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

Robertson Brookdale LLC,
Petitioner,

v

MTT Docket Nos. 332172, 332173, 332174, 332175, and 332176

Township of Plymouth,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

ORDER OF DISMISSAL

INTRODUCTION

Petitioner, Robertson Brookdale, is appealing the *ad valorem* real property taxes assessed on the subject properties by Respondent, Township of Plymouth, for tax year 2007. More specifically, the Tribunal must determine whether Respondent failed to treat the value of public service improvements as a loss resulting from Petitioner's dedication of such public improvements to Respondent in 2006 and thus deduct the value of the public service improvements from the subject property's 2007 taxable value pursuant to MCL 211.34d(1)(h).

PROCEDURAL HISTORY

On May 4, 2007, Petitioner filed its appeal contesting the true cash and taxable value of nine contiguous residential properties located in the Township of Plymouth, County of Wayne, State of Michigan. As a result of the Tribunal's October 30, 2007 Order Granting Petitioner's Motion to Consolidate, the subject matter of this appeal concerns the validity of Respondent's 2007 taxable value determination of 17 condominium lots.

By Order dated April 1, 2010, the Tribunal (i) placed both parties in default for failure to comply with the Tribunal's October 19, 2009 Order and (ii) ordered the parties to file a Stipulation of Facts, a statement of legal issues, and motions for summary disposition. On April 15, 2010, the parties filed their (i) Joint Stipulation of Facts and (ii) Joint Statement of Legal Issues to be Addressed in the Parties' Briefs. Per the Parties' Joint Stipulation of Facts, Petitioner withdrew its contention of the True Cash Value of the subject parcels for the tax years at issue.

On April 15, 2010, Petitioner filed its Motion for Summary Disposition and Brief in Support of Motion for Summary Disposition. Also, on April 15, 2010, Respondent filed its Motion for Summary Disposition, Brief in Support of Motion for Summary Disposition, and its Motion to Set Aside Default.

PETITIONER'S CONTENTIONS

Petitioner moves for summary disposition pursuant to MCR 2.116(C)(10) claiming that there is no genuine issue as to any material fact, and, as a result, Petitioner is entitled to judgment as a matter of law. More specifically, Petitioner claims for the tax year 2007 (the first year under appeal) that Respondent failed to make any subtractions to the taxable value of the public service improvements resulting from the dedication and acceptance, in 2006, of said improvements, as it was obligated to do under MCL 211.27a. In support of its contention, Petitioner states that "there was no formal acceptance [of the public service improvements] by Respondent. . .[until]. . .January 11, 2006. . .[when Respondent] issued the first certificate of occupancy for a home in the condominium. . . .Thus, the Township did not begin operating the water and sewer system that the Petition [*sic*] had constructed, as its own, until on or after January 11, 2006. It was at this point that a loss occurred, either for the reason that this property was no longer a part of that

owned by Petitioner or because this property was now owned by the public and exempt." More specifically, Petitioner states that "[w]hile the benefit may remain, the removal of the public service improvements from each parcel nonetheless constitutes a loss as defined by MCL 211.34d(1)(h)(i) and (ii)."

Petitioner further contends that "even if [the public service improvements were dedicated to Respondent] earlier, that should be no impediment to the Tribunal correcting Petitioner's taxable values in 2007 and subsequent years to reflect the undeniable reality that the public service improvements that were a part of the real property at the time Respondent's assessor initially valued it were no longer owned by Petitioner."

RESPONDENT'S CONTENTIONS

Respondent also moves for summary disposition pursuant to MCR 2.116(C)(10) claiming that there is no genuine issue as to any material fact, and, as a result, Respondent is entitled to judgment as a matter of law. More specifically, Respondent contends that "[t]here is no interpretation of the loss provisions found in MCL 211.34d(1)(h)(i) or (ii) which would justify treating the assumption of responsibility by. . .Respondent to operate and maintain the. . .[public service improvements] as a 'loss' within the meaning of MCL 211.34d(1)(h)(i)." In support of its contention, Respondent states that "[a]t the time Petitioner created the condominium lots, October 14, 2005, by signing and recording the Master Deed to the Saddlebrook Condominiums,. . .Respondent pursuant to Sec. 28.1 of its Zoning Ordinance assumed responsibility for the operation and maintenance of the public water, sanitary and storm sewers in the condominium after it was inspected and approved by township engineers." According to Respondent, "under no circumstances has the fact that. . .Respondent has taken over the operation and maintenance of the public water, storm and sanitary sewer constitute an event

which causes the water and sewers to become exempt from taxation, particularly in light of the fact that the parties have agreed in the Joint Stipulation of Facts that at no time has the water mains and sanitary sewers ever been dedicated to. . .Respondent."

Respondent further states that "for tax year 2006, or any time thereafter there have been no. . .[public service improvements] on the actual physical lots that are the subject of this appeal, rather the public water, storm and sanitary sewer systems are located in the road beds and in other rights of way in common areas in the condominium complex, and as a result even if the Tribunal were to conclude that the act of maintaining and operating these systems constituted a 'loss' or a conveyance which resulted in said property becoming exempt within the meaning of the act, the water system and storm sewers have never been on the parcels that are the subject of this appeal."

