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

Knollwood Country Club,
Petitioner,

v

MTT Docket No. 435668

West Bloomfield Township,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

ORDER DENYING PETITIONER'S MOTION FOR ENTRY OF JUDGMENT REGARDING THE TAXABLE VALUE

ORDER GRANTING SUMMARY DISPOSITION IN FAVOR OF RESPONDENT UNDER MCR 2.116(I)(2)

FINAL OPINION AND JUDGMENT

INTRODUCTION

On December 9, 2013, Petitioner filed a motion requesting that the Tribunal enter judgment in its favor in the above-captioned case with respect to the taxable value of the subject property for the 2012 and 2013 tax years. More specifically, Petitioner contends that the issue before the Tribunal is whether or not the taxable value of the water tower should have been capped when the Tribunal calculated the taxable value for 2011 in the Final Opinion and Judgment issued in MTT Docket No. 341605 (which was consolidated with Docket No. 285849).

On December 26, 2013, Respondent filed a response to the Motion, stating that the taxable values for 2012 and 2013 were properly calculated based on the 2011 determination of taxable value by the Tribunal in the prior case and the

applicable CPI for each year and Petitioner is barred from challenging the prior determination of the Tribunal by res judicata and collateral estoppel.

The Tribunal has reviewed the Motion, response, and the evidence submitted and finds that Petitioner is not entitled to judgment in its favor as to its taxable value argument, and instead, summary disposition should be granted in favor of Respondent under MCR 2.116(I)(2).

PROCEDURAL HISTORY

Petitioner filed the instant appeal on May 22, 2012, challenging the true cash, state equalized and taxable values of Petitioner's real and personal property. An Amended Petition was filed on June 29, 2012, correcting the parcel number under appeal (18-25-400-002 real and 99-00-008-070 personal). Petitioner timely filed a Motion to Amend to add the 2013 tax year, which was granted by the Tribunal on June 26, 2013. This appeal was placed on a Prehearing General Call, with valuation disclosures due on or before September 2, 2013. Petitioner did not file a valuation disclosure. Respondent filed its valuation disclosure on August 30, 2013. A Show Cause Hearing/Prehearing Conference was held on November 8, 2013. At this hearing, Petitioner indicated that it had lost substantial membership and could not afford to retain an appraiser, and further indicated that the sole issue remaining in this appeal was the calculation of the taxable value of the cellular tower located on the subject property. Specifically, Petitioner indicated that the Tribunal erred in Docket No. 285849[1] by valuing the cellular tower under the income approach rather than the cost approach. Petitioner was precluded from

[1] Docket No. 285849 (consolidated with 341605 on April 12, 2011) involved a determination of the taxable value for 2001 – 2005, and true cash, state equalized and taxable value for 2006 – 2011 for Parcel No. 18-25-400-002. The Opinion and Judgment was issued on February 10, 2012.

filing any valuation evidence, and instead, was to file a motion and brief with respect to its contention of taxable value of the cellular tower based on its purported incorrect calculations. As such, the only issue before the Tribunal is the 2012 and 2013 taxable value of Parcel No. 18-25-400-002.

PETITIONER'S CONTENTIONS

In support of its Motion, Petitioner contends that in Docket No. 285849, the Tribunal concluded that the true cash value of the water tower was $2,608,300, but "it was not explicitly stated how the taxable value for 2011 was calculated." Petitioner further contends that since the assessed value for the non-water tower portion of the property dropped to $1,500,000, the water tower's share of taxable value must make up the balance of the $2,656,442 taxable value, therefore the water tower's contribution to taxable value for 2011 was $1,065,442.

Petitioner argues that the Tribunal's authority to correct the taxable value going forward was set forth in the Michigan Supreme Court's decision in *Michigan Properties v Meridian Twp*, 491 Mich 518; 817 NW2d 548 (2012) ("*Toll I*"), and Petitioner's makes reference to footnote 18[2] of that decision. Petitioner also argues that the "final word" on this issue is contained in the remand to the Court of Appeals in *Toll Northville Ltd Pt v Northville Twp*, 298 Mich App 41, 825 NW2d 646 (2012) ("*Toll II*")in footnote 1[2].

