

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

Rock 12 Mile LLC,
Petitioner,

v

MTT Docket No. 14-005592

Courtland Township,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

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

FINAL OPINION AND JUDGMENT

INTRODUCTION

On May 12, 2016,¹ 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 incorrectly relies upon *Toll Northville LTD v Northville Twp*,² to assert that the subject parcels' taxable values were improperly increased due to the addition of public service improvements. On June 3, 2016, Petitioner filed a response to the Motion.

On June 3, 2016, Petitioner filed a motion requesting that the Tribunal enter summary judgment in its favor. Petitioner specifically contends that, like in *Toll Northville*, the Tribunal must look to the purpose of the Proposal A Amendment to limit the increase in taxable value while the property is owned by the same party and that the new owner's "uncapped" taxable

¹ Although, Respondent's Motion was filed on May 6, 2016, Respondent failed to pay the full filing fee for the Motion. As such, a Notice of No Action was entered and indicated that the Motion would be deemed filed as of the date the remaining fee was paid. Respondent submitted the remaining filing fee on May 12, 2016, and as such, that date is deemed the filing date of the Motion.

² *Toll Northville LTD v Northville*, 480 Mich 6; 743 NW2d 902 (2008).

value must be determined at the time of the transfer. Respondent has not filed a response to this motion.

The Tribunal has reviewed the Motions, response, and the evidence submitted and finds that granting Respondent's Motion for Summary Disposition under MCR 2.116(C)(10) and denying Petitioner's Motion for Summary Disposition under MCR 2.116(C)(10) is warranted at this time.

RESPONDENT'S CONTENTIONS

In support of its Motion, Respondent contends that there are two ways in which the taxable value of a property can be increased above the rate of inflation: (1) when the property is transferred the taxable value is "uncapped" to the state equalized value the year following the transfer or (2) if there have been "additions" to the property. Respondent states that this case is an uncapping case and not an additions case, as contended by Petitioner, thus rendering Petitioner's reliance upon *Toll Northville* irrelevant.

Respondent contends that the assessments in this case were not established by adding some "cost component" reflecting the public service improvements made to the property during 2013. Rather, the value of each individual parcel was derived based upon a sales comparison approach identifying lots which are similar to the subject lots which have public services installed and available to them. Respondent further contends that its position is clearly supported by the statutory language of MCL 211.27a and the case law of *Nixon Road Holding Co v Delta Twp.*³

³ *Nixon Road Holding Co v Delta Twp*, unpublished opinion per curiam of the Court of Appeals, issued October 23, 2012 (Docket No. 303519).

Respondent also states that Petitioner has waived its right to challenge the true cash and state equalized values of the subject property given the sole basis for its appeal to the 2014 March Board of Review was taxable value and the fact that Petitioner failed to appeal to the 2015 March Board of Review.

PETITIONER'S CONTENTIONS

In support of its response, Petitioner states that Respondent's Motion under MCR 2.116(C)(8) is without merit because "Petitioner does not dispute that the assessed value and the state equalized value may increase as a result of public services installation. The taxable value is the only value that is alleged to be unconstitutional in this case."⁴ Further, Petitioner states that it was not required to appear before the Board of Review in 2015, while this issue was already pending before the Tribunal.

Petitioner further contends that this case is nearly identical to the facts in *Toll Northville*, as in both cases, the taxing authority improperly increased the taxable value relating to value added for public service improvements. Petitioner contends that the Courts have held that Proposal A's purpose was to limit taxable value increases as long as a property remains owned by the same party. Petitioner further contends that since the public service improvements made to the property occurred during Petitioner's ownership, the value added to the parcels cannot be used to increase the taxable value. "The only reasonable conclusion to follow is that the new owner's 'uncapped' value determination is based on the parcel's value existing at the time of the transfer."⁵

⁴ Petitioner's Brief at 5.

⁵ Petitioner's Brief at 9.

