

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

NES Equipment Services Corp,
Petitioner,

v

MTT Docket No. 16-005620

City of Lincoln Park,
Respondent.

Tribunal Member Presiding
Steven H Lasher

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

ORDER OF DISMISSAL

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner filed this appeal on December 28, 2016, claiming entitlement to a refund of taxes paid for the 2013 tax year pursuant to MCL 211.53a.

On May 19, 2017, Respondent filed a motion requesting that the Tribunal enter summary disposition in its favor. In the motion, which was filed pursuant to MCR 2.116(C)(4) and (10), Respondent contends that it is entitled to judgment as a matter of law because the Tribunal lacks subject-matter jurisdiction and there is no genuine issue of material fact with respect to the existence of a mutual mistake of fact that would allow Petitioner to prevail under MCL 211.53a.

Petitioner has not filed a response to the motion.

RESPONDENT'S CONTENTIONS

Respondent contends that the Tribunal lacks jurisdiction over this appeal because it concerns an order issued by the State Tax Commission ("STC") in December 2014. Petitioner failed to timely appeal that order and is now trying to circumvent the Tribunal's lack of jurisdiction by disguising the nature of its claim. Petitioner would have the Tribunal assume jurisdiction over its appeal pursuant to an MCL 211.53a claim brought under MCL 205.731(b) as a court of first impression. However, as the issue is not the assessment levied by Respondent, but the values set by the STC following an MCL 211.154 proceeding, the Tribunal can only have jurisdiction under MCL 205.731(a) as an appellate body reviewing that order. And while an MCL 211.53a claim brought under MCL 205.731(b) can be brought within three years of payment of the taxes at issue, an appeal from an STC order under MCL 205.731(a) must be filed within 35 days of its issuance. Petitioner cannot circumvent the 35-day appeal period to invoke the Tribunal's jurisdiction under MCL 211.53a as an appellate body by appealing a value that no longer exists

and utilizing the Tribunal as a court of first review. The only value that Petitioner can appeal is the one set by the STC in its order, and as Petitioner waited more than 700 days to file its petition, it denied the Tribunal jurisdiction under MCL 205.731(a). Further, there is no mutuality between the assessor and taxpayer with respect to the 2013 true cash, state equalized, assessed, and taxable values that would allow Petitioner to recover under MCL 211.53a. The values at issue are the ones determined by the STC based on Respondent's L-4154 petition and unilateral belief with respect to the value of the subject property for the 2012 and 2013 tax years. Petitioner never filed a concurrence or attempted to dispute the values proposed by Respondent, and the values therefore were not the product of any meeting of the minds or mutual beliefs shared by Petitioner and Respondent. The only mistake made by Petitioner was failing to participate in the L-4154 petition process or appeal the STC ruling to the Tribunal in a timely manner.

STANDARD OF REVIEW

A. Motions for Summary Disposition under MCR 2.116(C)(4).

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.” MCR 2.116(G)(6). A motion under MCR 2.116(C)(4) is appropriate where the plaintiff has failed to exhaust its administrative remedies.²

B. Motions for Summary Disposition under MCR 2.116(C)(7).

Under MCR 2.116(C)(7), the claim is barred because of “release, payment, prior judgment, immunity granted by law, statute of limitations, statute of frauds, an agreement to arbitrate or to litigate in a different forum, infancy or other disability of the moving party, or assignment or other disposition of the claim before commencement of action.”

C. Motions for Summary Disposition under MCR 2.116(C)(10).

MCR 2.116(C)(10) provides for summary disposition when “there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.”³ The Michigan Supreme Court, in *Quinto v Cross and Peters Co*,⁴ provided the following explanation of MCR 2.116(C)(10):

MCR 2.116 is modeled in part on Rule 56(e) of the Federal Rules of Civil Procedure . . . [T]he initial burden of production is on the moving party, and the moving party may satisfy the burden in one of two ways.

¹ *Id.*

² See *Citizens for Common Sense in Gov't v Attorney Gen*, 243 Mich App 43; 620 NW2d 546 (2000).

³ *Id.*

⁴ *Quinto v Cross and Peters Co*, 451 Mich 358; 547 NW2d 314 (1996) (citations omitted).

First, the moving party may submit affirmative evidence that negates an essential element of the nonmoving party's claim. Second, the moving party may demonstrate to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim. If the nonmoving party cannot muster sufficient evidence to make out its claim, a trial would be useless and the moving party is entitled to summary judgment as a matter of law. In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4).

In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party 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. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.⁵

In the event, however, it is determined that an asserted claim can be supported by evidence at trial, a motion under subsection (C)(10) will be denied.⁶

CONCLUSIONS OF LAW

Having given careful consideration to Respondent's Motion for Summary Disposition under the criteria for MCR 2.116(C)(4), the Tribunal finds that granting the motion is not warranted. Subject-matter jurisdiction is defined as "[j]urisdiction over the nature of the case and the type of relief sought; the extent to which a court can rule on the conduct of persons or the status of things. — Also termed *jurisdiction of the subject matter*; *jurisdiction of the cause*; *jurisdiction over the action*; *jurisdiction racione materiae*. Cf. *personal jurisdiction*."⁷ MCL 205.731 provides that "[t]he tribunal has exclusive and original jurisdiction" over proceedings "for direct review of a final decision, finding, ruling, determination, or order of an agency relating to assessment, valuation, rates, special assessments, allocation, or equalization, under the property tax laws of this state," as well as those "for a refund or redetermination of a tax levied under the property tax laws of this state."⁸ The Tribunal also has jurisdiction over "[a]ny other proceeding

⁵ *Id.* at 361-363 (citations omitted.)

⁶ *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).