In further explanation of its taxable value argument, Petitioner states that the value contributed to the subject property by the water tower for taxable value purposes is capped at zero, as it has been in existence for decades prior to Proposal A and "[w]hatever value the water tower contributed except as signage had long

[2] Both footnote 18 of the Supreme Court decision and footnote 1 of the remand to the Court of Appeals are discussed in detail in the Conclusions of Law portion of this Opinion.

disappeared prior to 1994." Petitioner argues that in *Kok I* and *Kok II*[3] the Court of Appeals held that components of real estate are capped each year while under construction, and while the water tower under appeal is not new construction, its value has increased under the Tribunal's Opinion from near zero to $2,608,300, which value stems from the increase in occupancy as a base for cell towers. Petitioner contends that nonetheless, "the tower is a previously existing feature of the landscape that the respondent had previously deemed not to contribute any value to the real property." Petitioner states that in 1997, the water tower's portion of the taxable value was an unknown percentage of $143,913, which was allocated among the water tower and other improvements, excluding the clubhouse, and that the taxable value of the water tower continued to be an unknown percentage of $143,913, carried forward by the CPI each year, through 2005. Petitioner further states that for 2006 – 2011, the Tribunal in Docket No. 285849 substantially lowered the true cash value, with a commensurate reduction in taxable values. Petitioner argues that the Tribunal's separate determination of the water tower's true cash value without considering the capped value of the water tower is an addition to taxable value due to an increase in occupancy for the lease to cellular tower companies, which Petitioner contends is unconstitutional under the Michigan Supreme Court's decision in *WPW Acquisitions v Troy*, 466 Mich 117; 643 NW2d 564 (2002).

Lastly, Petitioner asserts that:

> Because the taxable value of the water tower increased from zero to 50% of $2,460,000 ($1,230,000), carried forward by the CPI, the cap on property tax increases was improperly circumvented, and should be reduced for the years under appeal by that $1,230,000 figure, adjusted

[3] *Kok v Cascade Twp*, 255 Mich App 535; 660 NW2d 389 (2003), and *Kok v Cascade Twp*, 265 Mich App 413; 695 NW2d 545 (2005).

forward by the CPI for each year. That works out to a reduction in taxable value of $1,337,187 for 2012 and a reduction of $1,369,280 for 2013.

RESPONDENT'S CONTENTIONS

In support of its response, Respondent contends that the values for the subject parcel for tax years 1998 – 2000 were established by the Tribunal in Docket Nos. 238636 and 259512, which were affirmed by the Court of Appeals. Respondent states that most recently, the values for the subject property for 2001 – 2011 were appealed to the Tribunal in Docket No. 285849, and Petitioner did not file a Motion for Reconsideration or appeal to the Court of Appeals. Respondent argues that Petitioner has been appealing the taxable value of the subject property to the Tribunal from 1998 through 2011, with Petitioner having ample opportunity to challenge any alleged defects in the taxable value for those years by also appealing to the Court of Appeals. Respondent contends that Petitioner is precluded from challenging the 2008 and 2011 taxable values as a result of the March 1, 2012 agreement executed between the parties that the 2001 through 2011 values would be accepted and would not be appealed with any court. Respondent asserts that because of this written agreement Petitioner "cannot now claim that the 2008 and/or 2011 taxable values of the subject property were improperly determined and/or established . . . and therefore, Petitioner must accept the 2011 taxable value . . . as the proper starting point for establishing the 2012 and 2013 taxable values . . . ."

Respondent also contends that even if this written agreement did not exist, Petitioner would be barred by res judicata. Respondent states that: (i) the prior Tribunal action pertaining to the 2008 and 2011 taxable value was decided on the

merits, (ii) the instant case involves the exact same parties, (iii) the matter raised in the instant case, the proper establishment of taxable value in 2008 and 2011, was "clearly decided" in the prior Tribunal appeal and was not appealed to the Court of Appeals, (iv) the arguments now being raised regarding an improper addition to taxable value in 2008 and 2011 based on the alleged increase in occupancy of the water tower was a claim that Petitioner could have raised in Docket No. 285849. Further, Respondent argues that collateral estoppel precludes Petitioner from challenging the 2008 and 2011 taxable values "inasmuch as the 2008 and 2011 taxable values of the subject property and how they were established was addressed and adjudicated . . . in MTT Docket No. 285849." Respondent argues that the decision in *Leahy v Orion Twp*, 269 Mich App 527; 711 NW2d 438 (2006) is "virtually the same" as the facts in the present case and Petitioner is barred from challenging the 2008 and 2011 taxable values. Respondent is also in disagreement with Petitioner's position regarding *Toll I*, as Respondent asserts that *Toll I* is distinguishable in that the petitioner did not appeal the prior year taxable value increase to the Tribunal, when in the present case, the 2008 and 2011 taxable values have already been appealed by Petitioner. Additionally, Respondent states that the Supreme Court recognized that res judicata and collateral estoppel may still apply, as indicated in footnote 18 of *Toll I*. Respondent argues that footnote 1 contained in the remand to the Court of Appeals in *Toll II* "is in direct conflict with, and takes a backseat to, the Michigan Supreme Court's ruling in footnote 18 . . . ."

