

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

Nos. 2451

September Term, 2014

CBM ONE HOTELS, L.P.

v.

MARYLAND STATE DEPARTMENT OF
ASSESSMENTS AND TAXATION

Krauser, C.J.,
Nazarian,
Kenney, James. A. III
(Senior Judge, Specially Assigned),
JJ.

Opinion by Kenney, J.

Filed: May 5, 2017

This appeal involves the recordation and transfer taxes due on a merger of four business entities operating in Maryland. The parties have stipulated to the operative facts and documents in this case. What is in dispute is the application of the relevant law to those facts and documents. The appellant is CBM One Hotels L.P. (“CBM”), and the appellee is the State Department of Assessment and Taxation (“Department”). As posed by CBM, the question before us is:

Did the Tax Court misapply Maryland law in holding that, in connection with the merger transaction which transferred only land and a reversionary interest in the improvements constructed on the land (but not the improvements themselves), CBM was obligated to pay transfer and recordation taxes on the full fair market value of both the land and the improvements?

For the reasons that follow, we answer that question in the negative and shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL HISTORY

In August 1986, Marriott Corporation, as the Tenant, entered into two ground leases with the Essex House Condominium Corporation (“Essex House” or “the Landlord”). The term of each ground lease was 95 years. One of the properties was in Montgomery County, and the other was in Baltimore County. For the purposes of this opinion, the operative language in the two ground leases is essentially the same.

Marriot Corporation assigned its interest in the ground leases to the Courtyard by Marriott Limited Partnership on October 15, 1986. The provision (taken from the Baltimore County lease) on which CBM relies reads as follows:¹

5.05 Improvements and Personal Property

- (a) Tenant shall have the right, subject to full compliance with applicable law, at any time and from time to time during the Term, to construct, alter, repair, remodel, or replace any Improvements and to demolish, raze, or otherwise remove the same. All Improvements shall be Tenant's property throughout the Term, and Tenant shall retain all rights to depreciation deductions and tax credits arising from ownership thereof. Nevertheless, subject to Section 3.03(b) and paragraph (b) below, any Improvements remaining as of expiration or termination of this Lease shall become part of the realty and the sole and absolute property of Landlord and shall be surrendered to Landlord at that time, free and clear of the liens of mortgages, deeds of trust, mechanics, laborers, or materialmen, and all other liens and encumbrances other than those incurred by or agreed to by Landlord.

The ground leases were not recorded, but a Memorandum of Lease for the Baltimore County property was recorded in that county's land records on October 17, 1986. A Memorandum of Lease for the Montgomery County property was recorded in that county's land records on May 14, 1987.

On December 28, 2005, Essex House conveyed each of the properties to CI Maryland Land Business Trust ("CI Trust") in fee simple by special warranty deeds. The respective conveyances included "the buildings and improvements located on such land only to the extent of the reversionary interest therein held by Grantor created under the

¹ The corresponding language in the Montgomery County lease is identical.

ground lease (and all amendments thereto) that encumbers such land.” The habendum clauses state “TO HAVE AND TO HOLD the Property hereby intended to be granted and conveyed, together with the appurtenances thereof, unto and to the proper use and benefit of Grantee, its successors and assigns, in fee simple.”

CI Trust, as the ground lessor, entered into a Memorandum of Agreement Regarding Ground Leases with CBM Land JV Limited Partnership and Courtyard Management Corporation as Manager on December 29, 2005. In the memorandum related to each of the properties in this case, the parties agreed that the ground lessor would not modify the terms of the ground lease without the consent of the Manager. The Memorandum for the Baltimore County property was recorded on April 4, 2006; the Memorandum for the Montgomery County property was recorded on January 13, 2006.

