

STATE OF MICHIGAN  
DEPARTMENT OF LABOR AND ECONOMIC GROWTH  
MICHIGAN TAX TRIBUNAL

Kevin Leverett,  
Petitioner,

v

MTT Docket No. 328982

Charter Township of Watertown,  
Respondent.

Tribunal Judge Presiding  
Victoria L. Enyart

**ORDER GRANTING RESPONDENT'S  
MOTION FOR SUMMARY DISPOSITION**

Respondent on August 8, 2007 filed its Motion for Summary Disposition and Brief in Support in the above matter. Petitioner did not file an answer to the motion.

Although Respondent in its Motion for Summary Disposition did not state whether the motion was being brought under MCR 2.116(C)(8)<sup>1</sup> or 2.116(C)(10)<sup>2</sup>, the Tribunal will consider both (C)(8) and (C)(10).

**CASE HISTORY**

Petitioner commenced this matter on September 13, 2006 by mailing a letter to the Tribunal protesting Respondent's special assessment on his property. On November 9, 2006 Petitioner returned the Small Claims Petition forwarded to him on October 10, 2006 by the Tribunal. Petitioner's Small Claims Petition failed to state the amount of the assessment in dispute; however, the stated reason for the appeal was: "Was not given a vote on the paving of Wacousta Rd."

On December 22, 2006, the Tribunal defaulted Petitioner for failing to enter the special assessment amount, and Petitioner's contentions, as well as failing to remit the proper filing fee. Petitioner returned a "sample form for special assessment petition." This was accepted as an Entire Tribunal Special Assessment Petition indicating that \$6,689.65 was levied for the Wacousta Road Special Assessment. The appeal was transferred to the Entire Tribunal because the amount of the Special Assessment in controversy exceeded the jurisdictional limit of the Small Claims Division.

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<sup>1</sup> (8) "The opposing party has failed to state a claim on which relief can be granted."

<sup>2</sup> (10) "Except as to the amount of damages, 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."

On April 4, 2007, Respondent filed its answer. Respondent states that the amount of the special assessment levied against the subject parcel as shown on the special assessment roll dated June 10, 2005, confirmed by the Township Board of Trustees on August 15, 2005, is \$6,573.97.

Respondent further states that Petitioner did not appear and protest the special assessment at the public hearing held on August 15, 2005, nor did Petitioner file any written objections to the special assessment as required by MCL 41.726(2) and MCL 211.74(2).

Respondent, in its August 8, 2007, Motion for Summary Disposition, states:

1. Watertown is a Charter township under the Charter Township Act of Michigan, 1947 PA 359, MCL 42.1 *et seq.*
2. Petitioner filed a Special Assessment Petition on January 11, 2007, objecting to a special assessment levy against his property, 8500 Leverett, Grand Ledge, Michigan 48837, for paving and road improvements.
3. The special assessment roll which levied the assessments complained of by Petitioner was approved by the Watertown Charter Township Board of Trustees after notice of a public hearing thereon at a regular meeting of the Township Board of Trustees held on August 15, 2005.
4. Petitioner did not appear and protest the special assessment at the public hearing held on August 15, 2005, nor did Petitioner file any written objections to the special assessment as required by MCL 41.726(2) and MCL 211.741(2).
5. Petitioner's Petition is therefore barred for failure of Petitioner to appear and protest the assessment at the hearing on the assessment roll as required by statute.
6. MCL 41.726(3) provides that after the Township Board's confirmation of the special assessment roll, all assessments on that assessment roll shall be final and conclusive unless an action contesting an assessment is filed in a court of competent jurisdiction within 30 days after the date of the confirmation. Subsection 35 of the Tax Tribunal Act, MCL 205.735, provides at subsection (2) thereof, that the jurisdiction of this Tribunal may only be invoked by a party by the filing of a written petition within 30 days after the final decision, ruling, determination, or order that the petitioner seeks to review which, in this case, was the Township Board's approval of the assessment roll on August 15, 2005.
7. Petitioner's Petition was not filed until January 11, 2007. Therefore, Petitioner's Petition is barred by the provisions of MCL 41.726(3) and MCL 205.735(2) for Petitioner's failure to file this Petition with the Tribunal within 30 days following the Township Board's approval of the assessment roll.
8. MTT Rule 205.1240 requires that Petitioner provide a clear and concise statement of facts upon which Petitioner relies and a statement of the portion of the tax admitted to be correct, if any.
9. Petitioner's statement showing what facts Petitioner is basing his protest on are vague and confusing. Petitioner has not stated a legal or factual issue in the Petition.
10. Petitioner's statements in the Petition fail to conform to the requirements of TTR 240.

Respondent, in its Motion, further requests that Petitioner's Petition be dismissed for one or more reasons and that Respondent be awarded costs.