Petitioner contends that Respondent's reliance on *Nixon* is improper as it is an unpublished decision which is factually distinguishable from the case at hand. Petitioner contends in this case, unlike *Nixon*, Respondent admits that the value of public service improvements are included in the assessments.

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.⁶ In this case, Respondent moves for summary disposition under MCR 2.116(C)(8) and (10). Petitioner moves for summary disposition under 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.” Dismissal should be granted when the claim, based solely on the pleadings, is so clearly unenforceable that no factual development could possibly justify a right to recovery.⁷ In reviewing a motion under this subsection, the court must accept as true all factual allegations in support of a claim, as well as all inferences which can fairly be drawn from the facts.⁸

Summary disposition under MCR 2.116(C)(10) 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.⁹ In the event, however, it is determined

⁶ See TTR 215.

⁷ See *Transamerica Ins Group v Michigan Catastrophic Claims Ass'n*, 202 Mich App 514, 516; 509 NW2d 540 (1993).

⁸ See *Meyerhoff v Turner Construction Co*, 202 Mich App 499, 502; 509 NW2d 847 (1993).

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

that an asserted claim can be supported by evidence at trial, a motion under (C)(10) will be denied.¹⁰

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.¹¹ The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider.¹² The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.¹³ 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.¹⁴ If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.¹⁵

CONCLUSIONS OF LAW

The Tribunal has carefully considered the parties' motions and finds that granting Respondent's Motion and denying Petitioner's Motion under MCR 2.116(C)(10) is warranted. Further, Respondent's Motion under MCR 2.116(C)(8) is not justified and is denied.

MCR 2.116(C)(8)

The Tribunal finds that although Petitioner indicated that "[t]his appeal involves issues relating to the property's True Cash Value and Taxable Value, and the value of additions added

¹⁰ See *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).

¹¹ See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)).

¹² See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).

¹³ *Id.*

¹⁴ See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).

¹⁵ See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

to the properties”¹⁶ on the July 31, 2014 Petition, Petitioner clearly states “[t]he taxable value is the only value that is alleged to be unconstitutional in this case and that issue is within the jurisdiction of the Tribunal.”¹⁷ Petitioner further contends that the only issue is a purely legal question regarding the taxable value and no issue of material fact remains between the parties.¹⁸ As such, the Tribunal finds that the value of the property itself is not disputed by Petitioner and the only issue at hand is the calculation of the taxable value for the 2014 and 2015 tax years. Nevertheless, the Tribunal finds that when looking to the pleadings alone, as required by MCR 2.116(C)(8), Petitioner did not fail to state a claim, because on the face of the Petition and Motion to Amend, the claim is not so unenforceable that no factual development could justify a right to recovery.¹⁹ Thus, the Motion under MCR 2.116(C)(8) is denied.

MCR 2.116(C)(10)

The Tribunal finds that the subject parcels were purchased by Petitioner in 2013. At the time of purchase, the parcels were a single “parent” parcel. After Petitioner’s purchase, and prior to December 31, 2013, the parent parcel was subdivided into single family residential parcels, and Petitioner made public service improvements including streets, sewer and gas connections, and electrical services.

In support of its Motion, Petitioner contends that Respondent improperly increased the taxable value of the subject parcels by adding public service improvements as additions which was found to be unconstitutional in *Toll Northville*. Petitioner contends that the “uncapped” value must be determined at the time of the transfer given the Court’s finding that Proposal A’s

¹⁶ Petition at 1.

¹⁷ Petitioner’s Brief at 5.

¹⁸ *Id.* at 4.

¹⁹ See *Transamerica Ins Group v Michigan Catastrophic Claims Ass’n*, 202 Mich App 514, 516; 509 NW2d 540 (1993).

purpose was to limit the increase in taxes for as long as the property is owned by the same party. Respondent contends that the taxable values of the subject parcels were properly uncapped given Petitioner's 2013 purchase and no value was added as "additions" given the uncapping.