A refinancing, dated June 15, 2012, of forty properties in multiple jurisdictions throughout the country,² generated a flurry of documents related to the two Maryland properties in this case, including:

- 1) A Termination of Ground Lease and Memorandum Thereof between CI Trust and Courtyard by Marriott Limited Partnership (CBMLP) under which CI Trust agreed to transfer to BM LP its “right in title and

² According to the testimony of Rachael Donnelly, Esquire, the Texas attorney who was “lead counsel” in the transaction, the “driving reason behind [the refinancing] was . . . paying off some existing debt” and “putting new debt in place, and the new lender wanted to simplify the structure of the transaction.” There were three properties in Maryland, but only two involved ground leases.

interest” in the leased premises including CI Trust’s “reversionary interest” in the groundleases.^[3]

- 2) A Termination of Memorandum of Agreement Regarding Ground Leases was executed and acknowledged for each property on June 5, 2012, with an “Effective Date” of June 15, 2012. It was recorded on June 25, 2012.
- 3) Articles of Merger Merging CI Land Management LLC, CI Land, L.P., and CI Maryland Land Business Trust with and into Courtyard by Marriott Limited Partnership. CI Maryland Land Business Trust is a Maryland business trust. The others include a Delaware limited liability company, and two Delaware limited partnerships. The Articles of Merger provide that the “effective time of the Merger shall be 4:15 p.m. Eastern Time on June 15, 2012.”
- 4) A Confirmatory Deed from CI Maryland Land Business Trust to Courtyard by Marriott Limited Partnership for each of the Maryland properties was filed and recorded in the respective land records. Each deed granted the subject property in “fee simple” and “together with all improvements thereupon.”

In short, the landlord under the ground leases merged into the tenant. On July 18, 2012, Courtyard by Marriott Limited Partnership changed its name to CBM One Hotels, L.P.

CBM calculated the value of the Montgomery County property for recordation and transfer tax purposes at \$1,986,300, which was the value of the land as assessed by the Department. It calculated the value of the Baltimore County property at \$2,754,700, which was the value of the land assessment by the Department. Both calculations—which did not include the improvements

³ The document was signed and notarized on June 5, 2015.

assessment—were rejected by the Department. In the Department’s view, recordation and transfer taxes were to be based on the total assessed value of the two properties. That value was \$13,406,000 for the Montgomery County property and \$5,599,400 for the Baltimore County property.

CBM paid the recordation and transfer taxes as calculated by the Department, and, on August 31, 2012, it sought refunds of \$208,979.85 with respect to the Montgomery County property and \$66,281.52 with respect to the Baltimore County property. The refund requests were denied and the case proceeded to the Tax Court. The Tax Court rendered its opinion on March 20, 2014.

In rejecting CBM’s argument that the tenant under the ground leases owned the improvements to the real property prior to the merger, the Tax Court cited *Supervisor of Assessments of Balt. Cty. v. Greater Balt. Med. Ctr., Inc.*, 202 Md. App. 282 (2011), and *Townsend Balt. Garage, LLC v. Supervisor of Assessments of Balt.*, 215 Md. App. 133, 145 (2013). It concluded that the recorded Memorandum of Lease as to each property “included no language to transfer the improvements” from the landlord under the ground lease to the tenant.

The Tax Court then stated:

The Court agrees with the Supervisor that the language in the Tax-Property Article specifically requires the taxes to be imposed on the assessed value of the property. [Maryland Code (2001, 2012 Repl. Vol.), §§ 12-105(g) and 13-205(d) of the Tax-Property Article] Tax-Property Section 12-105(g) & 13-205(d) states that: “for a transfer of articles of merger . . . , the recordation tax applies to the value of the real property determined by the

Department on the date of finality immediately before the date of the merger or consolidation.” In addition, for the same reasons, the state and county transfer taxes in Tax-Property Section 13-205(d) and 13-404 also requires the taxes to be imposed on the assessed value of the property. Under the clear language of the statutes, as well as the taxation scheme created in the Tax-Property Article, the Respondent’s valuation as of the previous date of finality can only be the valuation of a fee simple interest. The Petitioner’s position that value can mean the value of a partial interest has no support in the statutory language or in the facts of this case.

(Alteration supplied.)

CBM filed a Petition for Judicial Review in the circuit courts of both Baltimore County and Montgomery County. CBM and the Department filed a Joint Motion to Transfer the Montgomery County Petition for Judicial Review to Baltimore County based on common questions of law and fact. The motion was granted and the Montgomery County petition was transferred to the Circuit Court for Baltimore County. That court affirmed the decision of the Tax Court on December 11, 2014, and a timely appeal was filed by CBM on January 8, 2015.

