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

Southgate Lincoln Mercury,
Petitioner,

v

MTT Docket No. 341628

City of Southgate and County of Wayne,
Respondents.

Tribunal Judge Presiding
Patricia L. Halm

ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(4)

ORDER GRANTING RESPONDENTS' MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(8) AND (C)(10)

ORDER OF DISMISSAL

The Petition in this matter was filed by Petitioner, Southgate Lincoln Mercury, on August 28, 2007. Under appeal is the 2003 taxable value of Petitioner's personal property, known as Parcel No. 53-999-00-1344-000 (the subject property), located in the City of Southgate, Wayne County (Respondents). The basis for this appeal is Petitioner's contention that, after the Tribunal entered a Consent Judgment in 2004 establishing the subject property's 2002 assessed and taxable values, Respondent was required to utilize the 2002 taxable value in establishing the subject property's 2003 taxable value. Because Respondent did not recalculate the 2003 taxable value, Petitioner filed this appeal under MCL 211.53a.

On June 30, 2008, Respondents filed a Motion requesting that the Tribunal grant summary disposition in their favor pursuant to MCR 2.116(C)(4), (C)(8) and (C)(10). In support of their Motion, Respondents state:

a. "MCL 205.735(3) states that '(3) The jurisdiction of the tribunal in an assessment dispute is invoked by a party in interest, as petitioner, filing a written petition on or before June 30 of the tax year involved."

b. "As the Petitioner did not file its Petition in this Tribunal contesting the 2003 assessment or taxable value of the subject personal property until August of 2007, the Tribunal does not have jurisdiction over this appeal pursuant to MCL 205.735(3)."

c. "Petitioner alleges that the provisions of MCL 211.53a provide the Tribunal with jurisdiction over this appeal. In essence, Petitioner asserts that because this Tribunal entered a Consent Judgment in 2004, Michigan Tax Tribunal Docket No. 290392, which revised the 2002 taxable value of the subject personal property, the revised 2002 taxable value must be retroactively applied or used for purposes of calculating the 2003 taxable value."

d. "It is clear…that the provisions of MCL 211.53a do not apply to confer jurisdiction upon the Tribunal unless there has been a 'clerical error' or 'mutual mistake of fact made by the assessing officer and the taxpayer' and 'suit is commenced within 3 years from the date of payment of the taxes.'"

e. "Petitioner does not allege in this Petition that a 'clerical error' or 'mutual mistake of fact made by the assessing officer and the taxpayer' occurred, nor did one occur. Even assuming ***arguendo*** that Petitioner made such an assertion, it remains clear that the provisions of MCL 211.53a would still not apply as the Petition was filed untimely."

f. "In this case, the subject 2003 taxes were paid in July and December of 2003, well over 3 years before this Petition was filed…Note that Petitioner does not allege in its Petition that this appeal was commenced within 3 years from the date the 2003 taxes were paid. Rather, Petitioner alleges that the Petition is timely as it was filed within 3 years from the date the correction of the 2003 personal property taxes should have been made. This clearly does not satisfy the 3 year limitation requirement of MCL 211.53a."

On July 14, 2008, Petitioner filed a response to Respondents' Motion for Summary Disposition. In its response, Petitioner states:

a. "Petitioner admits that the Petition in this matter was filed in August of 2007."

b. "State Tax Commission Bulletin 1999-6 states in pertinent part:

> Effective immediately, the State Tax Commission directs that, whenever an order for a change in Taxable Value is received by an assessor from the Michigan Tax Tribunal, the assessor shall also recalculate Taxable Values for the year(s) following the year(s) specifically included in the order. This recalculation for the following years shall be based on the Taxable Value ordered by the MTT for the most recent year of the order. The State Tax Commission has established the following procedures which shall be used by assessors when the recalculation of Taxable Value is required after an MTT order is issued…Upon receiving an MTT order for a change

> in Taxable Value, *the assessor shall immediately recalculate Taxable Value(s) for the year(s) following the most recent year contained in the order*. (Emphasis added.)

c. "Respondent's assessor failed to comply with the requirements of STC Bulletin 1999-06 in that it failed to recalculate the taxable value for 2003 based upon the consent judgment pertaining to tax year 2002. The language of STC Bulletin 1999-06 is unequivocal in its dictate that the 'assessor shall immediate recalculate Taxable Value(s) for the year(s) following the most recent year contained in the order.' No exception for 'retroactive' application of the rule exists. Respondent had an unqualified duty to recalculate the taxable value for 2003 and simply failed to do so."

d. "STC Bulletin 1999-6 also states that 'A property owner may appeal the recalculated Taxable Value to the Michigan Tax Tribunal within 60 days after mailing of the tax bill by the treasurer. This is as provided by the Tax Tribunal Act.' In this instance, Respondent failed completely in its obligation to recalculate the taxable value for 2003 and no tax bill reflecting a recalculation was ever sent. As such, the sixty day period proscribed by MCL 205.735(2) (now MCL 205.735(3)) never ran and Petitioner's 2007 petition was timely filed."

e. "[T]he 'revised 2002 taxable value must be retroactively applied or used for purposes of calculating the 2003 taxable value.' This application is in accordance with unqualified obligation imposed on Respondent by STC Bulletin [1999]-6."

