



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

Empire Iron Mining Partnership and
The Cleveland-Cliffs Iron Company,
Petitioners,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 20-004901

Richmond Township,
Respondent.

Presiding Judge
Peter M. Kopke

ORDER HOLDING RESPONDENT IN DEFAULT

PROPOSED ORDER DENYING
RESPONDENT'S MOTION SUMMARY DISPOSITION

PROPOSED ORDER GRANTING
SUMMARY DISPOSITION IN FAVOR OF PETITIONERS

PROPOSED OPINION AND JUDGMENT

On April 29, 2021, Respondent filed a Motion in the above-captioned case, entitled "Motion to Amend Answers and Affirmative Defenses" with attached amended answers and paid a \$50.00 fee for the filing of the Motion. The Motion is, however, a Motion for Summary Disposition, which required payment of a \$100.00 fee for the filing of that Motion. As such, the Motion is not properly pending.¹ Nevertheless, the Motion requests that the Tribunal dismiss the case under MCL 2.116(C)(8) or 2.116(C)(10) or, alternatively, permit Respondent to conduct discovery pertaining to the value of Petitioner's Property under the General Property Tax Act. In the Motion, Respondent claims that:

1. "The sole issue in this case is whether the Specific Ore Tax applies to Petitioner's property for the 2020 tax year. The Petition alleged no other factual or legal issues that were unrelated to the principal claim that Petitioner's property should not be assessed under the Specific Ore Tax Act.

¹ See TTR 217(g) and (j). See also TTR 225(1) and (2) and 231(1).

2. On February 9, 2021, Respondent filed its Answers and Affirmative Defenses to the Petition. (**Exhibit C**, Answer.)
3. After Respondent filed its Answers and Affirmative Defenses, Respondent Township notified Petitioner, by letter dated February 12, 2021, that Respondent's 2020 December [Board of Review] transferred Petitioner's property from the Specific Ore Tax tax roll to the General Property Tax Act ("GPTA") tax roll for tax year 2020 and that the Specific Ore Tax bill was cancelled. (**Exhibit D**, Letter Cancelling 2020 Specific Ore Tax Bill.) (See Exhibit 1.)
4. Respondent estimated the assessed value and issued GPTA tax bills to Petitioner assessing Petitioner's Property at issue under the General Property Tax Act for tax year 2020, and not the Specific Ore Tax Act, under which the original appealed tax bill was issued. (**Exhibit E**, Tax Statement.)
5. For the 2020 tax year, Petitioner's property was assessed under the General Property Tax Act, and the Specific Ore Tax Bill was cancelled. This is exactly the relief that Petitioner had requested.
6. There is no genuine issue as to any material fact, and Respondent is entitled to judgment as a matter of law under MCR 2.116(C)(10). For the same reason, Petitioner has failed to state a claim upon which relief can be granted and summary disposition is also appropriate under MCR 2.116(C)(8).
7. Alternatively, should Petitioner amend its Petition or oppose Respondent's motion, Respondent asserts that this matter would then involve a valuation dispute as to the true cash, assessed and taxable values of the subject property. Respondent estimated the values based on Petitioner's personal property tax filings and its filings with regulatory agencies that estimated a mineral value and production over a 15[-]year period. As such, Respondent did not file a 'No Notice of Valuation Disclosure' and reserves the ability to conduct discovery to prepare an appraisal/valuation disclosure in support."

Petitioners filed a Response to the Motion on May 17, 2021. In the Response, Petitioners claim that:

1. "As an initial matter, Petitioners note that Respondent's Motion is mislabeled. Although labeled as a 'Motion to Amend Answers and Affirmative Defenses,' the Motion never seeks that relief. To be clear, if the Tribunal examines pages 3-4 of Respondent's Motion, that Motion never seeks the relief of having the Tribunal allow Respondent to amend its Answer and Affirmative Defenses. Rather, on pages 3 and 4 of the Motion, Respondent seeks to have this matter dismissed or, alternatively, that it be allowed to conduct discovery regarding the value of Petitioner's property under the General Property Tax Act ("GPTA"). It is therefore clear that Respondent's Motion is actually a Motion for Summary Disposition or, alternatively, for discovery under the GPTA. (Footnote omitted.)
2. Petitioner agrees that Summary Disposition is appropriate[,] and that the Tribunal should issue an Order of Summary Disposition holding that the assessment of Low[-]Grade Iron Ore Tax that Respondent issued to Petitioner, and which Petitioner appealed in this case, is null and void. Petitioner opposes

Respondent's proposed "alternative" relief by which Respondent seeks to conduct discovery regarding the value of Petitioner's property under the GPTA. This is not a GPTA case. The assessment that Petitioner protested in its Petition was an assessment of Low[-]Grade Iron Ore Tax, not a GPTA assessment. There is no basis for conducting discovery regarding the value of Petitioner's property under the GPTA in this matter.²

3. Subsequent to the filing of the Petition in this matter, Respondent claims to have cancelled its Assessment of Low[-]Grade Iron Ore Tax.³ See Respondent's Motion at paragraph 4. In a prior action, the Tribunal held that Petitioner's property was not subject to the Low[-]Grade Iron Ore Tax. See Exhibit 1 hereto, the Tribunal's January 9, 2020 Order Denying Respondents' Motion For Summary Disposition, Order Granting Petitioners' Summary Disposition Under MCR 2.116(l)(2), and Final Opinion And Judgment in Tribunal Docket No. 18-003877, consolidated with 18-003878, 19-003740, and 19-003742. The property at issue in this case is the same property as was at issue in that prior action and the facts have not changed. Therefore, the Tribunal should issue an Order consistent with its prior holding and issue an Order of Summary Disposition holding that the assessment of Low[-]Grade Iron Ore Tax that Respondent issued to Petitioner, and which Petitioner appealed in this case, is null and void."

