

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

Orion Partners LLC,
Petitioner,

v

MTT Docket No. 17-001883

Orion Township,
Respondent.

Tribunal Judge Presiding
Marcus L. Abood

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

INTRODUCTION

On March 5, 2018, Respondent filed a motion requesting that the Tribunal enter summary judgment in its favor in the above-captioned case. More specifically, Respondent contends that it is entitled to summary disposition under MCR 2.116(C)(5) because Petitioner is not a party in interest as required by MCL 205.735a(6).

On April 5, 2018, Petitioner filed a response to the Motion.

The Tribunal has reviewed the Motion, response, and the evidence submitted and finds that granting Respondent's Motion for Summary Disposition is warranted at this time.

RESPONDENT'S CONTENTIONS

In support of its Motion, Respondent contends that Petitioner signed a Waiver of Redemption Rights in March 2016, in which Petitioner voluntarily relinquished all its interests in the subject parcel. Therefore, because Petitioner lacked a property interest, it was not a party in interest as defined in *Spartan Stores, Inc.*¹

PETITIONER'S CONTENTIONS

Petitioner contends that (1) Respondent applies an overly-stringent interpretation of MCL 205.735a(6) in violation of *Spartan Stores, Inc.*, (2) there can be multiple parties in interest, and (3) Respondent fails to allege that Petitioner was not a party in interest as of December 31, 2016.

¹ *Spartan Stores, Inc v Grand Rapids*, 307 Mich App 565, 575; 861 NW2d 347 (2014).

STANDARD OF REVIEW

There is no specific Tribunal rule governing motions for summary disposition. Therefore, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions.² In this case, Respondent moves for summary disposition under MCR 2.116(C)(5). MCR 2.116(C)(5) states that a motion for summary disposition may be granted if “[t]he party asserting the claim lacks the legal capacity to sue.” In reviewing the motion for summary disposition, a court considers the pleadings, depositions, admissions, affidavits, and other documentary evidence submitted by the parties.³

CONCLUSIONS OF LAW

The Tribunal has carefully considered Respondent’s Motion under MCR 2.116(C)(5) and finds that granting the Motion is warranted.

Under MCL 205.735a(4) and (6), only a “party in interest” may bring an assessment appeal without protesting before the board of review.⁴ A party in interest under MCL 205.735a(6) is “a person or entity with a property interest in the property being assessed.”⁵ A property interest is a “legal share in something; all or part of a legal or equitable claim to or right in property.”⁶ Petitioner signed a document entitled Waiver of Redemption Rights (“Waiver”) on March 2, 2016, which became effective on March 10, 2016 when it was registered with the Oakland County Register of Deeds. In the Waiver, Petitioner acknowledged that it was in default on a mortgage to Wells Fargo Bank, NA. The Waiver states that Petitioner would “surrender possession, custody and control” of the parcel and that it would “have no further right, title and interest in and to the Real Estate” “No further right, title and interest” necessarily includes any “legal or equitable claim[s] to or right[s] in [the] property.”⁷ Petitioner therefore relinquished its property interest in the parcel, and as a result, it is not a party in interest.⁸

Petitioner argues that granting Respondent’s motion would result in an overly-stringent application of MCL 205.735a(6) in violation of *Spartan Stores, Inc.* In *Spartan Stores, Inc.*, the city of Grand Rapids, as respondent, argued that the General Property Tax Act (GPTA), MCL 211.1 *et seq.*, required that only an owner or its agent could appear before a board of review, and thus that requirement should be imposed as part of MCL 205.735a(6).⁹ The Court of Appeals rejected this interpretation because the intent behind the adoption of MCL 205.735a was “to remove procedural and formalistic obstacles from appeals on tax-assessment of commercial

² See TTR 215.

³ See MCR 2.116(G)(5); see also *Flint Cold Storage v Dep’t of Treasury*, 285 Mich App 483, 492; 776 NW2d 387 (2009).

⁴ “[A]n individual or entity that is not a ‘party in interest’ under MCL 205.735a(6) does not have standing to invoke the Tax Tribunal’s jurisdiction.” *Spartan Stores, Inc.*, 307 Mich App at 573 n 6.

⁵ *Id.* at 575.

⁶ *Id.* at 575 n 9, quoting *Black’s Law Dictionary* (10th ed), p 934.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 576.

property.”¹⁰ The Court explained that an interpretation that barred a leaseholder tenant from contesting an assessment did not comport with that intent.¹¹ Here, however, Petitioner is not a leaseholder tenant and voluntarily relinquished all of its rights to the parcel when it signed the Waiver. A finding that Petitioner lacks standing does not set forth a “procedural and formalistic obstacle.” Rather, such a finding is in accord with *Spartan Stores, Inc*’s interpretation of MCL 205.735a(6) that only a petitioner with a property interest may bring an appeal before the Tribunal.

Petitioner also argues that there can be multiple parties in interest. Multiple persons or entities could have a “legal *share* in something; all or *part* of a legal or equitable claim to or right in property.”¹² Petitioner, however, is not one of the parties in interest. As the Tribunal has already found, Petitioner lacks a property interest and therefore is not one of the parties in interest with respect to the parcel.

Petitioner also refutes Respondent’s argument that there can only be one party in interest. Respondent, however, makes no such argument, and therefore, Petitioner’s contention lacks merit.

Petitioner lastly argues that Respondent fails to allege that Petitioner was not a party in interest as of December 31, 2016. This argument also lacks merit. Respondent specifically alleges that Petitioner signed the Waiver on March 2, 2016. The crux of Respondent’s argument is that the signing of the Waiver stripped Petitioner of its property rights, and therefore, Petitioner is not a party in interest. Respondent therefore alleged that Petitioner was not a party in interest on December 31, 2016.

JUDGMENT

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

IT IS FURTHER ORDERED that the case is DISMISSED.

This Final Opinion and Judgment resolves the last pending claim and closes the case.

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.¹³ Because the final decision closes the case, the motion cannot be filed through the Tribunal’s web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is \$50.00 in the Entire Tribunal and \$25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 575 n 9 (emphasis added).

¹³ See TTR 261 and 257.

property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.¹⁴ A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.¹⁵ Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.¹⁶

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an “appeal by right.” If the claim is filed more than 21 days after the entry of the final decision, it is an “appeal by leave.”¹⁷ A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.¹⁸ The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.¹⁹

By Marcus L. Abood

Entered: April 17, 2018
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¹⁴ See TTR 217 and 267.

¹⁵ See TTR 261 and 225.

¹⁶ See TTR 261 and 257.

¹⁷ See MCL 205.753 and MCR 7.204.

¹⁸ See TTR 213.

¹⁹ See TTR 217 and 267.