FINDINGS OF FACT

The subject property is a parcel of personal property known as Parcel No. 53-999-00-1344-000. Under appeal is the property's 2003 taxable value.

On September 28, 2004, the Tribunal entered a Consent Judgment in MTT Docket No. 290392, revising the subject property's 2002 taxable value. Petitioner paid the subject property's property taxes in July and December of 2003.[1] On August 28, 2007, Petitioner filed the Petition in this case.

MOTIONS FOR SUMMARY DISPOSITION

[1] Respondent made this assertion in Paragraph 8 of its Motion. Petitioner did not specifically agree with or deny this assertion, instead stating: "See paragraph 3 of Petitioner's answer." Paragraph 3 does not specifically address payment of the tax; therefore, the Tribunal must assume that Respondent's assertion is correct. MCR 2.111(E).

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. TTR 111(4). In the instant case, Respondent moved for summary disposition under MCR 2.116(C)(4), (C)(8) and (C)(10).

- **MCR 2.116(C)(4)**

MCR 2.116(C)(4) provides the following ground upon which a summary disposition motion may be based: "The court lacks jurisdiction of the subject matter."

> Jurisdictional questions under MCR 2.116(C)(4) are questions of law that are also reviewed de novo… When reviewing a motion 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 there was no genuine issue of material fact. (Citations omitted.) *South Haven v Van Buren Co Comm'rs*, 270 Mich App 233, 237; 715 NW2d 81 (2006).

- **MCR 2.116(C)(8)**

MCR 2.116(C)(8) provides the following ground upon which a summary disposition motion may be based: "The opposing party has failed to state a claim on which relief can be granted."

> A motion for summary disposition brought under MCR 2.116(C)(8) tests the legal sufficiency of the complaint on the basis of the pleadings alone. The purpose of such a motion is to determine whether the plaintiff has stated a claim upon which relief can be granted. The motion should be granted if no factual development could possibly justify recovery. *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001).

"Under MCR 2.116(C)(8), we accept all well-pleaded factual allegations as true and construe them in a light most favorable to the nonmoving party." *Johnson v City of Detroit*, 457 Mich 695, 701; 579 NW2d 895 (1998). Only if no factual development could justify the plaintiff's claim for relief can the motion be granted. *Koenig v City of South Haven*, 460 Mich 667, 674; 597 NW2d 99 (1999).

- **MCR 2.116(C)(10)**

MCR 2.116(C)(10) provides the following ground upon which a summary disposition motion may be based: "Except as to the amount of damages, 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." The Michigan Supreme Court, in *Quinto v Cross and Peters Co*, 451 Mich 358; 547 NW2d 314 (1996), provided the following explanation of MCR 2.116(C)(10):

> In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted 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 the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to 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. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. 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. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *Id*. at 361-363. (Citations omitted.)

The Tribunal's "…task is to review the evidence and all reasonable inferences from it and determine whether a genuine issue of any material fact exists to warrant a trial." *Muskegon Area Rental Assoc v City of Muskegon*, 244 Mich App 45, 50; 624 NW2d 496 (2000) rev'd in part on other grounds 465 Mich 456; 636 NW2d 751 (2001). "Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law." *Taylor v Laban*, 241 Mich App 449, 452; 616 NW2d 229 (2000). 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, 18; 469 NW2d 436 (1991).

CONCLUSIONS OF LAW

In response to Respondents' Motion for Summary Disposition, Petitioner asserts that STC Bulletin No. 6 of 1999 requires Respondents to recalculate the subject property's 2003 taxable value because the previous year's taxable value was revised. This Bulletin is based on MCL 211. 27a(2), which states:

> Except as otherwise provided in subsection (3), for taxes levied in 1995 and for each year after 1995, the taxable value of each parcel of property is the lesser of the following:
>
> (a) The property's taxable value in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the inflation rate, plus all additions. For taxes levied in 1995, the property's taxable value in the immediately preceding year is the property's state equalized valuation in 1994.
>
> (b) The property's current state equalized valuation.

For the Tribunal to consider Petitioner's argument, it must first be determined whether the Tribunal's jurisdiction has been invoked. Pursuant to MCL 205.735a(6), an appeal involving commercial personal property must be filed "on or before May 31 of the tax year involved." In this case, Petitioner filed this appeal, in which the only issue is the subject property's 2003 taxable value, on August 27, 2007. Because the appeal was filed more than four years after the tax year at issue, the Tribunal's jurisdiction is not invoked under this statute.