### FINDINGS OF FACT

1. The Wacousta Road Paving Special Assessment District was created by resolution on June 20, 2005, following receipt of a Petition signed by 71.3% of the property owners.
2. Notices of Public Hearing were published for the June 20, 2005 Public Hearing to hear objections for the public improvement and the creation of a special assessment district.
3. Notices were mailed to residents for public hearing set for July 18, 2005.
4. Petitioner sent a letter received July 18, 2005, objecting to the Wacousta Road Paving Project and objecting to the method of allocating costs and benefits based on acreage rather than frontage.
5. Respondent adopted Resolution 1 declaration of necessity for Wacousta Road Paving Project and Resolution 2 accepting the property owners' petition as legally sufficient to initiate the special assessment improvement project, approving the plans and cost estimates establishing a special assessment district. And directing the Township Assessor to prepare a proposed special assessment roll to be considered at a special meeting to be held on August 15, 2005.
6. August 15, 2005 was the Public Hearing on the proposed special assessment roll and adoption of Resolution 815-2005-1 to confirm the public hearing on the special assessment; Resolution 815-2005-2 to confirm the proposed special assessment roll for the Wacousta Road Paving Project; Resolution 815-2005-3 confirming the Notice of Public Hearing on the proposed special assessment roll dated June 10, 2005 adopted August 15, 2005; Resolution 815-2005-4 approving the final assessment roll for the Wacousta Road Paving Project.
7. Petitioner objected in writing July 18, 2005 to the special assessment and the method of allocating costs and benefits.<sup>3</sup>
8. Petitioner commenced this matter on September 9, 2006 by mailing a letter via first class mail to the Tribunal protesting Respondent's special assessment on his property which was treated as the commencement of a Small Claims Division matter.

### STANDARDS FOR DETERMINING MOTIONS FOR SUMMARY DISPOSITION

Under **MCR 2.116(C)(8)**, a motion for summary disposition will be granted only if claims are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. *Ladd v Ford Consumer Finance Co, Inc*, 217 Mich App 119; 550 NW2d 826 (1996). The Court in *Cloverleaf Car Co v Phillips Petroleum Co*, 213 Mich App 186; 540 NW2d 297 (1995), held that a motion for summary disposition for failure to state a claim upon which relief can be granted tests the legal sufficiency of a claim by the pleadings alone and all factual allegations supporting the claim are accepted as true, as well as any inferences or conclusions that can be drawn from the facts. In *Roberts v Vaughn*, 214 Mich App 625; 543 NW2d 79 (1995), the Court held that a motion for summary disposition for failure to state a claim upon which relief can be granted tests the legal sufficiency of a claim to determine whether opposing party's pleadings allege a *prima facie* case, and the trial court must consider all well-pleaded

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<sup>3</sup> Respondent's Motion for Summary Disposition p. 3, para 12.

facts in favor of the nonmoving party and should grant the motion only if allegations fail to state a legal claim.

Under **MCR 2.116(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 a judgment as a matter of law. *Smith v Globe Life Insurance*, 460 Mich 446, 454-455; 597 NW2d 28 (1999).

The *Smith* court in its analysis stated:

This Court in *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363, 547 NW2d 314 (1996), set forth the following standards for reviewing motions for summary disposition brought under MCR 2.116(C)(10):

In reviewing a motion for summary disposition under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed 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 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. *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420, 522 NW2d 335 (1994). The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Id.* 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. *McCart v J Walter Thompson*, 437 Mich 109, 115; 469 NW2d 284 (1991). If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1992).

In the event, however, it is determined an asserted claim can be supported by evidence at trial, a motion brought under subsection (C)(10) will be denied, *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).

### CONCLUSIONS OF LAW

MCL 205.735(2)<sup>4</sup> provides that “In the residential and small claims division, a written petition is considered filed if it is postmarked by first-class mail or delivered in person on or before the expiration of the period in which an appeal may be made as provided by law.”

Since Petitioner did not comply with MCL.735 (2) and the mailing of the petition received by the Tribunal September 9, 2006 was not within 30 days of the confirmation of the assessment roll by Respondent, Petitioner’s Petition to the Tribunal is considered untimely.

The Tribunal is without jurisdiction as to Petitioner’s challenge to the validity and sufficiency of the underlying petitions that gave rise to the creation of the Special Assessment district since, pursuant MCL 41.725, such challenge needed to be brought in a court of competent jurisdiction within 30 days of the creation of the Special Assessment district (July 25, 2000) and Petitioner did not do so.

IT IS ORDERED that, pursuant to MCR 2.116(C)(8), Respondent’s Motion for Summary Disposition is GRANTED.

This Order resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: August 1, 2008

By: Victoria L. Enyart

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<sup>4</sup> MCL 205.735(2) was amended May 30, 2006 to 35 days.