

STATE OF MICHIGAN
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL

Clariant Corporation,
Petitioner,

v

MTT Docket No. 16-005619

Michigan Department of Treasury,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

On February 15, 2017, Respondent filed a Motion for Summary Disposition arguing that: (i) “[w]hile Clariant timely filed its Form 5278 and its ESA annual return, it failed to pay its ESA liability by October 15, 2016 despite prior notice from Treasury,” (ii) “[a]s required by MCL 211.1057(5)(a), Treasury rescinded Clairant’s EMPP Exemptions on November 23, 2016,” (iii) “[i]n its Petition, Clariant admits it did not pay the ESA tax but requests equitable relief in the form of reinstatement of the EMPP Exemptions. Clariant alleges it was confused about the process to submit payment in addition to a ‘number of legislation changes,’” (iv) “[t]he Tribunal does not have subject matter jurisdiction to hear an assessment dispute about the subject properties’ true cash value for tax year 2016, as the petition is untimely,” and (v) “the Petition does not allege any legal or factual basis that Treasury’s rescission was improper. Accordingly, Clariant fails to state a claim upon which relief may be granted and this case should be dismissed under MCR 2.116(C)(8).”

Petitioner has not filed a response to the Motion.

The Tribunal has considered the Motion and the casefile and finds that Respondent has moved for summary disposition under MCR 2.116(C)(4), (C)(8), and (C)(10). Dismissal under MCR 2.116(C)(4) is appropriate when the “court lacks jurisdiction of the subject matter.” When presented with a motion pursuant to MCR 2.116(C)(4), the Tribunal must consider any and all affidavits, pleadings, depositions, admissions, and documentary evidence submitted by the parties.¹ In addition, the evidence offered in support of or in opposition to a party’s motion will “only be considered to the extent that the content or substance would be admissible as evidence to establish or deny the grounds stated in the motion.”² A motion under MCR 2.116(C)(4) is appropriate where the plaintiff has failed to exhaust its administrative remedies.³ Here, Respondent contends that Petitioner’s appeal must be dismissed as it was not timely filed. The Tribunal finds that while Petitioner referenced the true cash and taxable values of the subject

¹ *Id.*

² MCR 2.116(G)(6).

³ See *Citizens for Common Sense in Gov’t v Attorney Gen*, 243 Mich App 43; 620 NW2d 546 (2000).

property, Petitioner's sole issue was the Order of Rescission. Thus, Respondent's motion for summary disposition under MCR 2.116(C)(4) shall be denied.

Motions under MCR 2.116(C)(8) are appropriate when "[t]he opposing party has failed to state a claim on which relief can be granted." Dismissal should be granted when the claim, based solely on the pleadings, is so clearly unenforceable that no factual development could possibly justify a right to recovery.⁴ In reviewing a motion under this subsection, the court must accept as true all factual allegations in support of a claim, as well as all inferences which can fairly be drawn from the facts.⁵

Under MCL 211.1057(3), "each eligible claimant shall electronically revise ... and certify the completed statement and make fully payment of the assessment levied" on or before August 15 for that assessment year. MCL 211.1057(4) requires the Department of Treasury to "issue a notice to the eligible claimant not later than September 15," if the claimant fails to certify the statement or provide full payment by August 15. The statute further allows the claimant to make a full payment of the assessment along with the late penalty fee by October 15. Here, in the Petition, Petitioner admits that it failed to timely pay the ESA assessment by the statutory deadline. The Affidavit of David A. Buick shows that Respondent provided Petitioner with numerous reminders including a Payment Reminder Letter on July 15, 2016, and a Notice of Account Status on August 24, 2016. Further, Respondent received two phone calls from Petitioner regarding questions about the Notice of Assessment Status. As such, the Tribunal agrees that Petitioner has not alleged any legal or factual basis that the rescission was erroneous; thus, Petitioner has failed to state a claim upon which relief can be granted.

Additionally, summary disposition under MCR 2.116(C)(10) tests the factual support for a claim and must identify those issues regarding which the moving party asserts there is no genuine issue of material fact. Under subsection (C)(10), a motion for summary disposition will be granted if the documentary evidence demonstrates that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law.⁶ In the event, however, it is determined that an asserted claim can be supported by evidence at trial, a motion under (C)(10) will be denied.⁷

The Michigan Supreme Court has established that a court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed by the parties in the light most favorable to the non-moving party.⁸ The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider.⁹ The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.¹⁰ Where the burden of proof at trial on a dispositive issue rests on a non-moving party, the non-moving party

⁴ See *Transamerica Ins Group v Michigan Catastrophic Claims Ass'n*, 202 Mich App 514, 516; 509 NW2d 540 (1993).

⁵ See *Meyerhoff v Turner Construction Co*, 202 Mich App 499, 502; 509 NW2d 847 (1993).

⁶ See *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999).

⁷ See *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).

⁸ See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)).

⁹ See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).

¹⁰ *Id.*

may not rely on mere allegations or denials in pleadings but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists.¹¹ If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.¹²

The Tribunal further finds that Respondent's Motion under MCR 2.116(C)(10) shall be granted as well as there are no genuine issues of material fact. As Respondent stated, "Clariant failed to pay the ESA tax in time despite prior notice, and Treasury's rescission of Clariant's EMPP exemption was proper."

Further, the State Essential Services Assessment Act ("SESA") clearly lists the qualification requirements and states that there is no equitable relief available for claimants who fail to certify the statement or fail to make a full payment of the assessment including the late penalty payment. Moreover, the Tribunal has no "equitable powers" to waive or otherwise extend the deadline set forth in the SESA.¹³ Petitioner failed to meet the timeframe required by MCL 211.1057 and while Petitioner contends that "due to the number of legislation changes and confusion regarding payment portal, the payment was not timely made," the Tribunal finds that Petitioner has not provided good cause to justify granting its requested relief. The Tribunal further finds that Respondent properly issued the Order of Rescission, as such Respondent has proven that it is entitled to summary disposition, under MCR 2.116(C)(8) and (C)(10), and the Order of Rescission shall be upheld. Therefore,

IT IS ORDERED that Respondent's Motion for Summary Disposition is GRANTED.

IT IS FURTHER ORDERED that the November 23, 2016 Order of Rescission for the subject property is UPHELD.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the revocation of the exemption and the property's assessment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization.¹⁴ To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear

¹¹ See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).

¹² See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

¹³ See *Electronic Data Sys Corp v Flint Twp*, 253 Mich App 538, 547-548 (2002).

¹⁴ See MCL 205.755.

interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, and (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%.

This Final Opinion and Judgment resolves all pending claims in this matter and closes this case.

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.¹⁵ Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is \$50.00 in the Entire Tribunal and \$25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.¹⁶ A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.¹⁷ Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.¹⁸

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave."¹⁹ A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.²⁰ The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.²¹

By _____ 

Entered: **APR 03 2017**
sms/pr

¹⁵ See TTR 261 and 257.

¹⁶ See TTR 217 and 267.

¹⁷ See TTR 261 and 225.

¹⁸ See TTR 261 and 257.

¹⁹ See MCL 205.753 and MCR 7.204.

²⁰ See TTR 213.

²¹ See TTR 217 and 267.