⁷ JURISDICTION, Black's Law Dictionary (10th ed. 2014).

⁸ *Id.*

provided by law,”⁹ and MCL 221.154(7) states that “a person to whom property is assessed under this section may appeal the state tax commission's order to the Michigan tax tribunal.” And though such appeals must be filed within 35 days of the issuance of the order pursuant to MCL 205.735a as contended by Respondent, the Tribunal would have jurisdiction over the nature of the case and the type of relief sought regardless of whether the petition was timely filed.¹⁰ See *Bonar v Dep’t of Treasury*,¹¹ wherein the Court of Appeals held that “the MTT has subject matter jurisdiction over tax appeals even when that jurisdiction is not properly invoked in a particular case.” Accordingly, Respondent’s motion would have been more appropriately filed under MCR 2.116(C)(7), which provides for summary disposition when an appeal is barred by the statute of limitations, among other things.

Even under the appropriate court rule, however, Respondent’s jurisdictional claims are without merit. Though Petitioner was required to appeal the STC order to the Tribunal within 35 days, MCL 211.53a provides an exception to the general jurisdictional provisions set forth in MCL 205.735a. In a case dealing with the exception found in MCL 211.53b, the Tribunal explained the nature of these statutes as follows:

Respondent's rhetorical claim that ‘Petitioner . . . seeks a back-door appeal’ is accurate. Much like its statutory counterparts, MCL 211.53a and MCL 211.154, the statutory relief in MCL 211.53b provides a limited retroactive period in which to correct specified errors. These errors would otherwise be subject to appeal only for the current tax year and would be required to have been raised through the procedure normally applicable to property tax appeals. MCL 205.735a. The relief in 53b extends a ‘back door’ to ‘the year in which the error was made or in the following year.’

While normally a 53b claim would be discovered after the March Board of Review, it need not be raised at the time. The test under 53b is not when the taxpayer should have discovered the error, but rather a simple claim that the error exists. Late discovery harms the taxpayer, however, as the taxpayer cannot recover accrued interest if relief is obtained. In sum, there is no statutory support for Respondent's interpretation of 53b. Respondent's interpretation conflicts with the plain language of 53b. Respondent's interpretation would be nearly impossible to administer and is contrary to the purpose and function of section 53b.¹²

Consequently, if Petitioner was assessed and paid “taxes in excess of the correct and lawful amount due because of a clerical error or mutual mistake of fact” for the 2013 tax year, it would be entitled to file an appeal with the Tribunal pursuant to MCL 211.53a and “recover the excess so paid, without interest,” regardless of its failure to appeal the STC order within the timeframe

⁹ *Id.*

¹⁰ See MCL 205.735a(6), which states, “In all other matters, the jurisdiction of the tribunal is invoked by a party in interest, as petitioner, filing a written petition within 35 days after the final decision, ruling, or determination.” *Id.*

¹¹ *Bonar v Dep’t of Treasury*, unpublished opinion per curiam of the Court of Appeals, issued May 30, 2013 (Docket No. 310707), p 2 n 1.

¹² *Mengeling v City of Brighton*, 16 MTTR 238 (Docket No. 329879, July 27, 2007).

provided by MCL 205.735a(6).¹³ The Tribunal finds, however, that the assessments at issue were not the result of a clerical error or mutual mistake of fact, such that Petitioner can invoke the Tribunal's jurisdiction under this section. In that regard, the Michigan Court of Appeals has defined clerical errors as "errors of a transpositional, typographical, or mathematical nature."¹⁴ Given the STC's purposeful revision of the assessment pursuant to the filing of a 154 petition filed by Respondent's Equalization Director on October 6, 2014, it cannot be found to constitute such an error. A "mutual mistake of fact" is "an erroneous belief, which is shared and relied on by both parties, about a material fact that affects the substance of the transaction."¹⁵ The Tribunal agrees that the STC, in ruling on the 154 petition in the absence of any concurrence by Petitioner or attempt to dispute the values proposed by Respondent's representative, did so based on Respondent's unilateral belief regarding the value of the subject property. And though it could be argued that Petitioner did not dispute the proposed values because it believed them to be correct, such that it shared Respondent's "erroneous" belief, "Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party 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. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted."¹⁶ The burden of proof in this case rests on Petitioner, and in addition to failing to identify the purported "clerical error and/or mutual mistake of fact" giving rise to this appeal in its petition, as required by TTR 227, it has failed to file a response to Respondent's Motion for Summary Disposition or present any documentary evidence establishing the existence of a factual dispute on that issue.

JUDGMENT

Given the above, the Tribunal finds that there is no genuine issue of material fact with respect to the existence of a clerical error or mutual mistake of fact, and Respondent is entitled to judgment as a matter of law. Therefore,

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

IT IS FURTHER ORDERED that this case is DISMISSED.

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.

¹³ *Id.*

¹⁴ *International Place Apartments – IV v Ypsilanti Township*, 216 Mich App 104, 109; 548 NW2d 668, 670 (1996).

¹⁵ *Ford Motor Co v City of Woodhaven*, 475 Mich 425, 442; 716 NW2d 247, 256 (2006).

¹⁶ *Quinto*, 451 Mich at 361-363
(citations omitted).

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.¹⁷ 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.¹⁸ 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.¹⁹ Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.²⁰

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."²¹ A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.²² The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.²³

Date Entered by Tribunal: June 29, 2017
ejg

By _____ Steven H. Lasher _____

¹⁷ See TTR 261 and 257.

¹⁸ See TTR 217 and 267.

¹⁹ See TTR 261 and 225.

²⁰ See TTR 261 and 257.

²¹ See MCL 205.753 and MCR 7.204.

²² See TTR 213.

²³ See TTR 217 and 267.