The Tribunal finds that Petitioner has not supported its contention that the uncapped value should be determined at the time of transfer. Rather, MCL 211.2(2) states that "[t]he taxable status of persons and real and personal property for a tax year shall be determined as of each December 31 of the immediately preceding year." Thus, by the plain and ordinary meaning of the statute, Respondent properly valued the subject parcels individually as single family lots having access to public service improvements as they existed on December 31, 2013. Petitioner does not dispute that the individual lots have a greater combined market value than the single vacant lot originally purchased.²⁰ Further, MCL 211.27a(3) states that "[u]pon a transfer of ownership of property after 1994, the property's taxable value for the calendar year following the year of the transfer is the property's state equalized valuation for the calendar year following the transfer." As indicated above, Petitioner does not dispute the true cash or state equalized values and admits that the value of the parcels as of December 31, 2013, had increased given the access to the public service improvements. The Tribunal finds that Respondent properly followed the statutory requirements in MCL 211.2(2) and MCL 211.27a(3) to uncap the subject's value as of December 31, 2013, and set the taxable value equal to the state equalized value for the calendar year following the transfer.

Petitioner failed to cite any statute or case law to indicate that the appropriate uncapped value should be determined at the time of the transfer. Rather, Petitioner merely relies upon the Court's analysis in *Toll Northville* regarding the public intent in adopting Proposal A. More

²⁰ Petitioner's Brief at 2-3.

specifically, Petitioner contends that given Proposal A's purpose, as quoted in *Toll Northville*, increases should be limited while the property is owned by the same party and there should not be a "free-for-all period" in the first year of ownership. The Tribunal finds that Petitioner's attempt to extend *Toll Northville* to change the statutory requirements of MCL 211.2(2) and MCL 211.27a(3) is not supported.

Respondent cites *Nixon Rd Holding Co v Delta Twp*²¹ which states that the taxable value is uncapped upon purchase and recapped at the end of the calendar year following the transfer. Thus, *Nixon Rd* states that the public service improvements installed during the year of purchase are not "subject to the property-tax cap and its corresponding restrictions as set forth in *Toll Northville*" because they were added during the "uncapped" period. Petitioner contends that the reliance upon this case is misplaced because it is an unpublished decision. The Tribunal disagrees, in this matter, given that the facts in *Nixon Rd* are nearly identical to the case at hand. Although the Michigan Court Rules indicate unpublished opinions should not be cited when there is published authority, the Tribunal finds that *Nixon Rd* sets forth a different fact pattern than *Toll Northville* given that the public service improvements were installed in the same year as the purchase of the property. Petitioner contends that this difference in fact is minor, however, based upon the statutory language of MCL 211.27a(3) and the holding in *Nixon Rd*, the Tribunal finds that this difference is not minor, but rather determinative.

Given the above, the Tribunal finds that the taxable values were properly uncapped for the 2014 tax year given the 2013 transfer of ownership. Further, there was no value added as "additions" with regard to the public service improvements, as Petitioner contends, as the taxable

²¹ *Nixon Rd Holding Co v Delta Twp*, unpublished opinion per curiam of the Court of Appeals, issued October 23, 2012 (Docket No. 303519).

values were simply uncapped as required by statute. Thus, the Tribunal finds that Petitioner's Motion shall be denied and Respondent's Motion shall be granted as there are no genuine issues of material fact remaining.

JUDGMENT

IT IS ORDERED that Petitioner Motion for Summary Disposition is DENIED.

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

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.²² 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 within 28 days of entry of this 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 its payment. A sum determined by the Tribunal to have

²² See MCL 205.755.

been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. 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, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, and (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%.

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.²³ 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.²⁴ 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 submitted with the motion.²⁵ Responses to motions for

²³ See TTR 261 and 257.

²⁴ See TTR 217 and 267.

²⁵ See TTR 261 and 225.

reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.²⁶

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.”²⁷ A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.²⁸ The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.²⁹

By: Steven H. Lasher

Entered: July 18, 2016
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²⁶ See TTR 261 and 257.

²⁷ See MCL 205.753 and MCR 7.204.

²⁸ See TTR 213.

²⁹ See TTR 217 and 267.