

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

Macy's Inc.,
Petitioner,

v

MTT Docket No. 352042

City of Sterling Heights,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

FINAL OPINION AND JUDGMENT

This matter was heard before Administrative Law Judge Thomas A. Halick, who issued a Proposed Judgment on August 25, 2008, and a Corrected Proposed Judgment on September 30, 2008. No exceptions or written arguments to the Proposed Judgments have been filed. The Tribunal, pursuant to Section 26 of the Tax Tribunal Act, as amended by 1980 PA 437, has given due consideration to the case file, and adopts and incorporates by reference the findings of fact and conclusions of law in the Proposed Judgments as the final decision of the Tribunal.

IT IS ORDERED that the subject property's true cash, state equalized, and taxable values for the tax year(s) at issue are as set forth in the Proposed Opinion and Judgment as adopted by this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by the Final Opinion and Judgment within 90 days of the entry of the Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period

prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (ii) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (iii) after December 31, 2006, at the rate of 5.42% for calendar year 2007, and (iv) after December 31, 2007, at the rate of 5.81% for calendar year 2008.

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

MICHIGAN TAX TRIBUNAL

Entered: December 17, 2008

By: Victoria L. Enyart

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STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
MICHIGAN TAX TRIBUNAL

Macy's Inc.,
Petitioner,

v

MTT Docket No. 352042

City of Sterling Heights,
Respondent.

Administrative Law Judge Presiding
Thomas A. Halick

CORRECTED
PROPOSED OPINION AND JUDGMENT

CORRECTED
PROPOSED ORDER GRANTING
RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

NOTE: The original Proposed Opinion and Judgment issued on August 25, 2008, failed to include the language providing the parties time in which to submit objections or exceptions to the Proposed Opinion and Judgment.

I. INTRODUCTION

The issue in this case involves the Lakeside Special Assessment levied by Respondent, City of Sterling Heights, on property owned by Petitioner, Macy's Inc. The subject property is commercial improved real property presently used as a department store. The Lakeside Special Assessment Respondent levied against the subject parcel is \$311,640.73. On June 23, 2008, Petitioner filed a petition appealing the special assessment. On July 18, 2008, Respondent filed this Motion for Summary Disposition. Petitioner has not filed a response to Respondent's Motion.

II. RESPONDENT'S CONTENTIONS

Respondent contends that "Petitioner was given timely notice of the May 20, 2008 special assessment hearing in this matter by way of correspondence from Respondent's City Clerk." Respondent further contends that "Petitioner received the notice and failed to appear at the May 20, 2008 public hearing to contest the special assessment as required by MCL 205.735a(5)."

Respondent submitted the affidavit of Walter C. Blessed, City Clerk for the City of Sterling Heights. Mr. Blessed asserts that Petitioner was sent proper and timely notice of the special assessment hearing and further contends that he was in attendance at the May 20, 2008 special assessment hearing, reviewed the video tapes of the hearing and no one appeared on behalf of Petitioner to contest the special assessment.

Respondent also submitted copies of the U.S. Postal Service certified mail receipt showing the notice was sent to Petitioner at 7 West Seventh St, Cincinnati, OH, 45202 on May 8, 2008 and received by Petitioner on May 12, 2008 at the same address.

III. APPLICABLE LAW

Respondent moves for summary disposition pursuant to MCR 2.116(C)(1) asserting that the “...court lacks jurisdiction over the person or property.” MCR 2.116(C)(1). When presented with a motion for summary disposition pursuant to MCR 2.116(C)(1), 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). The Tribunal finds additional grounds for Respondent's motion under MCR 2.116(C)(10) and MCR 2.116(C)(8) because there is no genuine issue of material fact that Petitioner received notice and failed to protest the assessment. The motion could also be brought under MCL 2.116(C)(8) because Petitioner has not alleged that it protested the assessment at the confirmation hearing and has therefore failed to state a claim upon which relief can be granted.

MCR 2.116(G)(4) provides that the nonmoving party may not rest upon mere allegations or denials in his or her pleadings but must, by affidavits or as otherwise provided in the court rule, “set forth specific facts showing that there is a genuine issue for trial.” *Jubenville v West End Cartage, Inc*, 163 Mich App 199, 203; 413 NW2d 705 (1987). The statement of the nonmoving party's conclusions, unsupported by allegations of fact upon which they may be based, will not suffice to establish a genuine issue of material fact. *NuVision v Dunscombe*, 163 Mich App 674, 681; 415 NW2d 234 (1987). The test is whether the kind of record which might be developed, giving the benefit of reasonable doubt to the opposing party, would leave open an issue of fact upon which reasonable minds might differ. *Meeka v D & F Corp*, 158 Mich App 688, 691; 405 NW2d 125 (1987). *Brackens v Detroit Osteopathic Hosp*, 174 Mich App 290, 292-293; 435 NW2d 472, 473 - 474 (1989).