The Tribunal has considered the Motion, the Response, and the case file, and finds that a telephonic status conference was held on May 17, 2021, to discuss the Motion. During the status conference, Respondent indicated that a petition had been filed with the Michigan State Tax Commission (STC) to add the property to the GPTA or ad valorem assessment roll for prior tax years under MCL 211.154. Respondent did, however, also indicate that discovery was necessary for Respondent to determine the valuation of the property as it is not clear what items of property should be included in

² Petitioner also claims, in pertinent part:

" . . .discovery as to the value of Petitioner's property under the GPTA is not relevant and such information is not discoverable. *Michigan Millers Mut Ins Co v Bronson Plating Co*, 197 Mich App 482, 495; 496 NW2d 373 (1992) (holding that material must be relevant to be discoverable); *Davis v O'Brien*, 152 Mich App 495, 505; 393 NW2d 914 (1986) ('To be discoverable, documents must be relevant[]')."

³ Petitioner also claims, in pertinent part:

"If Respondent can demonstrate that the Low[-]Grade Iron Order Tax Assessment at issue has been lawfully cancelled, then the Tribunal should issue an order dismissing this matter as moot. To date, however, Respondent has not cited any authority permitting such cancellation."

the assessment or assessments of the property at issue in both this case and in MOAHR Docket No. 20-004900.

As for the instant Motion, Respondent is seeking summary disposition in its favor under MCR 2.116(C)(8) and (10). There are, however, no specific Tribunal rules governing motions for summary disposition. Thus, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions.⁴

MCR 2.116(C)(8) provides for summary disposition when “the opposing party has failed to state a claim on which relief can be granted.”⁵ A motion under this rule “tests the legal sufficiency of the complaint” and “[a]ll well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant.”⁶ Such motions “may be granted **only** where the claims alleged are ‘so **clearly unenforceable as a matter of law** that **no** factual development could possibly justify recovery.’”⁷ [Emphasis added.] Further, “when deciding a motion brought under this section, a court considers **only** the pleadings.”⁸ [Emphasis added.]

With respect to summary disposition under MCR 2.116(C)(10), such motions test 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.⁹ Additionally, it has also been held that (i) 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,¹⁰ (ii) the moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider and,¹¹ (iii) the burden then shifts to the

⁴ See TTR 215.

⁵ See *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999).

⁶ *Id.* (citations omitted).

⁷ *Id.* (citations omitted).

⁸ *Id.* (citations omitted).

⁹ See *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999). See also *Maiden*, *supra* at 120.

¹⁰ See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)).

¹¹ See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).

opposing party to establish that a genuine issue of disputed fact exists, (iv) 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,¹² and (v) if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.¹³

With respect to the Motion, the Tribunal has carefully considered the Motion and finds that the denial of the Motion under MCR 2.116(C)(8) is warranted. More specifically, the Petition did, despite the admitted action taken by Respondent's 2020 December Board of Review, state a claim on which relief could have been granted, as the property at issue was originally assessed under the Tax on Low Grade Iron Ore Act (LGIOA) and the Board's authority to remove the property from the LGIOA assessment roll and place the property on the GPTA or ad valorem assessment roll has not been plead and is questionable at best particularly in light of Respondent's admitted STC petition under MCL 211.154 for the 2018 and 2019 tax years.¹⁴

As for the Motion under MCR 2.116(C)(10), the denial of that Motion is also warranted even though there is no genuine issue of material fact, as evidenced by the Tribunal's decision in MOAHR Docket No. 18-003877 regarding the property at issue and Petitioner's claim that the facts have not changed since the rendering of that decision, which is supported by the Board's action in removing that property from the LGIOA assessment roll, placing the property on the GPTA or ad valorem assessment roll, and filing an STC "154" petition to include the property on the GPTA or ad valorem assessment roll for the 2018 and 2019 as omitted property. Rather, summary disposition in Petitioner's favor is, given the above, warranted under MCR 2.116(I)(2).¹⁵ More specifically, the Tribunal concluded in MOAHR Docket No. 18-003877 that the

¹² See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).

¹³ See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

¹⁴ Although MCL 211.53b provides for the correction of a "qualified error," which includes "[a]n error of omission" and "[a]n error regarding the correct taxable status," said errors relate to real property only. See MCL 211.53b(8)(e) and (f). In that regard, the property may include both real and personal property.

