

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

National Church Residences of
Win Ypsilanti, MI formerly
Joseph Kasberg,
Petitioner,

v

MTT Docket No. 338289

Ypsilanti Township,
Respondent.

Tribunal Judge Presiding
Kimbal R. Smith III

ORDER DENYING RESPONDENT’S MOTION FOR SUMMARY
DISPOSITION

ORDER GRANTING PETITIONER’S MOTION FOR SUMMARY
DISPOSITION

FINAL OPINION AND JUDGMENT

INTRODUCTION

This matter comes before the Tribunal as a result of Respondent’s denial of Petitioner’s request that it be exempt from property taxes for tax year 2007 under the Michigan State Housing Development Authority Act of 1966 (the “MSHDA Act”) MCL 125.415a for tax parcel identification number K-11-02-275-005.

Petitioner was represented by Michael B. Shapiro and Daniel Stanley of Honigman Miller Schwartz and Cohn LLP. Respondent was represented by Angela King of the firm of McLain & Winters.

PROCEDURAL HISTORY

Petitioner initially filed a Petition with the Tribunal in its Small Claims Division on May 31, 2007, as a result of Respondent's denial of an exemption for the payment of property taxes pursuant to the MSHDA Act. Subsequent to the filing of the Petition, Respondent, on July 9, 2007, filed an answer which among other matters denied that Petitioner was entitled to the relief requested. On June 10, 2008, the Tribunal ordered that the matter be transferred from the Small Claims Division to the Entire Tribunal. Respondent thereafter on July 7, 2008 filed an Amended Answer to the Petition, which included the Affirmative Defense of lack of subject matter jurisdiction in the Tribunal. Petitioner, on July 14, 2008, filed a Motion to Grant Leave to File First Amended Petition. On July 28, 2008, Respondent filed a Motion for Summary Disposition based on the Tribunal's lack of jurisdiction over this matter in that the denial of Petitioner's alleged exemption arose not under the General Property Tax Act (MCL 211.1 et seq), but rather under the Michigan State Housing Development Housing Authority Act. (MCL 125.1401 et seq).

On August 28, 2008, the Tribunal granted Respondent's Motion for Summary Disposition under MCR 2.116(C)(4) and determined that it did not have subject matter jurisdiction to interpret the MSHDA Act or determine the tax levied on Petitioner and as a result entered an order of dismissal.

Petitioner then filed an appeal in the Michigan Court of Appeals on March 6, 2010 and in a published opinion the Court reversed and remanded the Tribunal's August 28, 2008 dismissal after having concluded that the Tribunal does in fact have jurisdiction to determine the claims raised by Petitioner. *Kasberg v Ypsilanti Township*, 287 Mich App 563 (2010). Subsequent to the Court of Appeals decision, on December 13, 2010, the Tribunal entered an Order granting a previously filed Motion to Amend to reflect that National Church Residences of Win Ypsilanti, MI was the proper name for Petitioner together with a Scheduling Order setting forth a timetable for the parties to file a Joint Stipulation of Material Facts, Motions for Summary Disposition, Briefs in support and Response Briefs. Although the parties did not file a Joint Stipulation of Material Facts, as ordered by the Tribunal in its December 13, 2010 Order, the Tribunal determines that it has sufficient uncontested facts based on the exhibits and affidavits attached to the parties respective motions and briefs to decide this matter.

RESPONDENT'S CONTENTIONS

Respondent contends that Petitioner did not qualify for an exemption from the 2007 Clark East Towers property taxes pursuant to the MSHDA Act because Petitioner did not file a Notification of Exemption Affidavit before the November 1, 2006 deadline mandated by MCL 125.1415a. Respondent argues the deadline,

as set forth in the statute, is clear and unambiguous and contains no exceptions for purchases made after the deadline.

Respondent states that Petitioner chose when to purchase Clark East Towers and therefore chose to purchase the property at a time when it would not be possible to qualify for the tax exemption. Specifically, Petitioner purchased Clark East Towers in December of 2006 and filed a Property Transfer Affidavit on January 4, 2007. Respondent argues that Petitioner was required to file a Notification of Exemption Affidavit attesting that it is an eligible nonprofit corporation by November 1 to qualify for a tax exemption under the MSHDA Act for the following tax year.

