

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

Shirin Taeih & Nazer Abdelfattah,
Petitioners,

v

MTT Docket No. 17-003334

City of Dearborn,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

INTRODUCTION

On February 27, 2018, Respondent filed a motion requesting that the Tribunal enter summary judgment in its favor in the above-captioned case. More specifically, Respondent contends that the Tribunal lacks jurisdiction over the subject matter because Petitioners failed to protest the assessment before the board of review under MCL 205.735a(3).

On March 20, 2018, Petitioners filed a response to the Motion. Petitioners contend they never received adequate and timely notice of their assessment to protest before the Board of Review. Petitioners did not learn of the assessment until after the March Board of Review adjourned. Due process entitles Petitioners an opportunity to be heard by the Tribunal because all administrative remedies have been exhausted upon discovery of their assessment.

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

RESPONDENT'S CONTENTIONS

In support of its Motion, Respondent contends that Petitioners expressly admitted to their failure to protest the assessment before the March Board of Review in their initial petition on

July 31, 2017. Petitioners assert they never received the assessment notice, but Respondent has proof evidencing service of the assessment notices for the 2017 tax year by mail, dated for February 28, 2017. Respondent attests to mailing the assessment notice to Petitioners' address recorded on Respondent's 2017 assessment roll and identified by Petitioners in the property transfer affidavit, which has been undisputed in prior tax years. Petitioners failed to satisfy the preliminary requirements under MCL 205.735a(3) for the Tribunal to acquire subject matter jurisdiction. Respondent finds dismissal of the case appropriate because the Tribunal lacks authority over the case and lacks equitable powers to grant Petitioners' claim without satisfying the statutory requirements. Therefore, any action taken by the Tribunal except for dismissal of the case, is void.

PETITIONERS' CONTENTIONS

In support of their response, Petitioners contend that they never received their assessment notice for the 2016 and 2017 tax years. Petitioners believed that the property was not subject to a tax assessment until the construction was complete, and then, Respondent would issue a certificate of occupancy. Respondent's failure to mail the notices in a reasonable manner denied Petitioners of their right to be heard, and actual notice of the assessment. Petitioners find the MCL 205.735a filing requirements irrelevant in determining the Tribunal's jurisdiction once the doctrine governing exhaustion of administrative remedies has been satisfied. Although protesting before the March Board of Review is required under MCL 205.735(a), jurisdiction is proper when Petitioners demonstrate deprivation of any assessment notice in time to protest before the Board of Review. If the Board of Review concluded that the property should have been subject to an assessment and changed the assessment roll, then Petitioners should have been granted an opportunity to attend a meeting with the Board of Review. Respondent had knowledge of

Petitioners' address on official records and failed to exercise a reasonable effort to identify Petitioners and deliver the assessment notice to them. Petitioners requested the Tribunal to use its equitable powers to consider Petitioners' delayed appeal, especially when Petitioners assert meritorious claims. Alternatively, the Tribunal should hold a hearing to determine whether the facts warrant the futility exception to the doctrine governing exhaustion of administrative remedies.

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.¹ In this case, Respondent moves for summary disposition under MCR 2.116(C)(4). Dismissal under MCR 2.116(C)(4) is appropriate when the "court lacks jurisdiction of the subject matter." When presented with a motion 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.² 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."³ A motion under MCR 2.116(C)(4) is appropriate where the Petitioners have failed to exhaust its administrative remedies.⁴

CONCLUSIONS OF LAW

The Tribunal has carefully considered Respondent's Motion under MCR 2.116(C)(4) and finds that granting the Motion is warranted. Respondent established that the assessment notice was

¹ See TTR 215

² MCR 2.116(G)(5)

³ MCR 2.116(G)(6)

