Frito-Lay Inc,
Petitioner,

v

Michigan Department of Treasury,
Respondent.

MICHIGAN TAX TRIBUNAL

MOAHR Docket No. 21-003926

Presiding Judge
Jason C. Grinnell

ORDER GRANTING RESPONDENT'S MOTION
FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(8) and (C)(10)

FINAL OPINION AND JUDGMENT

Rather than file an answer to Petitioner's petition[1] seeking relief for its failure to timely pay its 2020 Essential Services Assessment (ESA) on or before April 15, 2021, as required by MCL 211.1057(a), Respondent has moved for summary disposition under MCR 2.116(C)(8) and (C)(10). Petitioner did not file a response to Respondent's motion for summary disposition. However, Petitioner in its Petition, admits it failed to timely pay the ESA but seeks equitable relief from the Tribunal since Petitioner alleges it intended to pay but its failure to pay the ESA timely was beyond its control. The Tribunal must now decide whether Respondent is entitled to the relief requested or whether the case should proceed to trial.

[1] Petitioner initially listed "Ryan Williams" as Petitioner. Although Petitioner served an amended petition on Respondent, the Tribunal has no record of receiving such. Both parties agree that "Frito-Lay Inc" is the correct Petitioner and Respondent admittedly received notice when it received Petitioner's amended petition which Respondent attached to its' motion for summary disposition as Exhibit 1. Under the Misnomer Doctrine, when the right party has been sued by the wrong name, and service has been made upon the right party, although by a wrong name, an amendment substituting the true name of the party may be permitted. *Daly v Blair*, 183 Mich 351, 353; 150 NW 134 (1914). Therefore, sua sponte, the Tribunal substitutes "Frito-Lay Inc" for "Ryan Williams".

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.[2] In this case, Respondent moves for summary disposition under MCR 2.116(C)(8) and (C)(10).

MCR 2.116(C)(8)

Motions under MCR 2.116(C)(8) are appropriate when "[t]he opposing party has failed to state a claim on which relief can be granted." The Court of Appeals has held that:

> A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a complaint. Under this subrule '[a]ll well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant.' When reviewing such a motion, a court must base its decision on the pleadings alone. In a contract-based action, however, the contract attached to the pleading is considered part of the pleading. Summary disposition is appropriate under MCR 2.116(C)(8) 'if no factual development could possibly justify recovery.'[3]

MCR 2.116(C)(10)

MCR 2.116(C)(10) provides for summary disposition when "there is no genuine issue of material fact, and the moving party is entitled to judgment or partial judgment as a matter of law."[4] A genuine issue of material fact exists if the record leaves open an issue upon which reasonable minds might differ. Under Michigan law, the moving party may satisfy its burden of production under MCR 2.116(C)(10) by demonstrating to the court that the non-moving party's evidence is insufficient to establish an essential element of the nonmoving party's claim[5]. If the moving party properly supports its motion, the burden

---

[2] See TTR 215.
[3] *Liggett Restaurant Group, Inc v City of Pontiac*, 260 Mich App 127, 133; 676 NW2 633 (2003) (citations omitted).
[4] *Id*.
[5] *Quinto v Cross & Peters Co*, 451 Mich 362 (1996). Quinto, 451 Mich at 361

"then shifts to the opposing party to establish that a genuine issue of disputed fact exists."[6] If the moving party fails to properly support its motion for summary disposition, the nonmoving party has no duty to respond and the trial court should deny the motion.[7] In all cases, MCR 2.116(G)(4) squarely places the burden on the parties, not the trial court, to support their positions. A reviewing court may not employ a standard citing mere possibility or promise in granting or denying the motion and may not weigh credibility or resolve a material factual dispute in deciding the motion.[8] Rather, summary disposition pursuant to MCR 2.116(C)(10) is appropriate if, and only if, the evidence, viewed most favorably to the non-moving party, fails to establish any genuine issue regarding any material fact, and the moving party is entitled to judgment as a matter of law.[9] A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ.[10] Granting a motion for summary disposition under MCR 2.116(C)(10) is warranted if the substantively admissible evidence shows 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.[11]

"A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ."[12] In evaluating whether a factual dispute exists to warrant trial, "the court is not permitted to assess credibility or to determine facts on a motion for summary

---

[6] *Id*. at 362
[7] See MCR 2.116(G)(4) and *Meyer v City of Center Line*, 242 Mich App 560 (2000).
[8] *Skinner v Square D Co*, 445 Mich 153 (1994).
[9] *Quinto* at 362.
[10] *El-Khalil v Oakwood Healthcare*, Inc, 504 Mich 152 (2019).
[11] *Quinto*, at 362-363.
[12] *West v General Motors Corp*, 469 Mich 177 (2003).

judgment."[13] "Instead, the court's task is to review the record evidence, and all reasonable inferences therefrom, and decide whether a genuine issue of any material fact exists to warrant a trial."[14]

LEGAL ANALYSIS

In this case, both parties admit that Petitioner timely filed its 2020 Eligible Manufacturing Personal Property Tax Exemption Claim (EMPP) with the Kentwood Assessors Office on February 18, 2020. In addition, Petitioner admits that it did not pay the ESA in full by April 15, 2021. Ultimately, the Tribunal must determine, based on the evidence submitted by the respective parties, whether Respondent's recission of Petitioner's EMPP was proper.

