STATE OF MICHIGAN

COURT OF APPEALS

P.J. HOSPITALITY, INC.,	UNPUBLISHED June 26, 2014
Petitioner-Appellant,	
v	No. 314302 Tax Tribunal
DEPARTMENT OF TREASURY,	LC No. 418352
Respondent-Appellee.	

Before: DONOFRIO, P.J., and GLEICHER and M.J. KELLY, JJ.

PER CURIAM.

Petitioner appeals as of right from the Tax Tribunal's opinion and judgment, which adopted the findings of fact and conclusions of law of a hearing referee, who in turn upheld respondent's assessment of successor liability to petitioner. Because the tribunal did not commit an error of law or adopt a wrong legal principle and its factual findings were supported by competent, material, and substantial evidence, we affirm.

I. BASIC FACTS

Before 2007, the entity Soulful Concepts, Inc., owned the restaurant in Southfield, Michigan called Beans & Cornbread. Patrick Coleman, in turn owned Soulful Concepts. In 2007, petitioner, also owned by Coleman, purchased all of Soulful Concepts's business, including all of its assets for $50,000,[1] and continued to operate the Beans & Cornbread restaurant. Coleman testified that he thought the value of all the assets was between $30,000 and $40,000. Coleman stated that this transaction was done because Soulful Concepts had "some debt issues" and "needed to get a fresh start." Part of those debt issues involved large tax liabilities owed to both the federal government and the State of Michigan. Specifically, at the time of the referee hearing, the amounts owed to the federal government were approximately $150,000, and the amounts owed to the State of Michigan, not including some interest calculations, were approximately $57,000.

[1] No actual money exchanged hands though. Instead, petitioner gave Soulful Concepts a promissory note for the $50,000, and Coleman signed the purchase agreement on behalf of both parties.

Respondent assessed petitioner with Soulful Concepts's Michigan tax liability on the basis of it being a successor entity under MCL 205.27a(1). Petitioner objected to the assessment and filed the instant petition. Petitioner argued at the hearing that pursuant to the statute, its liability was limited by the fair market value of the assets acquired minus any senior, outstanding liabilities, such as the amount owed to the IRS. As a result, petitioner claimed that, with the value of the assets not exceeding $40,000, the outstanding $150,000 owed to the IRS "eviscerate[d] any sort of liability" to respondent.

After holding a hearing, the referee disagreed and concluded that respondent's assessment was proper. First, the referee did not accept Coleman's lay opinion on the evaluation of the assets because it "cannot be accepted as credible or accurate." The referee explained:

> [Coleman] did not make any effort to describe the property with the specificity that would be needed to determine its fair market value. There is no evidence regarding the value of the liquor license or goodwill. Petitioner executed the documents of sale on behalf of both the seller and the purchaser, which indicates that this was not an arm's-length transaction and the stated purchase price cannot be accepted as fair market value. There is no market evidence whatsoever to support an appraisal of the value of the assets of the business.

The referee also concluded that if any federal tax liens existed, there was no evidence that they were ever perfected by being recorded in the Oakland County Register of Deeds. Furthermore, the referee concluded that the statute only allows for liability to be limited by the fair market value of the business acquired minus any proceeds of the sale that were used to satisfy a senior, secured interest. But the referee also found that none of the proceeds were used for such a purpose; thus, petitioner was not entitled to any reduction in liability.

The Tax Tribunal affirmed the referee's decision and adopted his proposed opinion, including the findings of fact and conclusions of law.

II. ANALYSIS

Review of decisions by the Tax Tribunal is limited. "Unless fraud is alleged, an appellate court reviews the decision for a 'misapplication of the law or adoption of a wrong principle.'" *Podmajersky v Dep't of Treasury*, 302 Mich App 153, 162; 838 NW2d 195 (2013), quoting *Liberty Hill Housing Corp v City of Livonia*, 480 Mich 44, 49; 746 NW2d 282 (2008). "The tribunal's factual findings are deemed conclusive provided they are supported by competent, material, and substantial evidence on the whole record." *Podmajersky*, 302 Mich App at 162.

But to the extent that our review involves issues of statutory interpretation, that aspect of our review is de novo. *Id.* The primary goal of statutory interpretation is to give effect to the intent of the Legislature. *Ford Motor Co v City of Woodhaven*, 475 Mich 425, 438; 716 NW2d 247 (2006). To ascertain the Legislature's intent, we look to the language in the statute and give the words their plain and ordinary meanings. *Lafarge Midwest, Inc v Detroit*, 290 Mich App 240, 246; 801 NW2d 629 (2010). If the statute's language is not ambiguous, this Court will enforce the statute as written. *Ford Motor*, 475 Mich at 438-439.

