been a long standing practice for courts of equity under certain (or uncertain?) circumstances to grant to a defaulting land contract vendee a decree of specific performance as relief consistent with the maxim that "equity abhors a forfeiture." An early Michigan case which did so was **Hubbell v. Ohler**, 213 Mich. 664 (1921).

In **Hubbell**, the vendee failed to make a payment due on February 1, 1919. On April 12, 1919, the vendor served upon the vendee a notice of forfeiture. The premises were vacant, the vendor took possession on April 23, 1919, and then sold the premises to another person who took possession and made improvements. On April 27, 1919, the vendee tendered the amount due. The vendee then filed a bill for specific performance. The trial judge denied the bill, but the Supreme Court modified the decree, relieving the vendee of the forfeiture on the condition, inter alia, that he pay the entire unpaid purchase price.

Without knowing what percentage the unpaid purchase price was in relation to the total purchase price, or any other factors, it is difficult, by this case, to determine, with more precision, the circumstances required before a court will relieve a buyer of the harshness of forfeiture. But the more recent case of **Rothenberg v. Follman**, 19 Mich. App. 383 (1969), picks up where **Hubbell** leaves off.

In **Rothenberg**, the court began by stating that:

. . . where the purchaser is not in physical possession of the land or possession can be recovered peaceably, as is frequently true where the property is vacant, the purchaser's rights may be declared forfeited by the seller without proceedings in court if notice of forfeiture is duly given.

Justice Levin, writing for the court, then followed the lead of **Hubbell**, restating the principal that a court of equity can relieve a vendee from forfeiture and compel specific performance by the seller "when in the court's judgment to do otherwise could result in a unreasonable forfeiture."

Just what circumstances would cause a court to find a forfeiture to be unreasonable? Justin Levin answered this query by stating:

Whether a particular forfeiture is unreasonable depends upon a number of factors, among them the amount and length of the default, the amount of the forfeiture (i.e., the sum of the amounts paid to the seller and the value of the property at the time of the forfeiture less the contract price), the reason for the delay in payment and the speed with which equity's aid was sought.

In **Rothenberg**, the amount of the default was \$1,500. The length of default (i.e., the time between declaration of forfeiture and the time of tender of performance) was some 2 months. The amount of the forfeiture, on principal, was some \$32,500 or 75 to 80 percent of the purchase price. The reason for the delay in payment seemed to be bad legal advice, though this is not clear. The bill was brought 4 months after forfeiture. On balancing these factors, the court granted the vendee's relief, requiring full payment of the balance of the purchase price, and assessed costs of \$10,000, which was reduced to \$3,500 on appeal.

What the cases seem to show, then, is that a defaulting vendee not in possession under a land contract may have relief from a declared forfeiture, but he had better have paid a large amount of the purchase price and have good reason for the default. All of this provides for much uncertainty in the area of land contracts, but it should serve to make a vendor wary of the pitfalls inherent in such a transaction.

Besides making a vendor wary of land contract pitfalls, the above discussion should, also, alert the vendor's attorney to the same problems. One possible method by which equity's capriciousness can be overcome would be to provide in the land contract a device by which the purchaser can "cure" any default, i.e., putting in the contract a type of redemption process. This would entail spelling out a "reasonable" time to cure, such as 30 days, and that percentage of the purchase price which must have been paid in order for the cure process to be initiated. In this way, a vendor, who is a potential defendant in a specific performance action, would have some extra weight to place on his side of the scales of equity. In other words, "the vendee had his chance and blew it."

The above is only one possible proposed method. Others may prove more successful. However, it does, hopefully, provide for some certainty in a most uncertain situation. Perhaps a better method, though, would be for the legislature to do in this area what it did in the situation of vendees in possession. Florida or California have already done so by treating a land contract as a mortgage with the full panoply of redemptive rights. This may not sit well with vendors but, at least it provides for more certainty.

