

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

Candlewood Hotel Co, Inc,  
Petitioner,

v

MTT Docket No. 302362

City of Lansing,  
Respondent.

Tribunal Judge Presiding  
Jack Van Coevering

CORRECTED ORDER GRANTING PETITIONER'S  
MOTION FOR SUMMARY DISPOSITION

On December 20, 2006, the Tribunal granted Petitioner's Motion for Summary Disposition based on Respondent's admissions relating to pertinent facts. Respondent has asked for further explanation of the Order.

The December 20, 2006 Order granting Petitioner's Motion for Summary Disposition applies to the tax years 2003-2006. The Order is to be interpreted as the exemption of the personal property in question identified as Parcel No. 90-33-01-09-980-000. Respondent had admitted that during the tax years of 2003, 2004, 2005, and 2006, there was no transfer of ownership, the tax classification of each parcel did not change, and no additions or losses were attributable to the parcels for those years.

MICHIGAN TAX TRIBUNAL

Entered: February 7, 2007

By: Jack Van Coevering

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ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

On August 11, 2006, Petitioner filed a motion requesting the Tribunal render judgment in Petitioner's favor pursuant to MCR 2.116(C)(10). In support of its Motion, Petitioner contends (i) "Petitioner served Respondent with Petitioner's First Request for Admissions and Production of Documents on June 20, 2006," (ii) "Respondent failed to answer or object to any matter therein within 28 days of service of Petitioner's First Request for Admissions and Production of Documents, thus, in accordance with MCR Section 2.312(B)(1), each matter contained within the Request for Admissions is deemed admitted by Respondent."

Petitioner, Candlewood Hotel Co., Inc., has filed a Motion for Summary Disposition based on Respondent's untimely response to Petitioner's Request for Admissions. Pursuant to MCR 3.12(B)(1), due to Respondent's untimely response, there is no genuine issue of material fact. The Tribunal determines the request for admissions are deemed admitted and that Petitioner's Motion for Summary Disposition is granted.

FINDINGS OF FACT

Petitioner owns and operates commercial personal property located at 3545 Forest Road, Lansing, Michigan 48910. Respondent imposed a tax on Petitioner's property that contravenes the limitations on increasing taxable values established under Section 211.27(a). The case was placed in abeyance on August 10, 2004 pending the result of *Michigan State University v City of Lansing*, MTT Docket Nos. 286639, 293616, because the owner of the Candlewood property was a party to this case. (P's motion, p. 2). On February 15, 2005, the Michigan Court of Appeals affirmed the decision in favor of Michigan State University that the City of Lansing cannot impose real estate taxes upon it because of the exemption granted state-owned property under the General Property Tax Act.

On June 20, 2006, Petitioner's First Request for Admissions and Production of Documents was filed with the Tribunal and served upon Respondent. Petitioner requested Respondent to admit whether there were additions to the personal property or transfers of the ownership. Respondent failed to answer within the statutory 28-day period. (P's brief, p 3).

PETITIONER'S CONTENTIONS

Petitioner contends that since the *MSU* case was no longer in abeyance at the time Petitioner's Request for Admissions was sent to Respondent, and there is no genuine issue of material fact, summary disposition should be granted. Petitioner also contends that, pursuant to MCR 2.312(B)(1), "[e]ach matter is...deemed admitted unless, within 28 days after service of the request..., the party...serves...a written answer or objection addressed to the matter." Since Respondent did not admit or deny Petitioner's Request for Admissions, Respondent therefore admitted that there was no transfer of ownership or change in tax classification of 3545 Forest Road for 2003. Petitioner contends that because Respondent admitted there was no transfer or

change of classification for 2003, 2004, 2005, and 2006 so that MCLA 211.27(a)(3) does not apply; the taxable values of the land were incorrectly assessed.

### RESPONDENT'S CONTENTIONS

Respondent contends that because Petitioner's Motion is based solely on the Request for Admissions, the Motion should be denied. Further, Respondent contends that the case was placed in abeyance pending the outcome of *MSU v City of Lansing*, MTT Docket No. 286639, 293616, and remained in abeyance at the time Petitioner sent its Request for Admissions. Respondent argues that the Michigan Tax Tribunal website still listed the case in abeyance. Respondent contends that they had a good faith belief that this case was in abeyance pursuant to the MTT website, therefore, the admissions should not be deemed admitted. Respondent also contends that "MTT rules do not provide for Requests for Admission." (R's answers). Finally, Respondent claims that because the "admissions" cannot be denied or admitted, there is a genuine issue of material fact and summary disposition should not be granted. (R's reply, p.3).

