

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

David Knuth,
Petitioner,

v

MTT Docket No. 0413879

Township of Homer,
Respondent.

Tribunal Judge Presiding
Kimbal R. Smith III

ORDER GRANTING RESPONDENT'S MOTION FOR
SUMMARY DISPOSITION

I. INTRODUCTION

Petitioner, David Knuth, is appealing a special assessment levied in 2010 by Respondent, Township of Homer. On December 15, 2011, Respondent filed a motion requesting the Tribunal to dismiss Petitioner's appeal pursuant to MCR 2.116(C)(4) for lack of subject matter jurisdiction. Petitioner has not filed a response in opposition to Respondent's Motion for Summary Disposition. The Tribunal, having given careful consideration to Respondent's Motion under the criteria for MCR 2.116(C)(4), and based on the pleadings, affidavits and other documentary evidence provided, finds that it has not acquired subject matter jurisdiction over the contested special assessment, and as such, granting the Motion is appropriate.

II. RESPONDENT'S CONTENTIONS

In support of its Motion for Summary Disposition, Respondent contends that Petitioner was present at the September 15, 2010, public confirmation hearing, and protested the special assessment at issue during said hearing, but nonetheless failed to file his appeal with the Tribunal within 35 days of the confirmation, as required by MCL 205.735a. Respondent contends that, as such, Petitioner has failed to properly invoke the Tribunal's jurisdiction on the matter and his appeal of the same should be dismissed accordingly.

III. FINDINGS OF FACT

Respondent, Township of Homer, first levied a special assessment for the construction and financing of its Water District No. 1 in 1997. Said assessment was confirmed on August 14, 1997, and was payable in 20 annual installments beginning December 1, 1997. On August 25, 2010, the Township Board determined that additional pro rata assessments were required to supply the deficiency of the balances due on the specially levied assessments in the district, which were insufficient to pay the remaining principal and interest on the bonds issued in anticipation of the same. A public hearing was held for the purpose of reviewing and hearing objections to the special assessment roll on September 15, 2010, and the roll was confirmed at the same. Petitioner was present at said

hearing to protest levying of the assessment, but did not file this appeal with the Tribunal until November 3, 2010.

IV. APPLICABLE LAW

A. *Jurisdiction under MCL 205.735a.*

MCL 205.735a states, in pertinent part, as follows:

(3) Except as otherwise provided in this section or by law, for an assessment dispute as to the valuation or exemption of property, the assessment *must* be protested before the board of review before the tribunal acquires jurisdiction of the dispute under subsection (6).

* * *

(6) 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...residential real property...is invoked by a party in interest, as petitioner, filing a written petition on or before July 31 of the tax year involved. *In all other matters, the jurisdiction of the tribunal is invoked by a party in interest, as petitioner, filing a written petition within 35 days after the final decision, ruling, or determination.* (Emphasis added.)

B. *Motions for Summary Disposition under MCR 2.116(C)(4).*

Respondent moves for summary disposition pursuant to MCR 2.116(C)(4).

This statute states that a motion for summary disposition is appropriate where the “. . . court lacks jurisdiction of the subject matter.” MCR 2.116(C)(4). 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.

V. CONCLUSIONS OF LAW

Having given careful consideration to Respondent's Motion for Summary Disposition under the criteria for MCR 2.116(C)(4), and based on the pleadings, affidavits and other documentary evidence filed with the Tribunal, the Tribunal finds that granting the Motion is appropriate. More specifically, Petitioner was required to protest the special assessment and file his appeal within 35 days of the confirmation of the special assessment roll, as provided by MCL 205.735a. Petitioner's initial pleading (i.e., Small Claims Petition form) was filed more than 35 days after the date of the September 15, 2010, confirmation and is untimely. See also *Electronic Data Systems Corporation v Township of Flint*, 253 Mich App 538; 656 NW2d 215 (2002). Petitioner's contention that he did not receive notice of the confirmation until October 29, 2010, is not supported on the record, and even assuming arguendo that it were, such a finding would not excuse the untimely filing. And while MCL 211.53a and MCL 211.53b do provide exceptions to the general statutory timeframe for challenging assessments, they do not apply to special assessments.

As such, and in light of the above, the Tribunal finds that Petitioner has failed to properly invoke the Tribunal's subject matter jurisdiction. And as noted by the Michigan Supreme Court in *Fox v Board of Regents of the University of*

Michigan, 375 Mich 238; 134 NW2d 146 (1985), “[a] court which has determined that it has no jurisdiction should not proceed further except to dismiss the action.”

Id. at 243. Therefore,

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

IT IS FURTHER ORDERED that Petitioner’s appeal is DISMISSED.

MICHIGAN TAX TRIBUNAL

Entered: February 3, 2012

By: Kimbal R. Smith III

ejg