DISCUSSION

STANDARD OF REVIEW

Final orders of the Tax Court are subject to judicial review under Maryland Code (1984, 2014 Repl. Vol.), §§ 10–222 and 10–223 of the State Government Article, which governs the standard of review for administrative agency decisions.” *Pleasants Invs. Ltd. P’ship v. Dep’t of Assessments & Taxation*, 141 Md. App. 481, 489 (2001). We review the decision of the Tax Court and not the decision of the circuit court. *State Dep’t of Assessments & Taxation v. Consol. Coal Sales Co.*, 382 Md. 439, 453 (2004).

Under this standard [of review], a reviewing court is under no statutory constraints in reversing a Tax Court order which is premised solely upon an erroneous conclusion of law. *See, e.g., Supervisor of Assess. v. Carroll*, 298 Md. 311 (1984); *Comptroller v. Mandel Re-Election Com.*, 280 Md. 575 (1977). On the other hand, where the Tax Court's decision is based on a factual determination, and there is no error of law, the reviewing court may not reverse the Tax Court's order if substantial evidence of record supports the agency's decision.

Supervisor of Assessments v. Keeler, 362 Md. 198, 207 (2001) (citation omitted). Stated more simply, “a final order of the Tax Court must be upheld on judicial review if it is legally correct and reasonably supported by the evidentiary record.” *Consol. Coal Sales Co.*, 382 Md. at 454.

We review de novo the Tax Court's legal conclusions, including its “interpretation of statutory provisions.” *Bennett v. State Dep't of Assessments & Taxation*, 143 Md. App. 356, 367 (2001). In regard to statutory interpretation,

Our primary goal in construing a statute is to ascertain and effectuate the intent of the Legislature. We are guided in this endeavor by the statutory text.

We give the words of the statute their ordinary meaning. If the statute is free of ambiguity, we generally will not look beyond the statute to determine legislative intent.

Id. at 367–68 (internal citations omitted). We read the statute “as a whole, so that all provisions are considered together and, to the extent possible, reconciled and harmonized.” *Rouse-Fairwood Ltd. P'ship v. Supervisor of Assessments of Prince George's Cty.*, 120 Md. App. 667, 687 (1998).

If the statute is ambiguous, we consider both the usual meaning of its language, and its “meaning and effect in light of the setting, the objectives and purpose of the

enactment.” *Tucker v. Fireman’s Fund Ins. Co.*, 308 Md. 69, 75 (1986). In addition, we may give “weight to an agency’s experience in interpretation of a statute that it administers,’ especially when that statute is ambiguous or unclear.” *Md. Ins. Comm’r v. Cent. Acceptance Corp.*, 424 Md. 1, 16 (2011) (quoting *Schwartz v. Md. Dep’t of Nat. Res.*, 385 Md. 534, 554 (2005)).

THE CONTENTIONS

CBM, asserting that the “essential facts are simple and not in dispute,” posits that, as the tenant under the respective ground leases, it owned the improvements and the landlord “owned *only* the land and reversionary interest in the improvements.” (Emphasis in original.) Therefore, when the landlord under the ground leases merged into CBM, “*only* the land and the remainder interest in the improvements” transferred to CBM. On that premise, CBM contends that the Tax Court “reached . . . an erroneous legal conclusion” and misapplied “relevant provisions of the Tax-Property Article” and “controlling precedent.” And, “by assessing and collecting transfer and recordation taxes on the value of property already owned by CBM [i.e., the improvements,] the Department exceeded its statutory authority.” It analogizes the merger transaction to the sale of a “1/3 interest in Blackacre” or the sale of a limited liability company that owns a 1/3 interest in the land to a person or entity already owning an interest of Blackacre.

CBM distinguishes *GBMC*, 202 Md. App. 282, which, it argues, was “asserted” by the Department and “erroneously accepted” by the Tax Court, on the ground that the Greater Baltimore Medical Center owned both the land and the improvements.

According to CBM, the *GBMC* Court “addressed only the application of [a] charitable exemption for *real property taxes imposed under Title 6 of the Tax-Property Article.*” Title 6 of the Tax-Property Article relates to *ad valorem* property taxes which are “taxable to the owner of the property,” and thus an entitlement to a charitable exemption (the issue in *GBMC*) “rests with the record owner of the property.” Therefore, it contends, *GBMC* “has nothing relevant to offer with respect to the imposition of *transfer and recordation taxes on instruments of writing under Titles 12 and 13 of the Tax-Property Article.*” (Emphasis in original.)