Respondent states that it was not until March 29, 2007 that Petitioner filed restated Articles of Incorporation that complied with the MSHDA Act and were approved by MSHDA. Petitioner filed the restated Articles of Incorporation on April 2, 2007. Subsequently, Petitioner filed the Notification of Exemption on April 4, 2007, indicating that Petitioner was eligible by MSHDA to receive the tax exemption. Respondent concludes that the MSHDA Act unambiguously set forth the filing deadlines and Petitioner clearly missed the deadline for qualifying for a 2007 tax exemption by “five full months.” Respondent’s Brief in Support of Motion for Summary Judgment, page 17.

Respondent cited Judge Markey’s dissenting opinion in the Court of Appeals case that reversed and remanded this case to the Tribunal. *Kasberg, supra*. Judge Markey determined that Petitioner did not qualify for the tax exemption because Petitioner did not obtain its certification exemption until 2007. Therefore, Petitioner could not have complied with the filing deadline as it was required to file before November 1 of the year preceding the tax year in which the exemption is to begin. Judge Markey further opined that the Tribunal “. . . may not ignore the requirement of the statute that a certificate of exemption be filed ‘with the local assessing officer before November 1 of the year preceding the tax year in which the exemption is to begin.’” *Id.* at 472. (Emphasis omitted). Respondent concludes by reminding the Tribunal that the statute at issue includes the word “shall” and therefore the statutory requirements set forth in MCL 125.1415a mandate full compliance with its provisions as written.

PETITIONER’S CONTENTIONS

Petitioner contends that the exemption is for the housing project and not the owner of the housing project. As such, the exemption for the housing project, Clark East Towers, has been in effect since it was first granted in 1978.

Petitioner relies on Respondent’s Ordinance to support its position that it is entitled to the exemption for the 2007 tax year. Petitioner states that, pursuant to the Ordinance, “. . . once the exemption begins, it continues and ‘shall remain in

effect for as long as the federally-aided or authority-aided mortgage or advance or grant from the authority is outstanding, but not more than 50 years.’” Petitioner’s Motion for Summary Disposition, page 6. Petitioner further cites Respondent’s Ordinance, which states that “the contractual effect of this Ordinance shall remain in effect and shall not terminate so long as Clark East Towers is covered by a Federally Assisted Mortgage” *Id.* at 6.

Petitioner argues that Respondent relies upon a misreading of MCL 124.1415(1). Specifically, Petitioner argues that the November 1 deadline applies only to the initial year in which the project is to be exempted. Accordingly, the year at issue is 2007; therefore, Petitioner contends, 2007 was not the initial year of exemption and Petitioner was not required to file a Notification of Exemption with Respondent.

Petitioner cites a March 11, 2009, letter sent to Respondent’s Assessor by Christopher L. LaGrand, Director of Legal Affairs of MSHDA. In his letter, Mr. LaGrand states that “[i]f the ordinance involving Clark East Towers is written in a way that it applies to the project and not necessarily one owner, then I believe that the exemption would be available to the purchaser without the filing of a new affidavit, since the term ‘year in which the exemption is to begin’ would mean only the first year the project was exempt and not to the year that follows a transfer of

ownership.” Christopher L. LaGrand Letter, Exhibit B of Petitioner’s Motion for Summary Disposition.

Additionally, Petitioner contends that under Respondent’s position, Petitioner would never be able to comply with the deadline as it did not own Clark East Towers before November 1, 2006.

Finally, Petitioner argues that Respondent’s position is “bad tax policy.” Petitioner’s Brief, *supra*. “Respondent’s attempt to assess taxes to Petitioner and harm the low-income residents of Petitioner’s housing project is contrary to the policy embodied in both the MSHDA Act and Respondent’s own ordinance.” *Id.*

FINDINGS OF FACT

Petitioner, National Church Residences of Win Ypsilanti, MI (“National Church Residences”), is a Michigan nonprofit corporation doing business in Washtenaw County, Michigan. The tax identification number for the National Church Residences’ real property in Ypsilanti Township is K-11-02-275-005 otherwise known as Clark East Towers (“Clark East Towers”). Clark East Towers is located at 1550 E. Clark Road, Ypsilanti, Michigan and is classified as commercial real property for tax purposes.

In 1978, Clark East Towers was constructed and the then owner, Clark East Tower Limited Dividend Housing Corporation, was incorporated pursuant to the MSHDA Act and certified as eligible for a tax exemption pursuant to MCL

125.1415a for Clark East Towers. Also in 1978, Respondent passed an ordinance authorizing a tax exemption for Clark East Towers. In 2000, Respondent adopted a successor ordinance to the 1978 ordinance which stated that the contractual effect of the ordinance was extended to February 28, 2028.

