

## REAL ESTATE

### MICHIGAN SUPREME COURT CLEARS PATH FOR JUDICIAL REVIEW OF STATE TAX COMMISSION DECISIONS ON PROPERTY CLASSIFICATION

by Michael J. Cook  
June, 2011

Until recently, property owners in Michigan who disputed a local assessor's classification of their property for tax purposes were not permitted to seek judicial review of the State Tax Commission's decision. However, in *Midland Cogeneration Venture Ltd Pshp v Naftaly*, \_\_\_ Mich \_\_\_ (May 23, 2011), the Michigan Supreme Court cleared the path for property owners to file an appeal in the appropriate circuit court by declaring that a statutory provision that precluded an appeal of the State Tax Commission's decision was unconstitutional.

*The Midland Congregation Venture* case involved the consolidation of nine appeals in which property owners disputed the classification of their property as either "industrial real property" or "commercial personal property." Each plaintiff sought to have its property classified as "industrial personal property" in order to take advantage of certain tax exemptions and credits available for that property classification. The plaintiffs individually filed petitions with their respective local boards of review, but each board denied the request for reclassification. The plaintiffs then separately appealed each board's decision by filing a petition with the State Tax Commission (the "Commission"). Once again, each plaintiff's request for reclassification was denied.

Notwithstanding MCL 211.34c(6)'s plain prohibition that "[a]n appeal may not be taken from the decision of the state tax commission regarding classification complaint petitions," the plaintiffs individually filed appeals in various circuit courts and obtained relief. The defendants (the Commission, various members of the Commission, and several assessors) appealed the circuit court judgments to the Court of Appeals, which consolidated the cases and reversed, holding that MCL 211.34c(6) was constitutional and barred each plaintiff's appeal to circuit court.

The Michigan Supreme Court reversed, holding that MCL 211.34c(6)'s bar on judicial review ran afoul of article 6, section 28 of the Michigan Constitution, which provides, in pertinent part, that all final decisions of any administrative agency acting in a judicial or quasi-judicial capacity that affect private rights "shall be subject to direct review by the courts as provided by law." The Court held that the Commission's decision was final and that it was acting in a quasi-judicial capacity because it was required to "arbitrate" the petition to review a local board's decision. The Commission's decision also involved a "private right" because the classification decision would affect a property owner's tax burden. The Court rejected the defendants' argument that the phrase "as provided by law" in article 6, section 28 of the Michigan Constitution permitted the Legislature to limit (or completely prohibit) circuit court review. The Court explained that the phrase "as provided

by law" only permitted the Legislature to provide the mechanics of circuit court review, i.e., the how, when, and what of an appeal. Thus, the Legislature could not "eradicate" the constitutional guarantee of judicial review, and the provision of MCL 211.34c(6) that purported to do so was held severed and declared unconstitutional.

The Court was careful to limit its declaration of unconstitutionality to the final sentence of MCL 211.34c(6), and left intact the provisions that provide for an initial review by the board of review and a first level appeal to the Commission. Now, however, a property owner is permitted to file a subsequent appeal to a circuit court under MCL 600.631, which permits an appeal to either the circuit court of the county where the property owner is a resident or the circuit court of Ingham county.

FOR MORE INFORMATION, PLEASE CONTACT:



**Michael J. Cook** is an associate in Dickinson Wright's Bloomfield office and can be reached at 248.433.7259 or [mcook@dickinsonwright.com](mailto:mcook@dickinsonwright.com).