Titles 12 and 13 of the Tax-Property Article, on the other hand, impose an excise tax on “instrument[s] of writing.” For that reason, the tax imposed under Tax-Property sections 12-105(g)(2)⁴ and 13-205(d)(2)⁵ should not be calculated on the consideration payable for the instrument or the debt secured by it, but on the value of the property

⁴ That provision provides:

(2) For a transfer by articles of merger, articles of consolidation, or other documents which evidence a merger or consolidation of foreign corporations, foreign limited liability companies, foreign partnerships, or foreign limited partnerships, the recordation tax applies to the value of the real property determined by the Department at the date of finality immediately before the date of the merger or consolidation.

⁵ That provision provides:

(2) For a transfer by articles of merger, articles of consolidation, or other documents which evidence a merger or consolidation of foreign corporations, foreign partnerships, foreign limited liability companies, or foreign limited partnerships, the transfer tax applies to the value of the real property determined by the Department at the date of finality immediately before the date of the merger or consolidation.

actually being transferred by the instrument in writing. In this case, that would be only the land and the reversionary interest in the improvements.

And, even if *GBMC* is applicable to taxes imposed on instruments of writing under Titles 12 and 13, CBM contends that it is still entitled to a refund because the recorded documents in *GBMC* did not transfer “record title ownership of the improvements to BHI, LLC.” *GBMC*, 202 Md. App. at 300. Here, it asserts, the ground leases “unequivocally established” that the improvements were CBM’s property during the term of the lease with CBM “retain[ing] all rights to depreciation deductions and tax credits” based on its ownership. The recording of the Memorandum of Lease in the land records put the Department on notice and knowledge of the terms of the ground leases.

The Department contends that the “controlling statute directs the Department to calculate the transfer and recordation taxes based on the assessed value of the transferred real property under the real property taxation scheme, *i.e.*, the assessed value determined by the Department as of the preceding January 1.” In its view, CBM’s position that the taxes are to be computed on the value of the landlord’s interests in the land and its reversionary interest in the improvements ignores the statutory definition of “value” and rests on “an erroneous theory” that CBM as the tenant under the ground leases “owned the fee simple interest in the improvements at the time of the merger, which it did not.”

According to the Department, in a merger “all of the assets and liabilities (both known and unknown) are transferred from the absorbed entity to the surviving entity, so there is no allocation of consideration,” Therefore, Tax-Property §§ 12-105(g)(2) and 13-

205(d)(2) “authorize[] imposition of the taxes on one value, the preexisting assessment as of the most recent date of finality.” Moreover, the ground leases in this case “did not transfer legal ownership in any real property, including the improvements,” and even if they “had included the requisite language to do so,” the ground leases were not recorded and the recorded “Memorandum of Lease contained no language transferring ownership in the improvements.” For that reason, no transfer of improvements was “legally completed.”

Subsequent to oral argument, with permission of the Court, CBM submitted further authority for its position that the Department was without authority to collect recordation and transfer taxes on “property which was *not* transferred” because those taxes are not in the nature of excise taxes and not *ad valorem* property taxes. In *Md. Econ. Dev. Corp. v. Montgomery Cty.*, 431 Md. 189, 200 (2013), a case involving recordation taxes on a recorded deed of trust, the Court of Appeals stated:

As this Court has explained, a direct tax is a property tax, which “is a charge on the owner of property by reason of his ownership alone without regard to any use that might be made of it.” *Weaver v. Prince George's County*, 281 Md. 349, 357 (1977) (citation omitted). In contrast, an excise tax is “defined as a tax imposed upon the performance of an act, the engaging in an occupation, or the enjoyment of a privilege” which “is said to embrace every form of taxation that is not a burden directly imposed on persons or property.” *Id.* at 357–58 (citation and quotation marks omitted). The recordation tax at issue here is “an excise tax imposed upon the privilege of recording the deed.” *Dean v. Pinder*, 312 Md. 154, 159 (1988).

