STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

Revival Tabernacle Assembly of God,
Petitioner,

v

MTT Docket No. 353171

City of Highland Park,
Respondent.

Tribunal Judge Presiding
Kimbal R. Smith, III

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

ORDER OF DISMISSAL

I. INTRODUCTION

Petitioner, Revival Tabernacle Assembly of God, is appealing the assessed and taxable values determined for the subject property by Respondent, City of Highland Park, for tax year 2008. On February 4, 2009, Respondent filed a motion requesting the Tribunal to dismiss the above-captioned case pursuant to MCR 2.116(C)(4), (C)(8) and (C)(10). Petitioner has not filed a response in opposition to Respondent's Motion for Summary Disposition.

II. RESPONDENT'S CONTENTIONS

In support of its Motion for Summary Disposition, Respondent argues that since Petitioner ". . . did not file its Petition in this Tribunal contesting the 2008 assessment and taxable value until June 30, 2008, the Tribunal clearly does not have jurisdiction over his appeal of the 2008 tax year either. MCL 205.735a(6)." Respondent also cites MCR 2.116(C) in its Motion, contending that it "provides for the dismissal of an action based on lack of subject matter jurisdiction, failure to state a claim upon which a relief may be granted and when there is

no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law."

III. FINDINGS OF FACT

There are two underlying issues in this appeal: (1) the denial of exemption from ad valorem property taxes, and (2) the true cash, state equalized and taxable values of the subject property. Petitioner filed its initial property tax appeal letter with the Tribunal pertaining to the 2007 and 2008 tax years on June 30, 2008. Petitioner then filed a Small Claims Division petition on August 19, 2008. However, Petitioner did not properly invoke the Tribunal's jurisdiction because it improperly filed a Small Claims Division petition rather than an Entire Tribunal Petition. As such, Petitioner was placed in default on November 24, 2008, which was timely cured upon filing of its Entire Tribunal petition on December 15, 2008. In its Petition, Petitioner contends that the subject property should be exempt from real estate taxes pursuant to section 501(c)(3) of the Internal Revenue Code, or in the alternative, the subject property should yield a state equalized value of $225,000 rather than $472,000, if the property is found not to be exempt for property tax purposes.

Respondent subsequently filed its Answer and Affirmative Defenses with the Tribunal on January 15, 2009. Furthermore, the Tribunal entered an Order on January 30, 2009, partially dismissing Petitioner's appeal relative only to the 2007 tax year. The Tribunal reasoned that because Petitioner failed to file its initial letter of appeal pertaining to the 2007 tax year before the deadline, as set forth in MCL 205.735a, the Tribunal has no jurisdiction over the subject property for taxable year 2007. On February 4, 2009, Respondent filed this Motion for Summary Disposition pursuant to MCR 2.116(C)(4), (C)(8) and (C)(10).

IV. APPLICABLE LAW

Pursuant to MCL 205.735a(6):

> The jurisdiction of the tribunal in an assessment dispute as to property classified under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c, as commercial property, . . . is invoked by a party in interest, as petitioner, filing a written petition on or before May 31 of the tax year involved.

Respondent moves for summary disposition pursuant to MCR 2.116(C)(4). This statute states that a motion for summary disposition is appropriate where the ". . . court lacks jurisdiction of the subject matter." MCR 2.116(C)(4). When presented with a motion for summary disposition pursuant to MCR 2.116(C)(4), the Tribunal must consider any and all affidavits, pleadings, depositions, admissions, and documentary evidence submitted by the parties. MCR 2.116(G)(5). In addition, the evidence offered in support of or in opposition to a party's motion will only be considered to the extent that the content or substance would be admissible as evidence to establish or deny the grounds stated in the motion. MCR 2.116(G)(6). A motion for summary disposition pursuant to MCR 2.116(C)(4) is appropriate where the plaintiff has failed to exhaust administrative remedies. *Citizens for Common Sense in Government v Attorney General*, 243 Mich App 43; 620 NW2d 546 (2000). Furthermore:

> A motion under MCR 2.116(C)(4), alleging that the court lacks subject matter jurisdiction, raises an issue of law. The issue of subject matter jurisdiction may be raised at any time, even for the first time on appeal. *McCleese v Todd*, 232 Mich App 623, 627; 591 NW2d 375 (1998) ("Lack of subject matter jurisdiction may be raised at any time."); *Phinney v Perlmutter*, 222 Mich App 513, 521; 564 NW2d 532 (1997) ("Although the jurisdictional issue here was never resolved by the trial court, a challenge to subject-matter jurisdiction may be raised at any time, even for the first time on appeal."). When a court lacks jurisdiction over the subject matter, any action it takes, other than to dismiss the case, is absolutely void. *McCleese*, 232 Mich App at 628; 591 NW2d at 377. The trial court's determination will be reviewed de novo by the appellate court to determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law, or whether affidavits and other proofs show that there was no genuine issue of material fact. *See Cork v Applebee's of Michigan*, *Inc*, 239 Mich App 311; 608 NW2d 62 (2000) ("When reviewing a motion for summary

