

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

Kendor Steel Rule Die, Inc,
Petitioner,

v

MTT Docket No. 17-000315

City of Fraser,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

ORDER GRANTING RESPONDENT’S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

On May 19, 2017, Respondent filed a motion requesting the Tribunal to enter summary disposition in its favor. In the Motion, Respondent contends that Petitioner did not timely file its EMPP and personal property statement with the assessor and cannot qualify for the exemption under MCL 211.9m.

Petitioner has not filed a response to the Motion.

The Tribunal has considered the Motion, response and the case file and finds that Respondent moves 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 The failure to meet the statutory requirements for an exemption does not deprive the Tribunal of subject matter jurisdiction over this matter. Rather, MCL 205.731 grants the Tribunal exclusive jurisdiction over property tax matters, and as such, the Tribunal has subject matter jurisdiction over Petitioner’s request for an exemption from property taxation. Respondent’s motion for summary disposition under MCR 2.116(C)(4) must be denied.

Notwithstanding the above, the Tribunal finds that summary disposition under MCR 2.116(C)(10) is appropriate. 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.² 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.³

¹ *Id.*

² See *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999).

³ See *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).

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.⁴ The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider.⁵ The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.⁶ Where the burden of proof at trial on a dispositive issue rests on a non-moving party, the non-moving 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.⁷ If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.⁸

The Tribunal finds that it will treat Respondent's Motion as a motion under MCR 2.116(C)(10). The Motion under (C)(10) shall be granted as there are no genuine issues of material fact. MCL 211.9m requires, among other things, that "[t]he combined document prescribed in this section, shall be completed and delivered to the assessor of the township or city in which the qualified new personal property is located by February 20 of each year." As such, a taxpayer cannot qualify for the exemption if it fails to meet this requirement.

Along with its Motion, Respondent submitted a date stamped copy of Petitioner's EMPP Form 5278 as well as the postmarked envelope indicating it was mailed on March 7, 2017. In this case, the Tribunal finds that the postmark is not the determining factor for eligibility. The statute clearly states that the "combined document" must be "delivered to the assessor" by the February 20 deadline.⁹ In this case, it is clear that the form was not delivered to the assessor until March 9, 2017, as evidenced by the date stamp on the form. Moreover, the form was not even mailed to the assessor until after the February 20 deadline had passed. Respondent has met its initial burden of presenting evidence to demonstrate that no genuine issue of fact exists and Petitioner has not responded to the Motion to demonstrate there is a dispute. As such, the Tribunal finds that it is clear when considering the evidence, even in the light most favorable to Petitioner, that there is no genuine issue of fact that Petitioner failed to meet the February 20 filing deadline and cannot qualify for the exemption under MCL 211.9m. As such, Respondent has proven it is entitled to summary disposition, in its favor, under MCR 2.116(C)(10) and the denial shall be upheld. Therefore,

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

IT IS FURTHER ORDERED that Respondent's denial of exemption is UPHELD.

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

⁴ See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)).

⁵ See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).

⁶ *Id.*

⁷ See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).

⁸ See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

⁹ MCL 211.9m.

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.¹⁰ 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.¹¹ 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.¹² Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.¹³

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."¹⁴ A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.¹⁵ The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.¹⁶

By: Steven H. Lasher

Entered: June 21, 2017
krb

¹⁰ See TTR 261 and 257.

¹¹ See TTR 217 and 267.

¹² See TTR 261 and 225.

¹³ See TTR 261 and 257.

¹⁴ See MCL 205.753 and MCR 7.204.

¹⁵ See TTR 213.

¹⁶ See TTR 217 and 267.