Another statute that may be utilized to invoke the Tribunal's jurisdiction is MCL 211.53a. Petitioner relies on this statute, which states:

> Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a clerical error or mutual mistake of fact made by the assessing officer and the taxpayer may recover the excess so paid, without

> interest, if suit is commenced within 3 years from the date of payment, notwithstanding that the payment was not made under protest.

In relying on this statute, it appears that Petitioner's claim is that Respondents' failure to recalculate the subject property's subsequent year's (2003) taxable value is a clerical error. However, the Tribunal finds that because Petitioner did not file this appeal within 3 years from the date of payment of the tax, the Tribunal's jurisdiction is not invoked under MCL 211.53a. As a result, it is not necessary to determine whether a clerical error had been made.

Petitioner also relies on MCL 205.735(2), which permits a taxpayer to appeal a contested tax bill within 60 days from the date the bill was issued. In pertinent part, MCL 205.735(2) provides that:

> An appeal of a contested tax bill shall be made within 60 days after mailing by the assessment district treasurer and the appeal is limited solely to correcting arithmetic errors or mistakes and is not a basis of appeal as to disputes of valuation of the property, the property's exempt status, or the property's equalized value resulting from equalization of its assessment by the county board of commissioners or the state tax commission.

Contrary to Petitioner's assertion, the Tribunal also lacks jurisdiction under this statute. Petitioner interprets the STC's statement in Bulletin No. 6 of 1999, that "[a] property owner may appeal the recalculated Taxable Value to the Michigan Tax Tribunal within 60 days after mailing of the tax bill by the treasurer," to mean that if the taxable value is never recalculated, the statute of limitations never runs. However, the Tribunal finds the STC's statement to mean that <u>if</u> a tax bill is recalculated and the property owner believes there has been a mathematical error, the property owner has 60 days within which to appeal the recalculation to the Tribunal. To find otherwise would mean that the STC meant to contradict the statute; this is something the Tribunal cannot find.

Although STC Bulletin No. 6 of 1999 does not specify the type of property to which it applies, the Tribunal finds that, in actuality, this Bulletin only applies to real property and not to personal property. This is due to the fact that assessment of personal property must take into account depreciation factors. In other words, as an item of personal property ages, the depreciation factor applied to that property increases and the assessed value of the property decreases. If the assessor were to recalculate the subject property's taxable value for the year following a Tribunal decision based on the taxable value ordered by the Tribunal for the most recent year of the order, the taxable value would not take into account increased depreciation. All other things being equal (e.g., no additions or losses), the subject property's taxable value would be greater than need be.

Moreover, it appears as though Petitioner agrees with and understands this concept. In MTT Docket No. 342620, a case involving the subject property's 2004, 2005 and 2006 taxable values, Respondents filed a 154 Petition with the STC claiming that Petitioner had incorrectly reported or omitted property when it filed its personal property tax statement in each year at issue. In response to Respondents' 154 Petition, Petitioner filed a letter with the STC stating that it believed Respondents were "legally in error as it brings forward a 2002 stipulation regarding personal property at 100% of the 2002 value for the years 2004, 2005 and 2006 rather than subjecting these assets to the depreciation values for the STC tables." The Tribunal finds that this same argument applies to the 2003 tax year. To bring forward the 2002 value from the stipulation rather than applying the depreciation factor to determine the subject property's 2003 taxable value would constitute legal error. Petitioner cannot legitimately make a claim in one case where it may suit its position and then make the opposite claim when its position is different.

Because the Tribunal has jurisdiction in all proceedings involving Michigan's property tax laws, the Tribunal finds Respondents' MCR 2.116(C)(4) Motion must be denied. On the other hand, the Tribunal finds Respondents' (C)(8) Motion must be granted. Petitioner has not stated a claim upon which relief can be granted and there are no facts that could be developed to possibly justify recovery. Additionally, the Tribunal finds that there are no genuine issues as to any material fact and that Respondents' are entitled to judgment as a matter of law. Therefore, Respondent's (C)(10) Motion is also granted.

Finally, because Respondents' Motions for Summary Disposition under MCR 2.116(C)(8) and (C)(10) are granted, all outstanding motions are rendered moot. As such, these Motions will not be ruled on.

Therefore,

IT IS ORDERED that Respondents' Motion for Summary Disposition under MCR 2.116(C)(4) is DENIED.

IT IS FURTHER ORDERED that Respondents' Motions for Summary Disposition under MCR 2.116(C)(8) and MCR 2.116(C)(10) are GRANTED.

IT IS FURTHER ORDERED that this case is DISMISSED.

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

MICHIGAN TAX TRIBUNAL

Entered: September 2, 2010 By: Patricia L. Halm