(Parallel citations omitted.) The Court in *Dean*, 312 Md. at 159, stated that although a recordation tax “is computable on the amount of consideration transferred, it is not

considered a tax on property but rather an excise tax imposed upon the privilege of recording the deed.”

The Department responded that the difference “between recordation/transfer taxes and property taxes” has never been “at issue” in this case. In its view, nothing in *Md. Econ. Dev. Corp.* overcomes this Court’s holding in *GBMC* as to the ownership of the improvements in this case.

ANALYSIS

Our search for legislative intent begins with the language of the statutes at issue.

Tax-Property Article, 12-101(c), in the “definitions” section, provides:

(c) “Articles of merger” means a document filed with the Department under § 3-107, § 4A-703, § 9A-903, or § 10-208 of the Corporations and Associations Article which evidences a merger involving at least one Maryland corporation, Maryland limited liability company, Maryland partnership, or Maryland limited partnership.

Section 12-102, “application,” provides:

Except as otherwise provided in this title, recordation tax is imposed on an instrument of writing:

- (1) recorded with the clerk of the circuit court for a county; or
- (2) filed with the Department and described in § 12-103(d) of this title.

Section 12-101(g) “‘Recordation tax’ means the tax imposed under this title.”

Tax-Property Article 12-105(g) provides, in relevant part:

(2) For a transfer by articles of merger, articles of consolidation, or other documents which evidence a merger or consolidation of foreign corporations, foreign limited liability companies, foreign partnerships, or foreign limited partnerships, *the recordation tax applies to the value of the real property determined by the Department at the date of finality immediately before the date of the merger or consolidation.*

(Emphasis added.)

Tax-Property Article 13-101 “Definitions” provides, in relevant part:

(a) In this title the following words have the meanings indicated.

* * *

(c) “Articles of merger” means a document filed with the Department under § 3-107, § 4A-703, § 9A-903, or § 10-208 of the Corporations and Associations Article which evidences a merger involving at least one Maryland corporation, Maryland limited liability company, Maryland partnership, or Maryland limited partnership.

* * *

(f)(1) “Instrument of writing” means a written instrument that conveys title to, or a leasehold interest in, real property.

(2) “Instrument of writing” includes: . . .

(v) articles of merger or other document which evidences a merger of foreign corporations, foreign limited liability companies, foreign partnerships, or foreign limited partnerships;

* * *

(3) “Instrument of writing” does not include:

(i) a mortgage, deed of trust, or other contract that creates an encumbrance on real property; or

(ii) a security agreement, as defined in § 12-101(h) of this article.

Tax-Property Article § 13-201 “Definitions” provides, “[i]n this subtitle, ‘transfer tax’ means the tax imposed under this subtitle.”

Tax-Property Article § 13-205. “Computation” provides, in relevant part:

[(d)](2) For a transfer by articles of merger, articles of consolidation, or other documents which evidence a merger or consolidation of foreign corporations, foreign partnerships, foreign limited liability companies, or foreign limited partnerships, *the transfer tax applies to the value of the real property determined by the Department at the date of finality immediately before the date of the merger or consolidation.*

(Emphasis added.)

We are persuaded that the plain meaning of the respective statutes is clear and that the result is neither “unreasonable” nor “inconsistent with common sense.” *Rosemann v. Salisbury Clements, Beckman, Marder & Adkins, LLC*, 412 Md. 308, 315 (2010). In regard to both recordation and transfer taxes, the imposed tax is based on “the value of the real property determined by the Department at the date of finality immediately before the date of merger or consolidation.” Tax-Property §§ 12-205(g) and 13-205(d). The Tax-Property Article defines “value” as “the full cash value of the property,” in section 1-101(qq), and defines “real property” as “any land or improvements to land . . . includ[ing] . . . a leasehold or other limited interests in real property” in section 1-101(gg). The “date of finality” is the prior January 1. Tax-Property § 1-101(i). Read in the context of the statutory scheme, the applicable statutes direct that the respective taxes be based on the predetermined fixed value for both the land and the improvements. The fact that the taxes are excise taxes does not change the directed calculation of the tax.