Lastly, Respondent argues that the Tribunal does not even need to address Petitioner's taxable value argument, as it is barred by both the written agreement and collateral estoppel and res judicata. Even if it was considered, Respondent

states that the contention that the water tower should have its own separately capped taxable value is not supported by any existing law, and Petitioner admits in its brief that it cannot even determine the exact amount of 2011 taxable value it is attempting to challenge. Further, Respondent argues that Petitioner has had the opportunity to raise this issue during the previous litigation of the subject property and has failed to do so. Respondent contends that Petitioner has failed to cite any case or law to support the proposition that the water tower should be treated as a separate component of the subject property that should be separately capped and have a separately defined taxable value. To accept this argument, according to Respondent, would lead to all other revenue generating portions of the subject, such as the clubhouse, golf course and golf cart rental facility, to be separately valued and capped.

APPLICABLE LAW

Petitioner is no longer pursuing its true cash value claims with respect to the subject property, Parcel No. 18-25-400-002 or the personal property Parcel No. 99-00-008-070 that were originally appealed. Petitioner's only remaining argument relates to the taxable value of the subject property for 2012 and 2013, with Petitioner contending that the Tribunal should enter judgment in its favor with respect to the taxable value. Essentially, Petitioner is requesting that summary disposition be granted, although Petitioner does not cite in its Motion what standard should apply. The Tribunal has reviewed Petitioner's request for judgment under MCR 2.116(C)(10), which 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. See *Smith v Globe Life Ins Co*, 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 (C)(10) will be denied. See *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).

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. See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)). The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider. See *Neubacher v Globe Furniture Rentals, Inc*, 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 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. See *McCart v J Walter Thompson USA, Inc*, 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. See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

Summary disposition under MCR 2.116(I)(2) is appropriate "[i]f it appears to the court that the opposing party, rather than the moving party, is entitled to judgment . . . ," and as such, the court may render judgment in favor of the

opposing party. See also *Washburn v Michailoff*, 240 Mich App 669; 613 NW2d 405 (2000).

CONCLUSIONS OF LAW

The Tribunal has carefully considered Petitioner's Motion under MCR 2.116 (C)(10) and finds that Petitioner's Motion should be denied and Respondent should be awarded summary disposition in its favor under MCR 2.116(I)(2).

Petitioner contends that the sole issue remaining in this appeal was the calculation of the taxable value of the cellular tower located on the subject property, which Petitioner asserts was established in error by the Tribunal in the prior appeal involving tax years 2001 - 2011. Accordingly, it is Petitioner's argument that under the Supreme Courts' ruling in *Michigan Properties*, the Tribunal can adjust the 2012 and 2013 taxable values in the present case to correct the alleged error in taxable value by the Tribunal in 2011, as Petitioner is now alleging that the taxable value of the water tower is "capped" at zero.

In *Michigan Properties* (and *Toll I*), the Supreme Court held that "the Tax Tribunal has the authority to carry out a March Board of Review's duty to correct a previous erroneous taxable value in order to adjust the current taxable value, thereby bringing the taxable value back into compliance with the GPTA and Proposal A." *Id* at 543. Respondent contends that the determination made by the Court of Appeals in *Leahy* is virtually the same as the facts in the present case, and Petitioner is barred from challenging the prior taxable value determination in the current appeal before the Tribunal. In footnote 18 of its decision in *Michigan Properties*, the Supreme Court stated:

> The facts before us in both cases are distinguishable from those presented in *Leahy v. Orion Twp.*, 269 Mich App 527, 711 NW2d

> 438 (2006). In *Leahy*, the Court of Appeals refused to allow a taxpayer's challenge to a property's taxable value from a previous year for purposes of adjusting a subsequent year's taxable value. The taxpayer in *Leahy* had already challenged that previous year's taxable value in the year that the value was entered, claiming that the taxable value was erroneous. The taxpayer's challenge went to the Tax Tribunal, which ruled against him, and the taxpayer did not appeal that decision. Accordingly, the Court of Appeals correctly concluded that the taxpayer was collaterally estopped from relitigating the issue. *Id.* at 530–531, 711 NW2d 438.

Accordingly, the Supreme Court has recognized a factual distinction between *Michigan Properties/Toll I* and *Leahy*, in that *Michigan Properties/Toll I* related to situations where there was either a failure by the assessor to adjust the taxable value or an unconstitutional increase in taxable value by the assessor, with no litigation of those specific tax years before the Tribunal, and *Leahy* related to a challenge to a prior year's taxable value that had already been litigated before the Tribunal and the taxpayer was collaterally estopped from relitigating that issue. Petitioner contends that the "final word on this issue" is contained in footnote 1 of the Court of Appeals determination in *Toll II*:

