



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

Christopher Maher,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MAHS Docket No. 18-003480

City of Northville,
Respondent.

Presiding Judge
Marcus L. Abood

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION
UNDER MCR 2.116(C)(4) AND (C)(10)

FINAL OPINION AND JUDGMENT

INTRODUCTION

On November 1, 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 Petitioner was required to protest to the Board of Review and because he did not, the Tribunal lacks jurisdiction to hear the case.

Petitioner did not file a response to the Motion.

The Tribunal has reviewed the Motion 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 the subject parcel is residential and Petitioner must first protest the assessment to the Board of Review before appealing to the Tribunal under MCL 205.735a(3). Petitioner did not do so and therefore the Tribunal's jurisdiction has not been properly invoked.

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.¹ In this case, Respondent moves for summary disposition under MCR 2.116(C)(4) and (C)(10). Dismissal under MCR 2.116(C)(4) is appropriate when the “court lacks jurisdiction of the subject matter.” When presented with a motion 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.² 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.”³ A motion under MCR 2.116(C)(4) is appropriate where the plaintiff has failed to exhaust its administrative remedies.⁴

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 “when the affidavits or other documentary evidence, viewed in the light most favorable to the nonmoving party, show that there is no genuine issue as to any material fact and the moving party is therefore entitled to judgment as a matter of law.”⁵

¹ See TTR 215.

² *Id.*

³ MCR 2.116(G)(6).

⁴ See *Citizens for Common Sense in Gov’t v Attorney Gen*, 243 Mich App 43; 620 NW2d 546 (2000).

⁵ *Lowrey v LMPS & LMPJ, Inc*, 500 Mich. 1, 5; 890 NW2d 344 (2016) (citation omitted).

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.⁶ The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider.⁷ The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.⁸ Where the burden of proof at trial on a dispositive issue rests on a non-moving party, the non-moving 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.⁹ If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.¹⁰

CONCLUSIONS OF LAW

The Tribunal has carefully considered Respondent's Motion under MCR 2.116 (C)(4) and (C)(10) and finds that granting the Motion is warranted. MCL 205.735a(3) requires that "[e]xcept 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. . . ." MCL 205.735a(4)(a) provides that, in the case of commercial property, a taxpayer is not required to protest to the Board of Review and may appeal directly to the Tribunal. For residential property, however, MCL 205.735a contains no exception to the

⁶ See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)).

⁷ See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).

⁸ *Id.*

⁹ See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).

¹⁰ See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

Board of Review Protest requirement and thus a protest is required before the Tribunal acquires jurisdiction.¹¹ Here, the Notice of Assessment for the subject property states that the property is residential.¹² An affidavit from Thomas Monchak, assessor for the City of Northville, states that no appeal concerning the subject parcel was made to the 2018 March Board of Review.¹³ In addition, the minutes from the 2018 March Board of Review lists all the petitions brought before the Board, and neither Petitioner's name nor the subject parcel appears.¹⁴ Because the property is residential, a fact undisputed by Petitioner, Petitioner was required to protest the before the Board of Review. And because Petitioner failed to make the required protest, he has failed to perfect his appeal and properly invoke the jurisdiction of the Tribunal.¹⁵ Summary disposition under MCR 2.116(C)(4) is therefore appropriate.

In addition, under MCR 2.116(C)(10), Respondent has carried its burden to present documentary evidence that the subject parcel is residential and that Petitioner did not protest its assessment at the Board of Review.¹⁶ Petitioner has not responded to the Motion and, accordingly, has failed to establish that a genuine issue of material fact exists.¹⁷ Respondent is therefore entitled to summary disposition under MCR 2.116(C)(10) because there is no genuine issue of material fact that Petitioner failed to

¹¹ See *Electronic Data Sys Corp v Twp of Flint*, 253 Mich App 538, 543-544; 656 NW2d 215 (2002); see also *Fisher v City of Ann Arbor*, unpublished per curiam opinion of the Court of Appeals, issued February 4, 2014 (Docket Nos. 310921 and 313363), p 5 ("because the matter was not protested before the Board of Review, the Tax Tribunal lacked jurisdiction and properly dismissed petitioner's claims")

¹² Notice of Assessment, attached as exhibit 2 to Respondent's Motion for Summary Disposition ("Respondent's Motion"), November 1, 2018.

¹³ Affidavit of Thomas Monchak, ¶ 3, p 2, attached as exhibit 3 to Respondent's Motion.

¹⁴ See Minutes of the City of Northville March Board of Review, attached as exhibit 4 to Respondent's Motion.

¹⁵ See *Electronic Data Sys Corp*, 253 Mich App at 543-544; see also *Fisher*, unpub op at 5.

¹⁶ See *Neubacher*, 205 Mich App at 420.

¹⁷ See *id.*

protest to the Board of Review, and as a matter of law Respondent is entitled to judgment because the Tribunal's jurisdiction has not been properly invoked.

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.¹⁸ 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 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.¹⁹ 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.²⁰ Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.²¹

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

¹⁸ See TTR 261 and 257.

¹⁹ See TTR 217 and 267.

²⁰ See TTR 261 and 225.

²¹ See TTR 261 and 257.

filed more than 21 days after the entry of the final decision, it is an “appeal by leave.”²²

A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.²³ The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.²⁴

By Marcus L. Abood

Entered: November 30, 2018

wmm

²² See MCL 205.753 and MCR 7.204.

²³ See TTR 213.

²⁴ See TTR 217 and 267.