National Church Residences purchased Clark East Towers on December 1, 2006, from Clark East Tower Limited Dividend Housing Association (“Clark East Tower LDHA”). Clark East Tower LDHA operated Clark East Towers as housing for low income and/or handicapped senior citizens and National Church Residences purchased Clark East Towers with the express purpose of continuing this use and did continue this use. National Church Residences obtained permission to purchase Clark East Towers from the U.S. Department of Housing and Urban Development (“HUD”) and, on December 1, 2006, National Church Residences entered into a Regulatory Agreement with HUD.

In July 2006, Respondent’s Assessor sent a letter to Clark East Towers stating it was in “substantial compliance” with the 2000 ordinance and was exempt from ad valorem property taxes under MCL 125.1415a. At the time of the purchase from Clark East Tower LDHA, Clark East Towers was exempt from property taxes pursuant to the MSHDA Act, MCL 125.1415a. When National Church Residences purchased Clark East Towers, it assumed the existing federally

aided mortgage on Clark East Towers, as well as the corresponding Promissory Note and tenant leases related to Clark East Towers.

In January 2007, Respondent received a property transfer affidavit regarding National Church Residences' purchase of Clark East Towers. Because Respondent did not receive a "Notification of Exemption" by November 1, 2006, Respondent assessed Clark East Towers for the 2007 ad valorem taxes. National Church Residences tendered its payment in lieu of taxes to Respondent for 2007 but Respondent rejected National Church Residences' tendered payment.

On March 29, 2007 the Acting Director of Legal Affairs of MSHDA signed a certificate approving Petitioner's Restated Articles of Incorporation. On April 3, 2007, Petitioner executed a "Notification to Local Assessor of Exemption" and filed the same with Respondent's assessor on April 4, 2007.

APPLICABLE LAW

Petitioner 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).

CONCLUSIONS OF LAW

This Tribunal has carefully considered the parties' Motions for Summary Disposition under the criteria for MCR 2.116(C)(10) and, based on the pleadings and other documentary evidence filed with the Tribunal, determines that granting Petitioner's Motion for Summary Disposition is appropriate as there are no genuine issues of material fact.

The central issue in this dispute is an issue of law; namely, whether Petitioner was required to file a "Notification of Exemption" affidavit before November 1, 2006, pursuant to MCL 125.1415a, in order to qualify for an exemption from its 2007 ad valorem property taxes pursuant to the MSHDA Act.

MCL 125.1415a(1) states that:

If a housing project owned by a nonprofit housing corporation, consumer housing cooperative, limited dividend housing corporation, mobile home park corporation, or mobile home park association is financed with a federally-aided or authority-aided mortgage or advance or grant from the authority, then, except as provided in this section, the housing project is exempt from all ad valorem property taxes imposed by this state or by any political subdivision, public body, or taxing district in which the project is located. The owner of a housing project eligible for the exemption shall file with the local assessing officer a notification of the exemption, which shall be in an affidavit form as provided by the authority. The completed affidavit form first shall be submitted to the authority for certification by the authority that the project is eligible for the exemption. The owner then

shall file the certified notification of the exemption with the local assessing officer before November 1 of the year preceding the tax year in which the exemption is to begin.

MCL 125.1415 also specifies the duration of the exemption. It states that an exemption granted by this section “. . . shall remain in effect for as long as the federally-aided or authority-aided mortgage or advance or grant from the authority is outstanding, but not more than 50 years.” MCL 125.1415(3). Petitioner argues that the exemption is for the housing project, not the particular owner of the housing project. Therefore, under Petitioner’s theory, pursuant to the sections cited above, it was not required to file a “Notification of Exemption” affidavit before the November 1, 2006, deadline because the housing project’s exemption began in 1978 and remains in effect for up to 50 years. The Tribunal finds this argument persuasive and looks to the relevant law and submitted documentation and evidence to determine whether Petitioner’s position is tenable.

The Tribunal must look to the plain meaning of the statute to determine what the intent of the legislature was in including a deadline for the notification of the exemption. The purpose of statutory interpretation is to ascertain and give effect to the intent of the Legislature as manifested in the plain language of the statute. If the language is clear, additional construction is unnecessary. *People v Lown*, 488 Mich 242; ___ NW2d ___ (2011). The statute clearly states that “[t]he owner then shall file the certified notification of the exemption with the local assessing officer

before November 1 of the year preceding the tax year in which the exemption is to begin.” The Tribunal finds that the plain meaning of the statute is clear. Here, the exemption began in 1978; the tax year at issue is 2007; thus, Petitioner was not required to file an additional Notice of Exemption. Further, the Tribunal cannot infer that the Legislature intended the statute to mean the filing of a Notice of Exemption was a yearly requirement. In construing a statute, if the statutory language is clear, the Legislature is assumed to have intended its plain meaning. *South Haven v Van Buren County Board of Commissioners*, 478 Mich 518; 734 NW2d 533 (2007). After careful consideration of the statute’s previous versions, the Tribunal did not find that a yearly requirement was previously within the text of the statute. There is no evidence that indicates the Legislature intended this requirement to be fulfilled for every tax year.

