

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

Detroit Symphony Orchestra, Inc.,
Petitioner,

v

MTT Docket No. 409615

City of Detroit,
Respondent.

Tribunal Judge Presiding
Kimbal R. Smith III

ORDER DENYING PETITIONER'S MOTION FOR
SUMMARY DISPOSITION

ORDER GRANTING SUMMARY DISPOSITION FOR RESPONDENT

ORDER OF DISMISSAL

I. INTRODUCTION

On July 30, 2010, Petitioner, Detroit Symphony Orchestra, Inc., filed this appeal requesting that the Tribunal grant it a charitable exemption, under MCL 211.7o, for the property at issue. On March 4, 2011, Petitioner filed a Motion for Summary Disposition, under MCR 2.116(C)(10), requesting the Tribunal grant it a charitable exemption under the facts of this case. Respondent filed a response to Petitioner's Motion on March 24, 2011.

The Tribunal determines that Petitioner did not own the property on the relevant tax date, December 31, 2009, and therefore does not qualify for the charitable exemption. Nevertheless, the Tribunal finds that there are no genuine

issues of material fact and grants summary disposition in favor of Respondent, under MCR 2.116(I)(2).

II. PETITIONER'S CONTENTIONS

Petitioner contends the property qualifies for tax exempt status under MCL 211.7o, stating:

Real or personal property owned and occupied by a nonprofit charitable institution while occupied by that nonprofit charitable institution solely for the purposes for which that nonprofit charitable institution was incorporated is exempt from the collection of taxes under this act.

Petitioner's Motion for Summary Disposition, p. 6, quoting MCL 211.7o(1).

Petitioner further contends the Michigan Supreme Court has detailed a four-part test which a party must meet in order to qualify for a property tax exemption as a charitable institution:

1. the real estate must be owned and occupied by the exemption claimant;
2. the exemption claimant must be a charitable institution;
3. the claimant must have been incorporated under the laws of the State of Michigan (this requirement was found to be unconstitutional and is no longer a required element of the test. *American Youth Foundation v Benona Township*, 37 Mich App 722, 724; 195 NW2d 304, 305 (1972), citing *WHYY v Glassboro*, 393 US 117 (1968)); and
4. the exemption exists only when the buildings and other property thereon are occupied by the claimant solely for the purposes for which it is incorporated.

Engineering Society Detroit v City of Detroit, 308 Mich 539; 14 NW2d 79 (1944).

Petitioner applied the aforementioned test, contending that it meets the ownership and occupation element because on January 29, 2010, it received the property via a Warranty Deed from the Ellington Orchestra, LLC, (of which Petitioner is the sole member) who received ownership from WM Ellington, LLC, in February 2007. Petitioner further contends it uses the property to host visiting guest musicians, conductors, educators, and other performers visiting Detroit to participate in its activities, productions, and performances at the property.

Furthermore, Petitioner contends it meets the charitable institution requirement and quotes from its Articles of Incorporation, stating it was formed

To foster an appreciation of, and a desire for, good music and to promote and foster music and the musical arts by educational, scientific, literary and/or charitable means...In furtherance of the foregoing purpose, to organize, manage, maintain, operate, control and present a high-class orchestral organization under the name "The Detroit Symphony Orchestra."

Petitioner's Motion for Summary Disposition, Exhibit 3.

Petitioner further contends the property is utilized by Petitioner solely in a manner that aligns with its charitable purpose since the property is used to house a visiting guest musician, instructor, or conductor who performs with Petitioner; furthermore, many could not attend without the provision of housing by Petitioner.

Lastly, Petitioner contends these visiting instructors directly aid in its charitable purpose of “presenting a high-class orchestral organization.”

III. RESPONDENT’S CONTENTIONS

Respondent contends that for Petitioner to be a charitable institution, it must show charity:

[Charity] * * * [is] a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government.

Id.

Respondent contends Petitioner’s maintaining an orchestra is not charity.

Respondent’s Response to Petitioner’s Motion for Summary Disposition, p. 3.

Furthermore, Respondent argues in the alternative, contending that even if Petitioner qualified to be a charitable institution, the property cannot be exempted because Petitioner did not own the property on tax day, December 31, 2009. *Id.*

Lastly, Respondent contends Petitioner does not meet the first nor third prong of the *Wexford* test since the property is used for housing purposes for guests of Petitioner and it does not occupy the property solely for the purposes that it was incorporated. *Id.* at 4.

IV. FINDINGS OF FACT

The subject property is parcel no. 01004189.012 located at 3670 Woodward Avenue, Detroit, Wayne County, Michigan. Petitioner is a non-profit 501(c)(3) corporation. It was formed:

To foster an appreciation of, and a desire for, good music and to promote and foster music and the musical arts by educational, scientific, literary and/or charitable means...In furtherance of the foregoing purpose, to organize, manage, maintain, operate, control and present a high-class orchestral organization under the name "The Detroit Symphony Orchestra.

