

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

HIGHLAND-HOWELL DEVELOPMENT
GROUP, LLC,
Petitioner,

v

CITY OF HOWELL,
Respondent.

MTT Docket No. 339486
Kimbal R. Smith III
Tribunal Judge

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

ORDER OF DISMISSAL

On July 13, 2009, Respondent City of Howell filed a Motion for Summary Disposition together with a Brief in Support. On July 31, 2009 Petitioner filed its Response to the Motion for Summary Disposition, a brief in Support of Petitioner's Motion for Summary Disposition together with three exhibits.

Respondent, in its Motion for Summary Disposition, stated that the petition in this matter was filed by Petitioner on or about July 30, 2007, that the property in dispute is classified as commercial real property, and, pursuant to MCL 205.735a(6), for the Tribunal to have jurisdiction over assessment disputes concerning commercial real property a written petition must be filed with the Tribunal on or before May 31 of the tax year involved.

Petitioner, in its response to the Motion for Summary Disposition and in its brief in support of its response to the Motion for Summary Disposition, states that the property is zoned R-1 residential referencing its Exhibit B-the General Property Information for the subject parcels obtained from

the City of Howell, and that MCL 205.735a(6) permits the petition to be filed by July 31 of the tax year involved in the dispute and, therefore, it was timely filed.

Although Respondent in its Motion for Summary Disposition did not set forth on which subsection of MCR 2.116(C) it was basing its Motion, the Tribunal assumes that the Motion is brought under 2.116(C)(4), which specifies: “The court lacks jurisdiction of the subject matter.”

Petitioner’s reliance on the fact that the property is zoned residential and as a result its filing on July 27, 2007 invoked the jurisdiction of the Tribunal for 2007 is misplaced.

MCL 205.735a(6) states;

The jurisdiction of the tribunal in an assessment dispute as to property classified under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c, as commercial real property, industrial real property, developmental real property, commercial personal property, industrial personal property or utility personal property is invoked by a party in interest, as petitioner, filing a written petition on or before May 31, of the tax year involved.”

Petitioner in paragraph 5 of its Petition states: “the property is presently zoned residential and classified commercial.” (Emphasis added.) In addition, Petitioner attached to its answer to Respondent’s motion as its exhibit B: “general property information sheets obtained from Respondent that clearly indicate that the classification of both parcels is 201 (commercial).”

Respondent moves for summary disposition pursuant to MCR 2.116(C)(4), which states that a Motion for Summary Disposition is appropriate where the “. . . court lacks jurisdiction of the subject matter.” When presented with a motion for summary disposition 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. MCR 2.116(G)(5). 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 for summary disposition pursuant to MCR 2.116(C)(4) is appropriate where the plaintiff has failed to exhaust administrative remedies. *Citizens for Common Sense in Government v Attorney General*, 243 Mich App 43; 620 NW2d 546 (2000). Furthermore:

A motion under MCR 2.116(C)(4), alleging that the court lacks subject matter jurisdiction, raises an issue of law. The issue of subject matter jurisdiction may be raised at any time, even for the first time on appeal. *McCleese v Todd*, 232 Mich App 623, 627; 591 NW2d 375 (1998) ("Lack of subject matter jurisdiction may be raised at any time."); *Phinney v Perlmutter*, 222 Mich App 513, 521; 564 NW2d 532 (1997) ("Although the jurisdictional issue here was never resolved by the trial court, a challenge to subject-matter jurisdiction may be raised at any time, even for the first time on appeal."). When a court lacks jurisdiction over the subject matter, any action it takes, other than to dismiss the case, is absolutely void. *McCleese*, 232 Mich App at 628; 591 NW2d at 377. The trial court's determination will be reviewed de novo by the appellate court to determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law, or whether affidavits and other proofs show that there was no genuine issue of material fact. *See Cork v Applebee's of Michigan, Inc*, 239 Mich App 311; 608 NW2d 62 (2000) ("When reviewing a motion for summary disposition under MCR 2.116(C)(4), we must determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law or whether the affidavits and other proofs show that there was no genuine issue of material fact."); *Walker v Johnson & Johnson Vision Products, Inc*, 217 Mich App 705; 552 NW2d 679 (1996); *Faulkner v Flowers*, 206 Mich App 562; 522 NW2d 700 (1994); *Department of Natural Resources v Holloway Construction Co*, 191 Mich App 704, 478 NW2d 677 (1991).

1 Longhofer, Michigan Court Rules Practice § 2116.12, p 246A.

The Tribunal determines that this matter involves an assessment dispute regarding commercial classed property, which was filed after May 31, 2007, to wit: July 27, 2007, and as a result the Tribunal is without jurisdiction over this matter.

JUDGMENT

IT IS ORDERED that Respondent's Motion for Summary Disposition is **GRANTED** pursuant to MCR 2.116(C) and this matter is **DISMISSED**.

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

MICHIGAN TAX TRIBUNAL

Entered: August 31, 2009

By: Kimbal R. Smith III, Tribunal Judge