

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

Candace Dufek,
Petitioner,

v

MTT Docket No. 371848

Township of Pittsfield,
Respondent.

Tribunal Judge Presiding
Kimbal R. Smith III

FINAL OPINION AND JUDGMENT

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER GRANTING SUMMARY DISPOSITION FOR RESPONDENT

I. INTRODUCTION

Petitioner is requesting that the Tribunal require Respondent to issue a separate tax bill in Petitioner's name for parcel L-12-01-200-008, which is presently combined with parcel L-12-01-200-007. On December 22, 2009, Petitioner filed a motion requesting the Tribunal to grant summary disposition in her favor in the above-captioned case because there are no material facts in dispute. On January 13, 2010, Respondent filed an untimely response to Petitioner's Motion for Summary Disposition. Respondent also requested summary disposition in its favor pursuant to MCR 2.116(I)(2).

II. FINDINGS OF FACT

The subject property in question is parcel L-12-01-200-008. The property is classified for taxation purposes as commercial real property. There is a contiguous parcel, L-12-01-200-007. The parcels were consolidated after a fire in the original gas station in 1987. From 1990 forward, a single tax bill was issued that covered both parcels, which had been combined pursuant to the site plan for construction of the new gas station. Exxon Mobil Oil leased the

subject property from Petitioner up until December 31, 2008 and was responsible for the property taxes under the terms of the lease.

The 2009 March Board of Review denied Petitioner's request to be issued a separate tax bill, stating that it had no jurisdiction. Petitioner also submitted a request to the Township Supervisor, who issued a letter dated May 27, 2009, indicating that the land division could not be granted under the township zoning ordinance. Petitioner filed this appeal with the Tribunal on June 30, 2009, contending that Respondent is required to issue a separate tax bill for the subject property under the General Property Tax Act.

III. PETITIONER'S CONTENTIONS

Petitioner contends that Respondent is required to "levy and collect property taxes on the subject property" pursuant to the General Property Tax Act. Petitioner states that she is the owner of commercial real property that contains a portion of improvements associated with a gas station leased to Exxon Mobil Oil ("Exxon") in 1969. Exxon owned the adjacent parcel, L-12-01-200-007. Petitioner indicates that the lease agreement with Exxon required it to pay all property taxes on the subject property. Petitioner asserts that in 1987, Respondent consolidated the parcels, without Petitioner's awareness. Petitioner states that Respondent has issued one tax bill for the consolidated parcels since that time. Petitioner claims she has never had any interest in the adjacent property owned by Exxon. Petitioner states that the lease with Exxon expired December 31, 2008.

Petitioner contends that she "appealed to the Assessor, the Board of Review and the Township Board to obtain a tax bill." Petitioner states that the Board of Review informed her it had no jurisdiction to grant her request to issue a separate tax bill for the subject property. Petitioner claims that her request for a separate tax assessment on the subject property was

finally denied in a letter dated May 27, 2009. Petitioner contends that this appeal was timely filed within 35 days of the final decision given by the Township Supervisor in the May 27 letter.

IV. RESPONDENT'S CONTENTIONS

Respondent contends that the original gas station on the adjacent property was destroyed by fire in 1987. Respondent states that the required lot size for rebuilding was 30,000 square feet and that the owners of both properties combined the parcels in the site plan into one legal description. Respondent states that from 1990 forward, the consolidated description was used for the two parcels. Respondent asserts that Petitioner's representative had an interest in the combined parcel once it was consolidated for the 1990 tax year forward. Respondent contends that Petitioner "has acquiesced in and/or not protested for nearly 20 years" the issuance of a consolidated tax bill for both parcels.

Respondent further contends that it is entitled to summary disposition because the Petition was not timely filed. Respondent asserts that the action by the Board of Review was a final action under the General Property Tax Act and that any appeal of the Board's decision was required to be filed with the Tribunal by May 31. Respondent contends that any letter received by Petitioner from the Township Supervisor was in relation to a denial of Petitioner's request for a land division under the Township's Land Division Ordinance.

V. APPLICABLE LAW

Petitioner moves for summary disposition because there are no material facts in dispute. This is the standard set forth pursuant to MCR 2.116(C)(10). 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). If it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party, MCR 2.116(I)(2), *Washburn v Michailoff*, 240 Mich App 669; 613 NW 2d 405 (2000).

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 and other documentary evidence filed with the Tribunal, determines that denying Petitioner's Motion is appropriate. However, the Tribunal finds that it lacks jurisdiction over the matter. Specifically, the Tribunal concludes that Petitioner's appeal to the Tribunal was not timely filed by May 31, 2009, the deadline for filing a commercial real property appeal. Thus, Respondent is entitled to summary disposition as a matter of law under MCR 2.116(I)(2).

Petitioner requested the separate tax bill in an appeal to the 2009 March Board of Review. The Board of Review denied this request, citing no jurisdiction. Appeals from a decision of the local board of review are to be filed with the Tribunal by May 31 of that same year for commercial property. Petitioner asserted that the Petition was timely filed within 35 days of the letter received by the Township Supervisor, dated May 27, 2009. However, this letter related to a land division pursuant to a township zoning ordinance. The Tribunal does not have jurisdiction over this type of decision, as it does not arise under the General Property Tax Act. As such, the Tribunal finds that the Petition in this matter, postmarked June 30, 2009, was not timely filed and therefore the Tribunal lacks jurisdiction to hear the matter.

VII. JUDGMENT

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

IT IS FURTHER ORDERED that Summary Disposition is GRANTED for Respondent.

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

MICHIGAN TAX TRIBUNAL

Entered: February 10, 2010

By: Kimbal R. Smith III