"In evaluating a motion for summary disposition … a reviewing court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion."[15]

MCL 211.1057(1) states, "[t]he **department shall collect and administer** an assessment as provided in this section." Additionally, MCL 211.1057(3) states in relevant part the following, "[n]ot later than August 15 in each assessment year, each eligible claimant **shall** electronically revise as necessary and certify the completed statement **and make full payment of the assessment** levied under section 5 of that assessment year as calculated in section 5(2)." It is undisputed that Petitioner failed to pay the ESA in full by August 15, 2020. [Emphasis in bold.]

---

[13] *Cline v Allstate Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued June 21, 2018 (Docket No. 336299) citing *Skinner v Square D Co*, 445 Mich 1 (1994).
[14] *Id.*
[15] *SBC Health Midwest Inc v City of Kentwood*, unpublished per curiam decision of the Court of Appeals, 2015 WL 1276920.

MCL 211.1057(4) states in relevant part the following, "[i]f an eligible claimant does not certify the statement **and make full payment of the assessment levied under section 5 by August 15**, **the department shall issue a notice to the eligible claimant not later than September 15**. The notice must include a statement explaining the consequences of nonpayment as set forth in subsection (5) and instructing the eligible claimant of its potential responsibility under section (5)(e). Respondent provides undisputed evidence of its compliance with MCL 211.1057(4) in Exhibit 3 of its motion for summary disposition with written "ESA – Notice of Account Status" letters dated August 20, 2020, and September 15, 2020. Additionally, and although not required by statute, Respondent provided evidence of subsequent written notices to Petitioner dated December 1, 2020, March 2, 2021, and April 1, 2021. Despite multiple notices, Petitioner did not pay the ESA by April 15, 2021. [Emphasis in bold.]

MCL 211.1057(5)(a) states in relevant part the following, "[f]or any assessment year in which an **eligible claimant does not submit payment in full and any penalty due** under subsection (4) by April 15 of the year following the assessment year…[t]he department **shall rescind no later than the first Monday in June** for the immediately preceding assessment year any exemption described in sec 9m or 9n of the general property tax act…". In this case, Petitioner admits that it did not pay the ESA on time, however, it alleged that the ESA payment process changed from 2018 to 2020, leading to "missed/confusion for 2020 ESA payment requirement. . . ".[16] Petitioner also cites the COVID-19 pandemic and property tax department turnover as a means for not timely

[16] See Petitioner's Petition at 5.

receiving the ESA correspondence.[17] Importantly, the Tribunal notes that Petitioner certified to the following by singing and submitting its EMPP to the Kentwood Assessors Office:

> 4. I certify my understanding that to qualify for the EMPP exemption on this parcel, I must electronically certify an ESA statement and **make electronic payment of any ESA liability by the statutory deadline of August 15, 2020, and that failure to pay ESA liability and applicable later payment penalty via ACH, EFT, or e-file by the statutory deadline of April 15, 2021, will result in recission of this exemption**.[18] [Emphasis in bold.]

On the other hand, Respondent, in Exhibit 4 of its motion for summary disposition, provided evidence of its intent to rescind with a written "ESA – Notice of Intent to Rescind" letter dated April 22, 2021. Again, Petitioner did not pay. Finally, prior to the first Monday in June, Respondent on May 25, 2021, issued its "Eligible Manufacturing Personal Property Exemption – Order of Recission." See Respondent's Exhibit 5.

Simply put, Respondent's uncontroverted evidence, legal authority, and legal analysis, dispositively establishes that Petitioner did not pay the full ESA by April 15, 2021. Additionally, Respondent's evidence shows it complied with the various notice requirements set forth in the applicable statute and as Respondent correctly points out in its brief, the word "shall" statutorily requires Respondent to revoke Petitioner's EMPP no later than the first Monday in June, for its failure to pay the entire ESA, along with any associated penalties by April 15, 2021. Respondent did all that was required by statute and Petitioner has provided no evidence otherwise.

---

[17] See Petitioner's Petition at 5.
[18] See Petitioner's EMPP Claim form attached to Respondent's motion for summary disposition as Exhibit 6.

CONCLUSIONS OF LAW

For all the reasons stated in this opinion, The Tribunal grants summary disposition under MCR 2.116(C)(8) and (C)(10) to Respondent, Michigan Department of Treasury.

JUDGMENT

IT IS ORDERED that Respondent's Motion for Summary Disposition under MCR 2.116(C)(8) and (C)(10) is GRANTED.

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.[19] 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.[20] 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

[19] See TTR 261 and 257.
[20] See TTR 217 and 267.

submitted with the motion.[21] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[22]

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 filed more than 21 days after the entry of the final decision, it is an "appeal by leave."[23] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.[24] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[25]

By

Entered: June 28, 2022
jcg/ajs

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

[21] See TTR 261 and 225.
[22] See TTR 261 and 257.
[23] See MCL 205.753 and MCR 7.204.
[24] See TTR 213.
[25] See TTR 217 and 267.