> disposition under MCR 2.116(C)(4), we must determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law or whether the affidavits and other proofs show that there was no genuine issue of material fact."); *Walker v Johnson & Johnson Vision Products*, *Inc*, 217 Mich App 705; 552 NW2d 679 (1996); *Faulkner v Flowers*, 206 Mich App 562; 522 NW2d 700 (1994); *Department of Natural Resources v Holloway Construction Co*, 191 Mich App 704; 478 NW2d 677 (1991).
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> 1 Longhofer, Michigan Court Rules Practice § 2116.12, p 246A.

Respondent also moves for summary disposition pursuant to MCR 2.116(C)(8). Motions for summary disposition under MCR 2.116(C)(8) are appropriate when the opposing party has failed to state a claim on which relief can be granted. Summary disposition 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. *Transamerica Ins Group v Michigan Catastrophic Claims Ass'n*, 202 Mich App 514, 516; 509 NW2d 540 (1993). In reviewing a motion for summary disposition 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. *Meyerhoff v Turner Construction Co*, 202 Mich App 499, 502; 509 NW2d 847 (1993).

Lastly, Respondent moves for summary disposition pursuant to MCR 2.116(C)(10). In *Occidental Dev LLC v Van Buren Twp*, MTT Docket No. 292745 (March 4, 2004), the Tribunal stated "[a] motion for 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. *Smith* v *Globe Life Insurance*, 460 Mich 446, 454-455; 597 NW2d 28 (1999). In the event, however, it is

determined that an asserted claim can be supported by evidence at trial, a motion under subsection (C)(10) will be denied. *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).

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. *Quinto v Cross & Peters Co*, 451 Mich 358, 362-63; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)). The moving party bears the initial burden of supporting his position by presenting his documentary evidence for the court to consider. *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420; 522 NW2d 335 (1994). The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Id*. 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. *McCart v J Walter Thompson*, 437 Mich 109, 115; 469 NW2d 284 (1991). If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1992).

V. CONCLUSIONS OF LAW

This Tribunal has carefully considered Respondent's Motion for Summary Disposition under the criteria for MCR 2.116(C)(4), (C)(8) and (10), and based on the pleadings and other documentary evidence filed with the Tribunal, determines that granting Respondent's Motion is appropriate.

With respect to Respondent's first argument, Petitioner filed its initial letter of appeal in the above-captioned case on June 30, 2008. MCL 205.735a(6) provides, in pertinent part, that the

Tribunal's jurisdiction is only invoked "as to property classified under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c, as commercial property, . . . by a party in interest, as petitioner, filing a written petition on or before May 31 of the tax year involved."

Given the above, since Petitioner failed to file a petition with the Tribunal before the deadline, as set forth in MCL 205.735a(6), the Tribunal has no jurisdiction as to the subject property's assessed and taxable values for the tax year 2008. Therefore, the Tribunal finds that it does not have subject matter jurisdiction over the above-captioned case.

The Tribunal's conclusion is supported by a Court of Appeals decision in *WA Foote Memorial Hosp v City of Jackson*, 262 Mich App 333; 686 NW2d 9 (2004). In *WA Foote Memorial Hosp*, the petitioner contended that the Michigan Tax Tribunal erred by dismissing its appeal as untimely because Federal Express, a private carrier service, priority overnight mail is the equivalent to "certified mail" for purposes of MCL 205.735(2). The Court of Appeals affirmed the Tax Tribunal's conclusion that it lacked subject matter jurisdiction over the matter on the ground that the plain and ordinary meaning of the term "certified mail" under the statute only includes mail sent by the United States Postal Service, not delivery by private carrier services. Furthermore, the Court held that because the time requirements under MCL 205.735(2) are jurisdictional, the Tax Tribunal properly dismissed the appeal for lack of jurisdiction.

Therefore, the Tribunal concludes that it lacks subject matter jurisdiction over the above-captioned case and granting Respondent's Motion, pursuant to MCL 2.116(C)(4), is appropriate.

VI. JUDGMENT

IT IS ORDERED that Respondent's Motion for Summary Disposition is GRANTED pursuant to MCL 2.116(C)(4).

IT IS FURTHER ORDERED that this case is DISMISSED.

This Order resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: April 8, 2009
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By: Kimbal R. Smith III