MCL 205.27a(1), which governs successor liability, provided the following at all relevant times:[2]

> If a person liable for a tax administered under this act sells out his or her business or its stock of goods or quits the business, the person shall make a final return within 15 days after the date of selling or quitting the business. The purchaser or succeeding purchasers, if any, who purchase a going or closed business or its stock of goods shall escrow sufficient money to cover the amount of taxes, interest, and penalties as may be due and unpaid until the former owner produces a receipt from the state treasurer or the state treasurer's designated representative showing that the taxes due are paid, or a certificate stating that taxes are not due. Upon the owner's written waiver of confidentiality, the department may release to a purchaser a business's known tax liability for the purposes of establishing an escrow account for the payment of taxes. If the purchaser or succeeding purchasers of a business or its stock of goods fail to comply with the escrow requirements of this subsection, the purchaser is personally liable for the payment of the taxes, interest, and penalties accrued and unpaid by the business of the former owner. The purchaser's or succeeding purchaser's personal liability is limited to the fair market value of the business less the amount of any proceeds that are applied to balances due on secured interests that are superior to the lien provided for in [MCL 205.29(1)].

Petitioner first argues that the tribunal erred by relying on the fact that there was no evidence that any of the federal tax liens were ever recorded. However, this issue is not relevant because, as will be discussed later, the existence of any senior security interests only comes into play *when proceeds from the sale of the business are used to satisfy part of that debt*, and there was no evidence that any proceeds were applied in this manner. As such, we offer no opinion on whether the federal tax liens in this case qualify as "secured interests that are superior to the [state's tax] lien."

Here, Coleman admitted that he never escrowed any funds on behalf of petitioner. Thus, according to the plain language of the statute, it is clear that petitioner "is personally liable for the payment of the taxes, interest, and penalties accrued and unpaid by" Soulful Concepts. MCL 205.27a(1); see also *STC, Inc v Dep't of Treasury*, 257 Mich App 528, 537; 669 NW2d 594 (2003).

The next inquiry is to determine to what extent petitioner is liable. Petitioner claims that the indebtedness owed to the IRS needs to be taken into account for determining the amount it owes the state as a successor entity. The statute provides that the "purchaser's personal liability is limited to the fair market value of the business less the amount of any proceeds that are applied to balances due on secured interests that are superior to the lien provided for in [MCL 205.29(1)]." The tribunal determined that petitioner could not invoke the benefits of this section because it failed to establish the fair market value of the business. The finding that petitioner

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[2] MCL 205.27a(1) was later modified by 2014 PA 3, effective February 6, 2014.

failed to establish the fair market value was supported by competent, material, and substantial evidence. Coleman agreed at the hearing that the sale of the business was not an arm's-length transaction. Accordingly, the $50,000 sale price had no bearing on any market value determination. See *Mackey v Dep't of Human Services*, 289 Mich App 688, 704; 808 NW2d 484 (2010). Further, petitioner offered nothing to establish what the fair market value may be except for his unsupported lay opinion regarding the value. The referee and tribunal decided that Coleman's opinion on the value of the assets was not credible, and such credibility determinations will not be disturbed by this Court. *Detroit Lions, Inc v City of Dearborn*, 302 Mich App 676, 703; 840 NW2d 168 (2013). Further, Coleman admitted that he never got an appraisal of the assets and did not provide a list of the specific assets to respondent. Accordingly, because petitioner utterly failed to provide any evidence of what the market value of the business assets were, he cannot claim this limitation. Cf. *Podmajersky*, 302 Mich App at 164-165 (stating that the burden of proving an exemption to a tax is on the party claiming the exemption).

The tribunal further found that there was no evidence that any proceeds from the sale were applied to balances due on any superior secured interests. Petitioner does not dispute this finding. Rather, petitioner argues that the presence of a superior secured interest, without having applied any proceeds to those balances, is enough for it to offset its successor liability. However, the statute only allows for an offset for "any proceeds *that are applied* to balances due on secured interests that are superior to the lien provided for in section 29(1)." MCL 205.27a(1) (emphasis added). Thus, it is clear that in order for any such offset to occur, proceeds from the sale must be "applied" to balances due – the mere existence of any balances is insufficient. Accordingly, the tribunal did not misapply the law or adopt an incorrect legal principle when it came to the same conclusion.

In conclusion, we affirm the Tax Tribunal's opinion and judgment affirming the imposition of petitioner's successor liability pursuant to MCR 205.27a(1). The tribunal did not misapply the law or adopt an incorrect legal principle. It is undisputed that petitioner was liable for Soulful Concepts's liability because it did not escrow any funds in conjunction with the business purchase. While normally, petitioner's liability would have been limited to the fair market value of the business acquired, petitioner offered no evidence of the market value. Finally, the existence of any superior federal tax liens is of no consequence because the statute only allows for any offset of successor liability when proceeds from the sale are applied to such superior liens, and there is no evidence that any part of the proceeds were applied in this manner.

Affirmed.

/s/ Pat M. Donofrio
/s/ Elizabeth L. Gleicher
/s/ Michael J. Kelly