> . . . The Supreme Court directed this Court to consider "the Tax Tribunal's valuation of the subject properties." *Mich Props,* 491Mich at 546, 817 NW2d 548. Although Northville states its other issues in terms of valuation, those issues advance questions of law, i.e., collateral estoppel, res judicata, and law of the case. We note our Supreme Court's rejection of Northville's reliance on *Leahy v Orion Twp,* 269 Mich App 527, 711 NW2d 438 (2006) to support its collateral-estoppel claim, *Mich Props,* 491 Mich. At 533 n. 18, 817 NW2d 548, and Northville cites *Leahy* in support of its res judicata and law-of-the-case arguments as well. Moreover, the Supreme Court has held as a matter of law that the Tax Tribunal not only has "the authority to reduce an unconstitutional previous increase in taxable value for purposes of adjusting a taxable value that was timely challenged in a subsequent year," but also that the tribunal has a *duty*

> to do so. *Id.* At 545–546, 817 NW2d 548. The related concepts of collateral estoppel and res judicata, as well as the law-of-the-case doctrine, do not apply where, as here, our Supreme Court has recognized an affirmative duty to correct a previous determination of taxable values that later proves to be incorrect. [Emphasis in original.]

What Petitioner fails to recognize in relying on the Court of Appeals' footnote is that the situation in the *Toll* cases was factually distinguishable from *Leahy*, a circumstance that was noted by the Supreme Court in its decision. In *Michigan Properties/Toll I* the Supreme Court was not faced with a situation where either taxpayer had previously received a determination on taxable value from the Tribunal and was then attempting to challenge that prior year's taxable value in new proceedings for a subsequent tax year.

In the present case, Petitioner has already had sufficient opportunity to challenge the taxable value of the subject property, including whatever amount it contends should or should not have been attributed to the water tower, in two prior Tribunal cases: Docket Nos. 238636 and 259512, which determined the value for the 1998 – 2000 tax years, and was affirmed by the Court of Appeals, and Docket No. 285849, covering tax years 2001 – 2011. In this most recent Tribunal decision, Petitioner did not file a Motion for Reconsideration and did not appeal to the Court of Appeals, instead entering a written agreement with Respondent that the parties will accept the values as contained in the Tribunal's decision. It was not until the prehearing conference in this matter that Petitioner advised the Tribunal and Respondent that it was no longer pursuing a valuation claim and was instead only pursuing a legal argument with respect to the taxable value of Parcel No. 18-25-400-002. The present scenario is similar to the situation before the Court of Appeals in *Leahy*, were the Court found that the petitioner was barred by collateral estoppel from relitigating an issue with a tax year that had already been

appealed to and determined by the Tribunal. The factual scenario in *Leahy* can be summarized as follows:

> Petitioner cannot be aggrieved by the tribunal's finding that respondent erroneously computed the 2003 assessment. Rather, petitioner challenges the 2003 assessment to the extent that it remains premised on an incorrect starting point. Thus, petitioner argues that the 2003 assessment remains erroneous because it was computed on the basis of the 2002 taxable value of $137,910. However, this challenge presents a collateral attack on a matter that is no longer subject to litigation. *Id* at 530.

Similarly, Petitioner in the present case is challenging the 2012 taxable value premised on what it alleges is an incorrect starting point in 2011, however, such a challenge to the 2011 taxable value is a collateral attack on a matter that is no longer subject to litigation. As cited in *Leahy*, collateral estoppel "…bars relitigation of issues when the parties had a full and fair opportunity to litigate those issues in an earlier action . . . . A decision is final when all appeals have been exhausted or when the time available for an appeal has passed." [Internal citations omitted.] Petitioner had a full and fair opportunity to litigate the prior taxable value for the subject property in Docket No. 285849, which was determined in a valid final judgment by the Tribunal, and which was not further appealed by Petitioner to the Court of Appeals, and the time for any such appeal has now passed.

As the Tribunal finds that Petitioner is barred from relitigating a final determination of the 2011 taxable value in the present appeal, Petitioner's specific arguments with respect to how it believes the taxable value should have been determined or the alleged errors need not be considered in this Final Opinion and Judgment. Further, the Tribunal finds that the only outstanding issue to be litigated

in this case related to Petitioner's legal argument with respect to the prior years' taxable values. Petitioner has failed to establish that is entitled to judgment in its favor and there remains no further basis for appeal. As such, the Tribunal finds that Respondent is entitled to summary disposition in its favor under MCR 2.116(I)(2).

JUDGMENT

IT IS ORDERED that Petitioner's Motion for Entry of Judgment Regarding the Taxable Value is DENIED.

IT IS FURTHER ORDERED that summary disposition in favor of Respondent shall be GRANTED under MCR 2.116(I)(2).

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally provided in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by the Final Opinion and Judgment within 28 days of the entry of the Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the

amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this FOJ. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, and prior to July 1, 2012, at the rate of 1.09% for calendar year 2012, (iv) after June 30, 2012, through December 31, 2013, at the rate of 4.25%, and (v) after December 31, 2013, and through June 30, 2014, at the rate of 4.25%.

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

By: Steven H. Lasher

Entered:
klm