Courts have recognized that “a protest of an assessment before the local board of review

is clearly required before the tribunal may acquire jurisdiction.” *Manor House Apartments v City of Warren*, 204 Mich App 603, 605; 516 NW2d 530 (1994). The Tax Tribunal properly grants summary disposition to a respondent on the basis of the lack of subject matter jurisdiction when the petitioner fails to timely file the petition or protest the assessment at the local level as required by law. *Kelser v Dep't of Treasury*, 167 Mich App 18, 20-21; 421 NW2d 558 (1988).

IV. CONCLUSIONS OF LAW

The Tribunal has carefully considered Respondent’s Motion for Summary Disposition under the criteria for MCR 2.116(C)(1), and based on the affidavits, pleadings, and other documentary evidence submitted by the parties, determines that Respondent’s Motion shall be granted. Pursuant to MCL 205.735a(5), “. . . the special assessment shall be protested at the hearing held for the purpose of confirming the special assessment roll before the tribunal acquires jurisdiction of the dispute.” Respondent’s motion is also supported by MCR 2.116(C)(10) because there is no genuine issue of material fact that Petitioner received notice and failed to protest the assessment. Also, Respondent’s motion is granted under MCL 2.116(C)(8) because Petitioner has not alleged that it protested the assessment at the confirmation hearing and has therefore failed to state a claim upon which relief can be granted. Therefore, summary disposition shall be granted for failure to invoke the Tribunal’s jurisdiction due to Petitioner’s failure to protest at the special assessment hearing.

Petitioner’s “Special Assessment Petition” (paragraph 7) alleges that its “Tax Department did not receive timely notice of the special assessment.” The Tribunal finds that

notice of the special assessment hearing was properly sent to Petitioner on May 8, 2008 and was received by Petitioner on May 12, 2008 at 7 West Seventh Street, Cincinnati, Ohio 45202. The petition indicates that Petitioner's legal address is 7 West Seventh St., Cincinnati, Ohio, 45202. Further, the affidavit of Walter C. Blessed contends that Petitioner was not represented at the hearing to contest the special assessment. Petitioner, on the other hand, failed to submit any evidence or affidavits and the Petition fails to allege specific facts to contradict Respondent's assertions that it satisfied the statutory notice requirements and that Petitioner failed to attend the public hearing.

Based on the evidence, the Tribunal finds that Respondent has satisfied the notice requirements contained within MCL 211.741 and MCL 41.724a, with regard to the special assessment at issue. Respondent's uncontroverted evidence indicates that it mailed a notice to Petitioner and was received by Petitioner at its legal address. As such, Respondent has satisfied its statutory duty to provide notice to those within the special assessment district.

Moreover, the Tribunal finds that Petitioner has failed to invoke the Tribunal's jurisdiction over this matter because Petitioner failed to protest the special assessment at the May 20, 2008 public hearing, as required by MCL 205.735a(5). As such, Respondent's Motion shall be granted.

V. JUDGMENT

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

IT IS FURTHER ORDERED that this case is DISMISSED.

IT IS FURTHER ORDERED that this Order resolves all pending claims in this matter and closes this case.

This Proposed Opinion and Judgment (“Proposed Opinion”) was prepared by the State Office of Administrative Hearings and Rules. The parties have 20 days from date of entry of this Proposed Opinion to notify the Tribunal in writing if they do not agree with the Proposed Opinion and why they do not agree (i.e., exceptions). After the expiration of the 20-day time period, the Tribunal will review the Proposed Opinion and consider the exceptions, if any, and:

- a. Adopt the Proposed Opinion as a Final Decision.
- b. Modify the Proposed Opinion and adopt it as a Final Decision.
- c. Order a rehearing or take such other action as is necessary and appropriate.

The exceptions are limited to the evidence submitted prior to or at the hearing and any matter addressed in the Proposed Opinion. There is no fee for the filing of exceptions. A copy of a party’s written exceptions must be sent to the opposing party.

MICHIGAN TAX TRIBUNAL

Entered: September 30, 2008

By: Thomas A. Halick