

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

CMC Holdings LLC,
Petitioner,

v

MTT Docket No. 17-003304

City of Dearborn,
Respondent.

Tribunal Judge Presiding
Marcus L. Abood

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

INTRODUCTION

On April 4, 2018, Respondent filed a Motion requesting that the Tribunal enter summary judgment in its favor in the above-captioned case.

Petitioner did not file a response to the Motion.

The Tribunal has reviewed the Motion and the evidence submitted and finds that granting Respondent's Motion for Summary Disposition is warranted at this time.

RESPONDENT'S CONTENTIONS

In support of its Motion, Respondent contends that summary disposition in its favor is appropriate under MCR 2.116(C)(4) and (C)(8). Respondent's Motion states in pertinent part that a party in interest must invoke the Tribunal's jurisdiction in a valuation dispute for commercial real property by filing its petition on or before May 31 of the tax year under dispute, that Respondent properly issued its Notice of Assessment to Petitioner, that Petitioner's Petition was not filed until July 19, 2017, and that Petitioner fails to invoke any facts contending jurisdiction under MCL 211.53a or 211.53b.

STANDARD OF REVIEW

There is no specific Tribunal rule governing motions for summary disposition. Therefore, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions.¹ In this case, Respondent moves for summary disposition under MCR 2.116(C)(4) and (C)(8).

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.² 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.”³ A motion under MCR 2.116(C)(4) is appropriate where the plaintiff has failed to exhaust its administrative remedies.⁴

MCR 2.116(C)(8)

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.” The Court of Appeals has held that:

A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a complaint. Under this subrule “[a]ll well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant.” When reviewing such a motion, a court must base its decision on the

¹ See TTR 215.

² *Id.*

³ MCR 2.116(G)(6).

⁴ See *Citizens for Common Sense in Gov’t v Attorney Gen*, 243 Mich App 43; 620 NW2d 546 (2000).

pleadings alone. In a contract-based action, however, the contract attached to the pleading is considered part of the pleading. Summary disposition is appropriate under MCR 2.116(C)(8) “if no factual development could possibly justify recovery.”⁵

CONCLUSIONS OF LAW

The Tribunal has carefully considered Respondent’s Motion under MCR 2.116(C)(4) and finds that granting the Motion under (C)(4) is warranted. The Tribunal has also carefully considered Respondent’s Motion under MCR 2.116(C)(8) and finds that denying the Motion under (C)(8) is warranted.

Respondent argues that Petitioner failed to properly invoke the Tribunal’s jurisdiction by filing its commercial property tax appeal on or before May 31, 2017. “In evaluating a motion for summary disposition ... a reviewing court considers affidavit, pleadings, depositions, admissions and other evidence submitted by the parties in the light most favorable to the party opposing the motion.”⁶ Here, Petitioner did not file a response to Respondent’s Motion. The evidence on the record indicates Petitioner postmarked its Petition on July 19, 2017, or 49 days after the deadline to invoke the Tribunal’s jurisdiction over a 2017 commercial real property assessment.⁷

Petitioner’s Petition states in pertinent part that “Petitioner was never provided with a 2017 Notice of Assessment, and specifically was not notified of the increase to the taxable value. This petition is filed within 35 days of receipt of the 2017 summer tax bill.”⁸ Respondent filed evidence indicating in pertinent part that Petitioner’s mailing address was correctly listed on

⁵ *Liggett Restaurant Group, Inc v City of Pontiac*, 260 Mich App 127, 133; 676 NW2 633 (2003) (citations omitted).

⁶ *SBC Health Midwest Inc v City of Kentwood*, unpublished per curiam decision of the Court of Appeals, 2015 WL 1276920.

⁷ See MCL 205.735a(6).

⁸ See Petitioner’s Petition at 2.

Respondent's record card for the subject property and that Respondent's agent demonstrated proof of service of Respondent's notices of assessment by submitting those documents to the United States Postal Service on February 27, 2017. Respondent also relies on the fact that prior-year notices of assessment were mailed to Petitioner at the same address and that Petitioner subsequently and timely paid those property taxes resulting from that notice.

The Tribunal finds, after weighing Respondent's evidence in the light most favorable to Petitioner, that Petitioner has not alleged a set of facts sufficient to prove the Tribunal has jurisdiction of the subject case under MCL 205.735a(6). Further, Petitioner failed to allege any legal issues that would give the Tribunal jurisdiction over the subject appeal outside of MCL 205.735a(6), such as MCL 211.53a or 211.53b. As such, there are no other grounds under which the Tribunal may consider Petitioner's Petition to be timely filed, and Respondent is entitled to summary disposition under MCR 2.116(C)(4).

Respondent further argues that the opposing party has failed to state a claim upon which relief can be granted. The Tribunal disagrees. The Tribunal has exclusive and original jurisdiction over a proceeding for direct review of a final decision of an agency relating to assessment and valuation.⁹ Further, an owner of property classified as commercial can invoke the Tribunal's jurisdiction without first obtaining the final decision of a taxing authority's March Board of Review.¹⁰ Here, Petitioner's Petition states in pertinent part that the property at issue is commercial real property and that Petitioner disputes Respondent's assessment of the true cash, state equalized, and taxable values of that property for the tax year at issue. As such, Petitioner

⁹ See MCL 205.731.

¹⁰ See MCL 205.735a(4)(a).

has stated a valid claim upon which relief may be granted, and Respondent's motion fails under MCR 2.116(C)(8).

JUDGMENT

IT IS ORDERED that Respondent's Motion for Summary Disposition under MCR 2.116(C)(4) is GRANTED.

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition under MCR 2.116(C)(8) is DENIED.

IT IS FURTHER ORDERED that the case is DISMISSED.

This Final Opinion and Judgment resolves the last pending claim and closes the 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.¹¹ 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.¹² 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

¹¹ See TTR 261 and 257.

¹² See TTR 217 and 267.

demonstrating that service must be submitted with the motion.¹³ Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.¹⁴

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.”¹⁵ A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.¹⁶ The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.¹⁷

By Marcus L. Abood

Entered: May 11, 2018
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¹³ See TTR 261 and 225.

¹⁴ See TTR 261 and 257.

¹⁵ See MCL 205.753 and MCR 7.204.

¹⁶ See TTR 213.

¹⁷ See TTR 217 and 267.