



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

Jerry C Reeves,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 22-000568

Addison Township,
Respondent.

Presiding Judge
Jason C. Grinnell

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

INTRODUCTION

On November 28, 2022, Respondent filed a motion requesting that the Tribunal enter summary judgment in its favor in the above-captioned case. More specifically, Respondent contends that Petitioner has not presented any credible evidence that the special assessment of \$5.19 per acre is unreasonably disproportionate to the value received. Respondent contends the special assessment is valid and the petition in this case should be denied.

On November 30, 2022, Petitioner filed a response opposing the Motion.

The Tribunal has reviewed the Motion, response, and the evidence submitted and finds that granting Respondent's Motion for Summary Disposition is warranted at this time.

RESPONDENT'S CONTENTIONS

In support of its Motion, Respondent contends that it received a petition for a Special Assessment District (SAD) to pay for the Oakland County Michigan State

University Gypsy Moth Spray Program to control gypsy moths. The petition was signed by the record owners of land constituting more than 50% of the total land area in the SAD. Following proper public notice and public hearing, Respondent passed a resolution approving the SAD. After the resolution was passed, Respondent received confirmation of a \$30,000 grant from Oakland County to offset the cost of the gypsy moth spraying, thereby reducing the cost of the assessment to \$5.19 per acre. Petitioner owns four parcels (Parcel Nos. A-05-31-126-002, A-05-31-126-003, A-05-31-126-004, and A-05-31-126-005), totaling 19.91 acres, therefore, his total cost for the SAD is \$103.33. Petitioner does not challenge the procedure related to the creation of the SAD, he only challenges the SAD itself.

Oakland County established the Oakland County Moth Suppression Program to conduct invasive moth suppression in Oakland County communities to treat, suppress, and prevent further damage caused by gypsy moths. Township board minutes note that an aerial spray is used that is a naturally occurring forest health product that has no known impact to non-target organisms such as humans, pets, bird, fish, and other insects.

The Michigan Supreme Court has ruled that special assessments are presumed valid.¹ Petitioner has failed to assert a claim upon which relief can be granted because he has failed to rebut that presumption. Petitioner has failed to present credible evidence that the amount of the special assessment (\$5.19 per acre) is not reasonably proportionate to the benefits derived from the improvement related to the suppression of gypsy moths and the damage that they cause.

¹ *Kadzban v City of Grandville*, 442 Mich 495, 502; 502 NW2d 299 (1993).

PETITIONER'S CONTENTIONS

In support of his response, Petitioner contends that: his land is private land, not shared by the public; he does not wish to have toxic chemicals applied to his property; the spraying of his land does not benefit the public because adjacent lands infected with gypsy moths were not sprayed; and only one application of the spray is not effective, as opposed to two applications.

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 MCR 2.116(C)(10).

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) provides for summary disposition when “there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial

² See TTR 215.

³ *Liggett Restaurant Group, Inc v City of Pontiac*, 260 Mich App 127, 133; 676 NW2 633 (2003) (citations omitted).

judgment as a matter of law.”⁴ The Michigan Supreme Court, in *Quinto v Cross and Peters Co*,⁵ provided the following explanation of MCR 2.116(C)(10):

MCR 2.116 is modeled in part on Rule 56(e) of the Federal Rules of Civil Procedure . . . [T]he initial burden of production is on the moving party, and the moving party may satisfy the burden in one of two ways.

First, the moving party may submit affirmative evidence that negates an essential element of the nonmoving party's claim. Second, the moving party may demonstrate to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim. If the nonmoving party cannot muster sufficient evidence to make out its claim, a trial would be useless and the moving party is entitled to summary judgment as a matter of law.

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. See MCR 2.116(C)(10) and MCR 2.116(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.⁶

“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

⁴ *Id.*

⁵ *Quinto v Cross and Peters Co*, 451 Mich 358 (1996) (citations omitted).

⁶ *Id.* at 361-363. (Citations omitted.)

minds might differ.”⁷ 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 judgment.”⁸ “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.”⁹

CONCLUSIONS OF LAW

The Tribunal has carefully considered Respondent’s Motion under MCR 2.116 (C)(8) and MCR 2.116(C)(10) and finds that granting the Motion is warranted.

Respondent states that Petitioner has not challenged the creation of the SAD but the actual SAD itself and therefore, the sole issue is whether Petitioner has presented evidence sufficient as a matter of law to meet its burden to prove that the SAD results in substantial disproportionality between the cost of the assessment and the benefit conferred upon the subject property and is thus invalid under the Michigan Supreme Court’s holdings in *Dixon Road Group v Novi*, 426 Mich 390; 395 NW2d 211 (1986) and *Kadzban v Grandville*, 442 Mich 495; 502 NW2d 299 (1993). While the petition states that the SAD does not meet the necessity or benefit requirement under MCL 41.722, Petitioner has presented no documentary evidence in support of this statement. MCL 41.722 provides for the planting, maintenance, and removal of trees as authorized improvements and the Tribunal finds the suppression of gypsy moths would constitute maintenance of trees under this statute as gypsy moths can weaken and kill trees. Petitioner argues that the SAD would result in toxic chemicals being sprayed on his

⁷ *West v General Motors Corp*, 469 Mich 177 (2003).

⁸ *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).

⁹ *Id.*

property. However, as Respondent has indicated, its board minutes note that an aerial spray is used that is a naturally occurring forest health product that has no known impact to non-target organisms such as humans, pets, bird, fish, and other insects. Further, township board minutes submitted by Respondent quote the township supervisor as stating “we were devastated last year and we’re trying to do something about it” in reference to the gypsy moth problem. Petitioner states that because adjacent lands were not sprayed, there is no benefit to the public. While Petitioner indicates that a second application of the spray and spraying additional properties on an adjacent road would make the gypsy moth prevention efforts more effective, he does not indicate that he has not received any benefit from the spraying. As Petitioner’s total assessment for the SAD is \$103.33, the Tribunal finds there is no evidence that the cost is disproportional to the benefit received by Petitioner. As such, Petitioner has failed to state a claim upon which relief can be granted and the Tribunal finds there is no genuine issue of material fact.

JUDGMENT

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

IT IS FURTHER ORDERED that the case is DISMISSED.

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 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: February 3, 2023
ssm/jcg

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