¹⁵ See MCR 2.116(I)(2), which provides, in pertinent part, "[i]f it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party."

low-grade iron ore tax under MCL 211.621 *et seq* did not apply to the property at issue in that case, which is the same property at issue in this case.¹⁶ Further, Respondent's evidence supports Petitioner's claim that the facts under which the decision was made to cancel the property's assessment under LGIOA have not changed (i.e., the Board's action and the STC "154" Petition) and confirms Respondent's position that the actual claim made by Petitioner in its Petition is correct (i.e., the low-grade iron ore tax did not apply to the property for the tax year at issue). As such, the Tribunal concludes that Petitioners are entitled to judgment in its favor relative to the LGIOA assessment.¹⁷

Finally, the Petition did not, as also indicated above, contest the property's ad valorem taxation. Rather, the Petition only claims that the property is not subject to the low-grade iron ore tax, and, in the alternative, that its assessment under LGIOA is excessive. As such, evidence of the value of the property for purposes of the GPTA or ad valorem tax roll is irrelevant, as that issue is not pending in this case.¹⁸

PROPOSED JUDGMENT

IT IS ORDERED that Respondent is HELD IN DEFAULT.

IT IS FURTHER ORDERED that Respondent shall, within 14 days of the entry of this Order, pay the additional fee required for the filing of its Motion for Summary Disposition (\$50.00). Failure to comply with this Order may result in the imposition of other sanctions.¹⁹

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition is DENIED.

IT IS FURTHER ORDERED that Summary Disposition is GRANTED in Petitioners' favor under MCR 2.116(I)(2).

¹⁶ The Tribunal's decisions in MOAHR Docket No. 18-003877 reference the Specific Ore Tax or SOT, said "specific tax" is levied under the LGIOA or 1951 PA 77, as amended.

¹⁷ Although summary disposition may also be appropriate in MOAHR Docket No. 20-004900, no motion has been filed or information provided in that case indicating that the Board of Review in that taxing unit took similar action that would support or otherwise confirm that taxing unit's position that the property is not subject to a low-grade iron ore tax.

¹⁸ See TTR 243(1) and MCR 2.302(B)(1) ("Parties may obtain discovery regarding any matter, not privileged, **which is relevant to the subject matter involved in the pending action.**") [Emphasis added.]

¹⁹ See TTR 215 and MCR 1.109(5) and (6).

IT IS FURTHER ORDERED that the LGIOA assessment for the property at issue is CANCELLED.

EXCEPTIONS

This is a Proposed Opinion and Judgment (POJ) and not a Final Opinion and Judgment (FOJ).²⁰ As such, the parties have 20 days from the below "Date Entered by Tribunal" to notify the Tribunal and the opposing party in writing, by mail or by electronic filing, if they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions). Exceptions are limited to the evidence submitted prior to or at the hearing and any matter addressed in the POJ. There is no fee for filing exceptions.

The opposing party has 14 days from the date the exceptions were mailed to that party to file a written response to the exceptions.

A copy of a party's written exceptions or response must be sent by mail or electronic service, if agreed upon by the parties, to the opposing party and proof must be submitted to the Tribunal that the exceptions or response were served on the opposing party.

Exceptions and responses filed by *facsimile* will not be considered.

Entered: June 15, 2021
PMK/wmm

By



²⁰ See MCL 205.726.



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STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
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v

MOAHR Docket No. 20-004901

Richmond Township,
Respondent.

Presiding Judge
Steven M. Bieda

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

The Tribunal issued a Proposed Order Granting Petitioner's Motion for Summary Disposition and Proposed Opinion and Judgment (POJ) on June 15, 2021. The POJ states, in pertinent part, "[t]he parties have 20 days from date of entry of this POJ to notify the Tribunal in writing, by mail or by electronic filing, if available, if they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions)."

On July 21, 2021, the parties filed a joint stipulation to the POJ and requested that the Tribunal issue a Final Opinion and Judgment granting Petitioner's Motion for Summary Disposition.

The Tribunal has considered the stipulation and the case file and finds that the Administrative Law Judge's determination that the property at issue is not subject to the Low Grade Iron Ore Tax (LGIOT) is supported by the facts and applicable law, as is his determination that Petitioner is entitled to judgment as a matter of law. As such, the Tribunal adopts the POJ as the Tribunal's final decision in this case.¹ The Tribunal also incorporates by reference the Conclusions of Law contained in the POJ in this Final Opinion and Judgment. Therefore,

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

IT IS FURTHER ORDERED that the property's LGIOT assessment for the tax year at issue is CANCELLED.

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

¹ See MCL 205.726.

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 Tribunal with the required filing fee within 21 days from the date of entry of the final decision. 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. You are required to serve a copy of the motion 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. Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.

A claim of appeal must be filed with the Michigan Court of Appeals 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." You are required to file a copy of the claim of appeal with filing fee with the Tribunal in order to certify the record on appeal. The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.

By 

Entered: October 22, 2021
ejg

PROOF OF SERVICE

I certify that a copy of the foregoing was sent on the entry date indicated above to the parties or their attorneys or authorized representatives, if any, utilizing either the mailing or email addresses on file, as provide by those parties, attorneys, or authorized representatives.

By: Tribunal Clerk