THE LEGISLATIVE SCENE

**Mary Levine, Chairperson
Legislation Committee**

Included in this article is a listing of the remainder of the bills signed into law by the Governor for the 1980-81 legislative year. Of special interest is P.A. 497, P.A. 432, P.A. 492 and P.A. 496 which comprises the new construction lien laws. These new laws become effective on January 1, 1982 and will repeal (P.A. 497) Michigan's old Mechanic's Lien Law. Since it is quite likely that further amendments will be added during the period prior to the effective date, publication of the new laws in the *Review* with comments and analysis by members of the Mechanic's Lien Committee of the Section will be delayed until early fall of this year. Similarly, seminars on the new laws will be scheduled for the early fall.

The legislature wasted no time getting back to business and has already introduced a substantial number of bills. As anticipated, a number of these bills are old favorites. A package of legislation was introduced by Sen. Ross to freeze property tax assessments and equalization values and permit the voted levy of 5 additional mills by local units of government. Prohibitions on the location of state-licensed residential facilities was introduced by Sen. Bishop while a number of bills dealing with ownership of agricultural property, taxation of agricultural property and the right to farm, were introduced in both houses.

In the months to come, legislation in the following areas is expected to be introduced: establishment of an urban land assembly fund to help cities compete with outlying areas in offering land parcels for business development; authorize the Job Development Authority to issue bonds for commercial and agricultural enterprises; amendments to Subdivision Control Act to better protect agricultural land and direct development into other areas; and establishment of statutory home warranties similar to the national HOW program.

If readers are interested in obtaining copies of new public acts or newly introduced legislation contact the Legislative Service Bureau at (517) 373-0170 or your state Representative or Senator.

NEWLY INTRODUCED LEGISLATION 1981-82 Legislative Session

- | | |
|---------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| HB 4001 | Provides for exemption for senior citizens from property taxes assessed for school purposes and provides for state reimbursement. (Introduced by Rep. McCollough on 1/14/81 and referred to the Com. on Taxation.) |
| HB 4011 | Provides for licensing and regulation of second mortgages. (Introduced by Rep. Keith on 1/27/81 and referred to the Com. on Corporations and Finance.) |
| HB 4018 | Provides for exclusion of alimony and child support from income in certain cases for property tax credit. (Introduced by Rep. Bryant on 1/27/81 and referred to the Com. on Taxation.) |
| HB 4031 | Provides for exclusion of farmland and open space preservation credits from income for property tax credit. (Introduced by Rep. Dodak on 1/28/81 and referred to the Com. on Taxation.) |

- HB 4041 Provides contract requirements for joint administration of zoning laws. (Introduced by Rep. Andrews on 1/29/81 and referred to the Com. on Conservation, Environment and Recreation.)
- HB 4044 Delays property tax equalization by class until 1984. (Introduced by Rep. Bennett on 1/29/81 and referred to the Com. on Taxation.)
- HB 4054 Provides a right to farm act. (Introduced by Rep. Dodak on 1/29/81 and referred to the Com. on Conservation, Environment and Recreation.)
- SB 1 Provides for property tax assessment freeze. (Introduced by Sen. Ross on 1/27/81 and referred to the Com. on Finance.)
- SB 2 Provides for freeze on equalization values for property taxation. (Introduced by Sen. Ross on 1/27/81 and referred to the Com. on Finance.)
- SB 3 Permits home rule cities to levy 5 additional mills by vote for 1981. (Introduced by Sen. Ross on 1/27/81 and referred to the Com. on Finance.)
- SB 4 Same as SB 3 but applies to home rule villages.
- SB 5 Same as SB 3 and 4 but applies to general law villages.
- SB 6 Same as SB 3, 4 and 5 but applies to charter townships.
- SB 9 Provides for property tax exemption for property leased, loaned or otherwise made available to a municipal water authority. (Introduced by Sen. Bishop on 1/27/81 and referred to the Com. on Finance.)
- SB 12 Prohibits the location of a state-licensed residential facility if it is within a 2500 foot radius of an existing state-licensed facility within a city or village. (Introduced by Sen. Bishop on 1/27/81 and referred to the Com. on Municipalities and Elections.)
- SB 14 Same as SB 12 but applies to townships.
- SB 21 Provides for property tax exemption for senior citizens with income less than \$15,000 and assessed value of homestead of less than \$70,000. (Introduced by Sen. Gast on 1/27/81 and referred to the Com. on Finance.)
- SB 28 Prohibits refusal by landlord to lease a dwelling to a senior citizen or a person having minor children. (Introduced by Sen. Pierce on 1/27/81 and referred to the Com. on Health and Social Services.)
- SB 31 Requires determination of state equalization every four years or upon petition of a county due to a decrease in its state equalized valuation. (Introduced by Sen. Welborn on 1/28/81 and referred to the Com. on Finance.)