Petitioner's Motion for Summary Disposition, Exhibit 3. Petitioner utilizes the property to house visiting guest musicians, conductors, educators, and other performers visiting Detroit to participate in its activities, productions, and performances. Petitioner's Motion for Summary Disposition, Exhibit 4.

Ellington Orchestra, LLC, (of which Petitioner is sole member) acquired the property in February of 2007 from WM Ellington, LLC. Ellington Orchestra, LLC, owned the subject property on December 31, 2009. Petitioner gained ownership of the property via a Warranty Deed from Ellington Orchestra, LLC, on January 29, 2010.

V. APPLICABLE LAW

Petitioner moves for summary disposition pursuant to MCR 2.116(C)(10), which provides the following grounds upon which a summary disposition motion

may be based: “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.” There is no specific tribunal rule governing motions for summary disposition. As such, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such a motion. TTR 111(4).

In *Occidental Dev LLC v Van Buren Twp*, MTT Docket No. 292745 (March 4, 2004), the Tribunal stated “[a] motion for 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. *Smith v Globe Life Insurance*, 460 Mich 446, 454-455; 597 NW2d 28 (1999). In the event, however, it is determined that an asserted claim can be supported by evidence at trial, a motion under subsection (C)(10) will be denied. *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. *Quinto v Cross & Peters Co*, 451 Mich 358, 362-63; 547 NW2d 314 (1996) (citing MCR

2.116(G)(5)). The moving party bears the initial burden of supporting his position by presenting his documentary evidence for the court to consider. *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).

VI. CONCLUSIONS OF LAW

The Tribunal has carefully considered Petitioner's Motion for Summary Disposition under the criteria for MCR 2.116(C)(10), and based on the pleadings, affidavits and other documentary evidence filed with the Tribunal, determines that denying Petitioner's Motion is appropriate. However, the Tribunal concludes that the pleadings, affidavits and documentary evidence prove there is no genuine issue with respect to any material fact. As such, granting summary disposition in favor

of Respondent, under MCR 2.116(I)(2), is warranted for the reasons set forth herein.

MCL 211.7o provides charitable institutions an exemption from collection of taxes under the General Property Tax Act, stating in pertinent part:

[r]eal or personal property owned and occupied by a nonprofit charitable institution while occupied by that nonprofit charitable institution solely for the purposes for which that nonprofit charitable institution was incorporated is exempt from the collection of taxes.

The Michigan Supreme Court ruled, in *Wexford Medical*, that MCL 211.7o applies to a charitable institution if:

1. the real estate is owned and occupied by the exemption claimant;
2. the exemption claimant is a nonprofit charitable institution; and
3. the subject property is occupied by the claimant solely for the purposes for which it was incorporated.

Wexford Medical, supra.

The Tribunal finds that the pertinent issue in this appeal is whether Petitioner satisfies the ownership requirement set out in the first prong of *Wexford, supra*. Michigan's General Property Tax Act, MCL 211.1, et seq., provides for the annual assessment and taxation of all real and personal property within the state unless expressly exempted. The Act indicates when the taxable status of real and personal property for a tax year shall be determined as evidenced by MCL

211.2(2), which provides that “[t]he taxable status of real and personal property for a tax year shall be determined as of each December 31 of the immediately preceding year, which is considered the tax day, any provisions in the charter of any city or village to the contrary notwithstanding.” The taxable status of the property for previous years is not controlling and each tax year stands alone.

Although Petitioner received ownership of the property via a Warranty Deed on January 29, 2010 from Ellington Orchestra, LLC, of which Petitioner is the sole member, Ellington Orchestra, LLC, owned the property on the relevant tax date, December 31, 2009. Petitioner has not brought forth any controlling authority that indicates that because it was the sole member of the LLC that owned the subject property, a charitable exemption can be granted for the member company. As such, Petitioner did not own the property on December 31, 2009; thus, Petitioner does not meet the ownership requirement.

Petitioner has failed the first prong of the *Wexford* test, and therefore does not meet the requirements of MCL 211.7o; accordingly, the Tribunal will not analyze the remainder of the test.

Petitioner has failed to show that granting its Motion for Summary Disposition pursuant to MCR 2.116(C)(10) is appropriate. As a result, the Tribunal grants summary disposition in favor of Respondent under MCR 2.116(I)(2) as Petitioner does not qualify for an exemption under MCL 211.7o.

VII. JUDGMENT

IT IS ORDERED that Petitioner's Motion for Summary Disposition is DENIED.

IT IS FURTHER ORDERED that summary disposition in favor of Respondent is GRANTED.

IT IS FURTHER ORDERED that this case is DISMISSED.

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

MICHIGAN TAX TRIBUNAL

Entered: July 7, 2011

By: Kimbal R. Smith III