Furthermore, according to Respondent, Petitioner did not "raise the 'loss' issue or the exemption issue included in its Motion, and in fact nowhere in its Petition, does. . .Petitioner challenge the taxable value of these parcels based upon any theory of loss or exemption, and at no time has . . .Petitioner ever sought to amend its Petition." Respondent also highlights the fact that Petitioner never contended that the taxable value of the subject property should be reduced "with respect to the other public service improvements such as roads, which at all times remain the sole property and obligation of the condominium co-owners."

FINDINGS OF FACT

According to the Joint Stipulation of Facts, Petitioner, in 2005, (i) purchased the subject property, (ii) added public service improvements to the subject property, and (iii) signed and recorded the Master Deed to the Saddlebrook Condominium, thereby creating a residential condominium that includes all of the lots under appeal in this matter. As a result of the 2005

conveyance of the subject property to Petitioner the assessor uncapped all of the new parcels pursuant to MCL 211.27a(3) and set the Assessment and Taxable Value to reflect Respondent's opinion of 50% of true cash value for each parcel on December 31, 2005. (Joint Stipulation of Facts, 7) Per the parties' Joint Stipulation of Facts, Petitioner never formally dedicated the public service improvements to Respondent or anyone else.

APPLICABLE LAW

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).

MCL 211.27a states, in pertinent part:

> (2) Except as otherwise provided in subsection (3), for taxes levied in 1995 and for each year after 1995, the taxable value of each parcel of property is the lesser of the following:
>
> (a) The property's taxable value in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the inflation rate, plus all additions. For taxes levied in 1995, the property's taxable value in the immediately preceding year is the property's state equalized valuation in 1994.
>
> (b) The property's current state equalized valuation.
>
> (3) Upon 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.

Pursuant to MCL 211.34d, additions include, in part:

> Public services. As used in this subparagraph, "public services" means water service, sewer service, a primary access road, natural gas service, electrical service, telephone service, sidewalks, or street lighting. For purposes of determining the taxable value of real property under section 27a, the value of public services is the amount of increase in true cash value of the property attributable to the available public services multiplied by 0.50 and shall be added in the calendar year following the calendar year when those public services are initially available. MCL 211.34d(1)(b)(viii).

Pursuant to MCL 211.34d(1)(h), "losses" include, in part:

> (i) Property that has been destroyed or removed.
>
> (ii) Property that was subject to ad valorem taxation under this Act in the immediately preceding year that is now exempt from Ad Valorem taxation under this Act.

CONCLUSIONS OF LAW

Having considered Petitioner's Motion for Summary Disposition under the criteria for MCR 2.116(C)(10) and Respondent's Motion for Summary Disposition under MCR 2.116(C)(10), and the pleadings and other documentary evidence filed with the Tribunal, the Tribunal finds that Petitioner's Motion must be denied and that Respondent's Motion must be granted.

The commencement of maintenance and operation of the public service improvements by Respondent does not constitute a loss per MCL 211.34d(1)(h)(ii). Specifically, a loss means "property that has been destroyed or removed." MCL 211.34d(1)(h)(i). Here, a strict application of the statute mandates that the Tribunal cannot adjust the taxable value in the 2006 tax year because there was no "loss." It was merely a purported error in adding the public service improvements in a prior year that is now finalized. Moreover, Respondent never added the value of the public improvements to the taxable value of the subject parcels as "additions." Rather, Respondent lawfully uncapped the taxable value of the subject parcels for tax year 2006 which reflects the value of the public service improvements. In that regard, the ability to "tap into" public service improvements undoubtedly adds value to property.

The Tribunal finds that the taxable values of the subject properties were properly uncapped in the 2006 tax year. Pursuant to MCL 211.27a(3) "[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." The statute further identifies that a transfer of ownership includes a conveyance by deed. MCL 211.27a(6)(a). Petitioner purchased and recorded the deed for the subject property in tax year 2005.

Consequently, although it is unconstitutional to increase a property's taxable value to account for public service improvements, public service improvements are value influencers and make the property more marketable. In that regard, Respondent can increase the assessed value of the subject property to reflect the value added by the public service improvements as a result of the increase in marketability. However, because such influence is not the same as an "addition" to the taxable value, as contemplated by the legislature in MCL 211.34d, Respondent is strictly prohibited by statute from increasing the taxable value of parcels due to the addition of the public service improvements. As stated, Respondent increased the taxable values to account for a transfer of ownership that occurred in 2005. However, Respondent could have increased the assessed values of the subject parcels to reflect the increase in value of the land with public service improvements and thus, the ability to "tap into" public service improvements added to the subject parcels. When the property was transferred in 2005, Respondent was required by MCL 211.27a(3) to increase the property's taxable value to equal the property's state equalized valuation for the calendar year following the transfer. The subject property's state equalized value for the calendar year following the transfer reflected the value the ability to "tap into" public service improvements added to the subject parcels. Consequently, Respondent's determination of the subject parcels' 2007 taxable value was proper. If Petitioner's position is adopted and its Motion for Summary Disposition granted, Petitioner would successfully avoid increasing the taxable value of the subject parcels as a result of the addition of a public service improvement (which is proper) and then successfully decrease its taxable value by claiming a loss of the same subject improvements when Respondent assumes the responsibility to maintain and operate said public service improvements. The Tribunal finds that adopting such a result would be contrary to statutory and well-established case law.

JUDGMENT

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

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition is GRANTED.

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

By: Victoria L. Enyart

Entered: May 28, 2010
sd/sms