SB 33 Provides that true cash value of agricultural land be determined by economic income of structures and income potential of land. (Introduced by Sen. Welborn on 1/28/81 and referred to the Com. on Finance.)

SB 51 Prohibits ownership of agricultural land by a non-resident alien and corporation and any other legal entity under certain conditions. (Introduced by Sen. G. Hart on 1/29/81 and referred to the Com. on State and Veterans' Affairs.)

BILLS SIGNED BY GOVERNOR (1980-81 Legislative Session)

HB 4053 P.A. 497, I.E.; Construction Lien Act

HB 5092 P.A. 394, I.E.; provides that computation of revenue sharing benefits exclude property tax reductions made because of required rollbacks.

HB 5244 P.A. 416, I.E.; provides for review of township zoning ordinance and recommendation thereof by county zoning commission and establish methods of determining effective date.

HB 5385 P.A. 501, I.E.; general amendments to Economic Development Act.

HB 5445 P.A. 456, I.E.; provide option of conditional certification for newly elected assessing officer.

HB 5541 P.A. 524, I.E.; provides for regulation of construction retainage requirements in construction contracts entered into with governmental units.

HB 5599 P.A. 326, I.E.; clarifies rights of surviving spouse under probate code.

HB 6046 P.A. 432, I.E.; provides for revocation of plumber's license for causing homeowner construction lien recovery fund payment.

HB 6047 P.A. 492, I.E.; provides for revocation of electrician's license for causing homeowner construction lien recovery fund payment.

HB 6048 P.A. 496, I.E.; provides for revocation of builder's license for causing homeowner construction lien payment and remove right to construction lien of person supplying materials or performing labor for an unlicensed builder.

SB 685 P.A. 407, I.E.; permits establishment of commercial redevelopment district if property within proposed district was owned by a local government unit on effective date of commercial redevelopment act and subsequently conveyed to a private owner and zoned commercial.

SB 1021 P.A. 1021, I.E.; revises household income ceiling for property taxation up to \$10,000 for senior citizens.

- SB 1216 P.A. 450, I.E.; permits establishment of tax increment finance authorities.
- SB 1217 P.A. 449, I.E.; permits industrial property within a plant rehabilitation district to be included in a tax increment district established under tax increment finance authority act.
- SB 1218 P.A. 448, I.E.; permits commercial property within a commercial redevelopment district to be included in a tax increment district established under tax increment finance authority act.
- (SB 777 Provide authority to Downtown Development Authority to levy special assessments — vetoed by Lt. Governor due to technical defects in bill.)

RECENT DECISIONS
by
Joseph Lloyd
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CASE NOTES

VAN SLOOTEN v LARSEN, ___ Mich ___, ___ NW2d ___ (1980)

Statutory termination of oil and gas interests — constitutionality

The question before the court was the constitutionality of the dormant minerals act (MCLA 554.291, MSA 26.1163(1), et seq) as applied to oil and gas interests created prior to the passage of the act in 1963. A narrow majority of the Michigan Supreme Court, in a carefully reasoned opinion, held that the statute was not unconstitutional as either an impairment of contract or deprivation of property without due process, analogizing the act to the recording acts. The court also analyzed the public purposes served by the act in light of recent concerns about development of energy resources and found that there was a reasonable relationship of the act to those purposes.

CONGRESS HILLS APARTMENTS v TOWNSHIP OF YPSILANTI, ___ Mich App ___, ___ NW2d ___ (1981)

Tax Tribunal — Assessments — Income approach to value

The taxpayer took appeal of a decision by the Tax Tribunal which based assessment of a rental property on projected “market rents” rather than on the actual rents charged. The property was subject to a HUD regulatory agreement holding the rent that a tenant could be required to pay at a level below the prevailing rents in the area. The Court of Appeals, citing a similar case where a long term lease kept the rent below market rents, held that “economic income” as used in the statute, means “actual income.” The court noted however that the assessment could rise as the period of controlled rents drew to a close, to take into account the fact that actual income would eventually rise to market levels. The court noted, as a corollary to its holding, that the assessor must use actual expenses in reaching a determination of fair market value, rather than market averages.