### CONCLUSIONS OF LAW

#### A. SUMMARY DISPOSITION UNDER MCR 2.116(C)(10)

Summary disposition under MCR 2.116(C)(10) will be granted when "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." "In considering a motion under MCR 2.116(C)(10), the trial court considers affidavits, pleadings, depositions, admissions and other evidence offered by the parties in the light most favorable to the nonmoving party." *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). *The Michigan Supreme Court in Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996), set forth the standard for reviewing motions for summary disposition brought under MCR 2.116(C)(10):

In reviewing a motion for summary disposition under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions and documentary evidence filed by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if affidavits or other documentary evidence show there is no genuine issue in respect to any material fact, and the moving party is entitled to a judgment as a matter of law. MCR 2.116(C)(10), (G)(4).

In presenting a motion for summary disposition the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. *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).

#### *B. MOTIONS FOR SUMMARY DISPOSITION UNDER MCR 2.116(c)(8)*

Motions for summary disposition under MCR 2.116(c)(8) are to be decided on the pleadings alone. Summary disposition should be granted when the claim, based solely on the pleadings, is so clearly unenforceable that no factual development could possibly justify a right to recovery. *Transamerica Ins Group v Michigan Catastrophic Claims Ass'n*, 202 Mich App 514, 516; 509 NW2d 540 (1993). In reviewing a motion for summary disposition under this subsection, the court must accept as true all factual allegations in support of a claim, as well as all inferences which can fairly be drawn from the facts. *Meyerhoff v Turner Construction Co*, 202 Mich App 499, 502; 509 NW2d 847 (1993).

#### *C. CONCLUSIONS*

The Tax Tribunal Practice and Procedures Rule 205.111(4) includes “[i]f an applicable entire tribunal rule does not exist, the 1995 Michigan Rules of Court...shall govern.” There is no MTT rule regarding Requests for Admission. Therefore, pursuant to MCR 2.312(B)(1), “[e]ach matter is...deemed admitted unless, within 28 days after service of the request..., the party...serves...a written answer or objection addressed to the matter.” Requests for Admissions are favored because they are inexpensive and effective over other forms of discovery. *Occidental Development, LLC, v Van Buren Township*, MTT 292745, p.6. Courts have given special consideration to non-attorneys with regard to following Michigan Court Rules, however attorneys are presumed to know the purpose and effect of the Court Rules. Ultimately, “discovery practice at the Tribunal is subject to the same general restrictions imposed under the court rules.” *Id.*

Candlewood properly sent a Request for Admission to the City of Lansing. Although the Respondent claims that the reliance on the MTT’s website warranted a good faith belief that a response to the Request was not necessary, the Court Rules provide otherwise. In this case, Respondent is represented by an attorney who is expected to follow the Michigan Court Rules. *Occidental* pointed out that the Tribunal may give some leeway to non attorneys; however, the opinion did not mention any special attention to be given to attorneys who have studied the law and are presumed to know the Court Rules.

Respondent contends that because the MTT’s website still listed the *MSU* case as “in abeyance” they were allowed to rely on this information. Tribunal Notice 2004-2 states that “[c]ases that are placed in abeyance are automatically removed from abeyance status when the condition that justified abeyance no longer exists.” When the *MSU* case was resolved, Respondent knew or should have known that the case was no longer in abeyance. Respondent was not entitled to rely

on the MTT's website, but rather was required to get reliable information on the status of the *MSU* case from the MTT directly. Also, Respondent was the same party to the *MSU* case; therefore, reliance on the MTT's website is unnecessary because Respondent's attorney should have had knowledge of the status of the case. Therefore, relying on a website which does not promise to be up-to-date or true is bad faith. However, Respondent failed to respond timely to Petitioner's Request for Admissions. Therefore, Respondent has in effect admitted to facts which results in a lack of material issue of fact for this case.

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

MICHIGAN TAX TRIBUNAL

Entered: December 20, 2006

By: Jack Van Coevering