The Tribunal finds that Respondent’s Ordinances support this finding. The 1978 and 2000 Ordinances adopted by Respondent are identical except the duration of the contractual effect of the 2000 ordinance was extended to February 28, 2028. The Ordinance in effect during the tax year at issue is the 2000 Ordinance; therefore, the Tribunal shall look to its language. The Ordinance states that “. . . the Sponsor has offered to continue to own and operate a housing

development identified as Clark East Towers. . . .”¹ The Ordinance defines “sponsor” as “. . . persons or entities who have undertaken to own, operate and manage a low income Housing Development with Section 8 Rent Subsidies obtained through a HUD Housing Assistance Payment Contract.” *Id.* The contractual effect of the Ordinance “. . . shall remain in effect and shall not terminate so long as Clark East Towers is covered by a Federally Assisted Mortgage,” and will not extend beyond February 28, 2028. *Id.*

The relevant statute, MCL 125.1415a, and Respondent’s 2000 Ordinance together support Petitioner’s position that Clark East Towers, the “housing project,” was exempt from taxation prior to Petitioner’s purchase and remained tax exempt thereafter. The Ordinance does not specify that the owner is the previous owner, Clark East Towers LDHA. The Ordinance merely states that the owner, or “sponsor,” own, operate, and manage a low income housing development with rent subsidies obtained through a HUD contract. Petitioner, the current owner, is a “sponsor” pursuant to this definition that owns and operates Clark East Towers. Accordingly, MCL 125.1415a and the Ordinance state that the exemption shall not terminate so long as Clark East Towers is covered by a Federally Assisted Mortgage. Petitioner’s Motion indicates that the federally assisted mortgage “. . .

¹ Petitioner’s Motion for Summary Disposition, Exhibit A3, Charter Township of Ypsilanti Ordinance No. 2000-246.

has been continuously outstanding since 2000 and Petitioner assumed that mortgage with the permission of HUD.”

Further, Petitioner submitted a letter, dated March 11, 2009, from Christopher L. LaGrand, Director of Legal Affairs of Michigan State Housing Development Authority. The letter offers Mr. LaGrand’s opinion regarding Petitioner’s eligibility for the exemption at issue. Mr. LaGrand states that:

In order to qualify for the PILOT/tax exemption, an owner is required to file a certified notification of the exemption with the local assessing officer before November 1 of the year preceding the tax year in which the exemption is to begin. . . . ‘The year in which the exemption is to begin’ depends on the wording of the ordinance authorizing the PILOT. Some ordinances are specific to the current owner while others are specific to a particular project and remain in effect even if the project is transferred.

(Emphasis in original). Petitioner’s Motion for Summary Disposition, Exhibit B, LaGrand Letter. Although not persuasive, Mr. LaGrand’s opinion supports the Tribunal’s determination that the ordinance is specific to the housing project and now the owner of the housing project. As such, the ordinance, and thus the exemption, remains in effect even though the project is transferred.

Respondent asserts that an ownership entity can only meet the requirements for the exemption post closing and no prequalification procedure is provided for in the statute or the MSHDA Act that would have allowed for the timely filing of the notice with regard to the project. Respondent’s contention is unsupported as there

is no evidence to indicate the exemption follows the owner of the property and therefore Petitioner was required to file the Notice of Exemption by November 1, 2006. Additionally, Respondent, in its Motion, asserts that November 1 of the year preceding the exemption year is the mandatory deadline for qualifying for a tax exemption. Respondent is correct; however, the statutory requirement only applies to the year proceeding the tax year in which the exemption is to begin.

In light of the foregoing, the Tribunal finds that Petitioner's Motion for Summary Disposition shall be granted and summary judgment shall be rendered in its favor.

JUDGMENT

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

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

IT IS FURTHER ORDERED that Petitioner is exempt from ad valorem property taxes and is required to pay a service charge equal to 4% of the annual shelter rent for the 2007 tax year.

MICHIGAN TAX TRIBUNAL

Entered: March 18, 2011

By: Kimbal R. Smith III