LADIES LITERARY CLUB v CITY OF GRAND RAPIDS, ___ Mich ___, ___ NW2d ___ (1980)

Real property — assessments — immunity from taxation

The Ladies Literary Club claimed exemption from real property taxation. The club provided a small library for public use and offered a wide range of classes and lectures, in addition to

participating in public service and charitable activities. The club enjoyed federal tax-exempt status under Sec. 501(c)(3) of the IRC. The Supreme Court, overruling the Court of Appeals, and over the dissent of three members of the Court, held the club not exempt from tax. The court narrowly read the “educational” exemption in the statute, holding that the activities of the club were not “educational.” The basis for the decision was the fact that the activities of the club did not reduce the educational burden of the State of Michigan. The court did not regard continuing education and adult enrichment courses as equivalent, for tax purposes, to more traditional state sponsored curricula.

VIDRICH v VIC TANNY INTERNATIONAL, INC, ____ Mich App ____, ____ NW2d ____ (1980)

Use of premises — Handicapped Civil Rights

The Plaintiff, a blind person, was denied access to a health and exercise club on the ground that he could not safely use the facilities. He filed suit under the Michigan equal accommodations act, MCLA 750.146, MSA 28.343. The trial court held that there was an implied safety exception in the act and found that use by a blind person of athletic facilities was a danger to himself and to other patrons. The trial court therefore granted summary judgment for the defendant. The Court of Appeals reversed, holding that the club was a “public accommodation” under the terms of the act, and that there is no implied safety exception in the Act. The Court reversed the trial court and directed that summary judgment be entered for the Plaintiff.

CAMPBELL v CAMPBELL, ____ Mich App ____, ____ NW2d ____ (1980)

Mortgages — Limitation of Actions — joint obligors

The parties to a divorce owned property subject to a mortgage to the parents of the husband. The mortgage was more than twenty years old and the only payment that had been made was a \$5.00 payment made by the husband to his parents for the purpose of tolling the fifteen year period of limitations. The wife knew nothing about the payment. The judgment of divorce allowed the husband to purchase his wife’s interest in the property for a fixed sum, less any mortgage liens. The question before the court was whether there was a valid mortgage as regards the wife, or whether the period of limitations had expired.

The Court of Appeals, interpreting the Michigan joint obligor statute, MCLA 600.5825; MSA 27A.5825, held that the \$5 payment by the husband would not stop the running of the period of limitations as regards the wife unless she acquiesced in that payment. The mortgage was held not to constitute a valid lien as regards the wife, and the husband could not set it off in making a purchase of his ex-wife’s interest.

PEARSON-COOK COMPANY, INC v PREFERRED PROPERTIES, INC, ____ Mich App ____,
____ NW2d ____ (1980)

Brokers — Listing Agreements — Performance of Contract

A homeowner had signed an exclusive listing agreement with a Broker. A cooperating broker brought in an offer at less than the asking price, to which the homeowner made a counter-offer. During the pendency of that counter-offer a second cooperating Broker brought in an offer of full price. The counter-offer was later accepted. The Broker who brought in the full-price offer sued both other Brokers and the homeowner for payment of "his share" of the commission. He based his suit, inter alia, on breach of contract, conspiracy, unjust enrichment, contract implied-in-fact, breach of fiduciary duties and violation of the Code of Ethics of the National Association of Realtors. The trial court granted summary judgment for the Defendants on all of the above charges and the Court of Appeals affirmed. Although the counter-offer was legally revocable at the time the second offer was made, the homeowner was under no obligation, contractual or otherwise, to revoke it in order to accept the second offer.

SECTION NEWS

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Our special thanks to Robert H. Janover who, as Chairman of the Committee on Syndications and Commercial Transactions, made arrangements for the publication of Mr. Oravec's article.

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