The record establishes that the Department’s interpretation of the applicable statutes is one of long standing. Thus, were we to find some ambiguity in the statutes (we do not), the Department’s consistent interpretation of a statute would be “entitled to considerable weight.” *Falik v. Prince George’s Hosp. and Medical Center*, 322 Md. 409, 416 (1991).

And, had we interpreted the statute as advocated by CBM, it still would not prevail. In addressing CBM’s argument that the improvements had been transferred to the tenant under the ground leases, the Tax Court cited *GBMC*, 202 Md. App. 133, and

Townsend, 215 Md. App. at 145. We are not persuaded that, under Maryland real property law, title ownership of the land and improvements in this case was separated because “there [is] no document of record that transferred record title in the improvements from the owner of the fee simple interest in the land” from the landlord to the tenant under the respective ground leases. *Townsend*, 215 Md. App. at 145.

As we explained in *GBMC*, “the record owner, as listed in the land records, is the owner of the real property for tax assessment purposes.” 202 Md. App. at 292. Tax-Property section 1-101(gg)(1) defines real property as “any land or improvements to land.” We further explained, quoting 41 Am. Jur. 2d Improvements § 3 (2005), that “improvements affixed to the land are ‘considered part of the real property’ and ‘ownership of the improvements follows title to the land.’” *GBMC*, 202 Md. App. at 293. We concluded, citing Maryland Code (1974, 2010 Repl. Vol.), § 3-101 of the Real Property Article, “that, for someone other than the record landowner to own the improvements on the land, there must be a recorded deed or other instrument of record showing a transfer of title to the improvements to another owner.” *GBMC*, 202 Md. App. at 293.

Looking to the *recorded* documents in that case, the *GBMC* Court concluded:

In sum, of the documents relied upon by the Supervisor, only the Memorandum of Lease, Easement Agreement, and Leasehold Deed of Trust were recorded in the land records. Although the Easement Agreement and Leasehold Deed of Trust acknowledge that BHI LLC is the owner of the Improvements, there is no language in these recorded documents transferring *GBMC*’s record title ownership of the land or the Improvements to BHI LLC. This result is corroborated by the “printout” for the land and Improvements on the *SDAT*’s own website, which states that

GBMC is the owner of the land and the Improvements for real property tax purposes.

202 Md. App. at 300.

As to the unrecorded documents, the *GBMC* Court stated:

These documents, at most, show a *contractual ownership* of the Improvements by [the lessee]; they do not show title or record ownership of the Improvements by [the lessee]. In other words, record title always remained in GBMC, even if contractual ownership of the Improvements was held by [the lessee].

Id. (emphasis in original).

We reached the same conclusion in *Townsend*, 215 Md. App. 133. Similar to the situation in *GBMC*, “the transaction was structured . . . to finance the development of the property.” *Townsend*, 215 Md. App. at 136–37. The property, which was owned by the State for the use of the Maryland University System, was leased to a tax exempt non-profit corporation created under section 12-113 of the Education Article of the Maryland Code, “which permits the University system to establish a business entity to further a goal of the University” *Id.* at 135. The ground lease provided that the corporation would own the improvements upon the land during the lease term and “upon the expiration of the lease term the title to the improvements shall automatically vest in the landlord without any payment by the landlord.” *Id.* We concluded, as in *GBMC*, that the documents showed “at most . . . a contractual ownership” but not “title or record ownership of the improvements,” and therefore, the State as the landlord was “the owner of the land ‘and the improvements.’” *Townsend*, 215 Md. App. at 145.

The language of the ground leases in this case establishes that “All Improvements shall be Tenant’s property throughout the Term, and Tenant shall retain all rights to depreciation deductions and tax credits arising from ownership thereof.” At the end of the respective terms, they automatically became “part of the realty and the sole and absolute property of the Landlord.” We perceive no substantive difference between this provision and those in *GBMC* and *Townsend*. It establishes a “contractual ownership” for the purposes of tax benefits and credits, but it does not transfer legal title to the tenant. And, even if it did, the ground leases were not recorded and the recorded memoranda related to the ground leases contain no transfer of title language.

**JUDGMENT OF THE CIRCUIT
COURT FOR BALTIMORE
COUNTY AFFIRMED; COSTS TO
BE PAID BY APPELLANT.**