

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

Chiquita Brands,
Petitioner,

v

MTT Docket No. 11-000007

Michigan Department of Treasury,
Respondent.

Tribunal Judge Presiding
David B. Marmon

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

INTRODUCTION

On November 3, 2017, Respondent filed a motion requesting that the Tribunal enter summary judgment its favor in the above-captioned case. More specifically, Respondent contends that Petitioner initiated the subject case to challenge Respondent's rejection of Petitioner's attempts to file an amended MBT return using an equally weighted three factor apportionment formula. This case was placed into abeyance pending the result of the Supreme Court's decision in *International Business Machines Corp v Dep't of Treasury*.¹ While the Supreme Court upheld the use of the three factor apportionment formula, the case remained in abeyance after the state legislature passed 2014 PA 282, which was challenged in the courts. The Michigan Court of Appeals upheld the validity of 2014 PA 282.² Both the Michigan Supreme Court and the United States Supreme Court rejected applications from various taxpayers seeking to challenge the *Gillette* holding.³ As the ultimate issue in dispute in this

¹ *International Business Machines Corp v Dep't of Treasury*, 496 Mich 642 (2014).

² *Gillette Comm Ops North America v Dep't of Treasury*, 312 Mich App 394 (2015).

³ *Gillette Comm Ops North America v Dep't of Treasury*, 499 Mich 960; 880 NW2d 230 (2016); *Sonoco Products Co v Dep't of Treasury*, ___ Mich ___; 880 NW2d 521 (2016); *Yaskawa America, Inc v Dep't of Treasury*, ___ Mich ___; 880 NW2d 526 (2016); *Sapa Extrusions, Inc v Dep't of Treasury*, 500 Mich 854; 884 NW2d 268 (2016);

matter has been conclusively resolved, this matter should be dismissed. Petitioner has not filed a response to this motion.

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

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.⁴ In this case, Respondent moves for summary disposition under 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.” 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.⁵ 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.⁶

CONCLUSIONS OF LAW

The Tribunal has carefully considered Respondent's Motion under MCR 2.116 (C)(8) and finds that granting the Motion is warranted. Petitioner's sole issue in this consolidated appeal was the appropriateness of the usage of the 3 factor apportionment formula; an issue that

International Business Machine Corp v Dep't of Treasury, 500 Mich 855; 884 NW2d 269 (2016); and *Harley Davidson Motor Co v Dep't of Treasury*, 500 Mich 856; 884 NW2d 292 (2016). The United State Supreme Court's May 22, 2017 order list denying certiorari in Docket Nos. 16-687, 16-688, 16-697, 16-698, 16-699, and 16-736 can be found on the Supreme Court's website at https://www.supremecourt.gov/orders/courtorders/052217zor_4gd5.pdf.

⁴ See TTR 215.

⁵ See *Transamerica Ins Group v Michigan Catastrophic Claims Ass'n*, 202 Mich App 514, 516; 509 NW2d 540 (1993).

⁶ See *Meyerhoff v Turner Construction Co*, 202 Mich App 499, 502; 509 NW2d 847 (1993).

has ultimately been resolved by the appellate courts in favor of Respondent. Accordingly, Petitioner has failed to state a claim upon which relief may be granted.

JUDGMENT

IT IS ORDERED that Respondent's Motion for Summary Disposition is GRANTED, and Petitioner's appeal 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 required filing fee within 21 days from the date of entry of the final decision.⁷ 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.⁸ 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.⁹ Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.¹⁰

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."¹¹ A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.¹² The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.¹³

By David B. Marmon

Entered: December 5, 2017

⁷ See TTR 261 and 257.

⁸ See TTR 217 and 267.

⁹ See TTR 261 and 225.

¹⁰ See TTR 261 and 257.

¹¹ See MCL 205.753 and MCR 7.204.

¹² See TTR 213.

¹³ See TTR 217 and 267.