⁴ See *Citizens for Common Sense in Gov't v Attorney Gen.*, 243 Mich App 43; 620 NW2d 546 (2000)

sent according to the proper procedure under MCL 211.24c. The assessor shall give each owner listed on the assessment roll of the property a notice by first-class mail.⁵ The assessment notice must be addressed to the property owners as stated in the assessor's records and mailed not less than 14 days before the meeting of the board of review.⁶ Respondent's assessment roll and property transfer affidavit confirm that the assessor's records accurately held Petitioners' names and the subject property's address. The March Board of Review for Dearborn, Michigan, in 2017 commenced on March 13, 2017. Respondent has proof evidencing service of its 2017 assessment notices on February 27, 2017, which is exactly 14 days before the March Board of Review meeting. The due process test concerning notice is whether the means chosen to serve notice are reasonably calculated to reach the party and not whether notice is actually received.⁷ Petitioners failed to prove that (1) Respondent had knowledge that the first mailing was not received and failed to take reasonable steps to notify Petitioners,⁸ (2) the notice was undeliverable or untimely mailed,⁹ (3) Respondent used an inadequate substitute to provide notice when personal notice by mail was possible,¹⁰ or (4) Respondent failed to use Petitioners' last known address when said address existed in Respondent's records.¹¹ Although Petitioners' inability to receive actual notice is unfortunate, the statute does not require actual receipt for the assessment on the property to be enforceable.¹² Respondent's affirmative evidence demonstrates that it complied with MCL 211.24c in good faith, and it sent the assessment notice to Petitioners' last known address on record, by mail, not less than 14 days before the March Board of Review meeting.

⁵ MCL 211.24c(1)

⁶ MCL 211.24c(4)

⁷ See *Keith v Dept of Treasury*, 180 Mich App 714, 718 (1989)

⁸ See *Sidun v Wayne County Treasurer*, 481 Mich 503, 511 (2008)

⁹ See *Parkview Memorial Ass'n v City of Livonia*, 183 Mich App 116, 121 (1990)

¹⁰ See *Fisher v Muller*, 53 Mich App 110, 122 (1974)

¹¹ See *Bickler v Dept of Treasury*, 180 Mich App 205, 210 (1989)

¹² MCL 211.24c(4); See *Rochester Meadows Apartments v City of Rochester*, 112 Mich App 319, 324 (1982)

The primary goal of statutory interpretation is to ascertain and give effect to the legislature's intent as expressed by the language of the statute.¹³ Legislature is presumed to have intended the meaning it plainly expressed in the law which it enacted.¹⁴ MCL 205.735a states that the Tribunal has jurisdiction over the assessment for residential real property when Petitioners file a written petition on or before July 31 of the tax year involved.¹⁵ Petitioners must protest the assessment at the March Board of Review meeting before the Tribunal acquires jurisdiction over the dispute.¹⁶ Petitioners cite a tax tribunal case, *Paisley v. Mullett*,¹⁷ to conclude the procedural requirements of the statute¹⁸ does not determine jurisdiction over the dispute. The Michigan Court of Appeals declined to follow this interpretation in the case of *Electronic Data Systems Corp v Twp of Flint*, concluding the preceding statute is jurisdictional and a contrary reading does not comport with the clear language of the statute.¹⁹ This Court of Appeals determination has a binding and precedential effect on the Tribunal.²⁰ Nevertheless, Respondent has not violated the purpose of the *Paisley v. Mullett* decision.²¹ Respondent has demonstrated that it acted in good faith to properly comply with MCL 211.24c. Petitioners argue that the doctrine governing exhaustion of administrative remedies, in the case of *Parkview Memorial Ass'n v City of Livonia*,²² proves that failure to protest before the Board of Review cannot bar the Tribunal of subject matter jurisdiction. However, the doctrine governing the exhaustion of administrative remedies applied in that case when the

¹³ *Yaldo v North Pointe Ins Co*, 457 Mich 341, 346 (1998)

¹⁴ *Id.*

¹⁵ MCL 205.735a(6)

¹⁶ See MCL 205.735a(3)

¹⁷ *Peter Paisley, Et Ux v Mullett Twp*, 1986 WL 20543

¹⁸ The case reviewed the application of MCL 205.735, but the subsequent jurisdictional statute, MCL 205.735a, applies to the 2017 tax year.

¹⁹ See *Electronic Data Systems Corp v. Flint Twp*, 253 Mich App 538, 544 (2002)

²⁰ MCR 7.215(C)(2); See *Catalina Marketing Sales Corp v Dept of Treasury*, 470 Mich 13, 23 (2004)

²¹ See *Peter Paisley, Et Ux v Mullett Twp*, 1986 WL 20543, at *10 (“[to prevent] wrongful and possibly fraudulent action or inaction by the assessing unit (which has the effect of directly precluding a taxpayer from complying with these requirements) . . . ”)

²² See *Parkview Memorial Ass'n v City of Livonia*, 183 Mich App 116 (1990)

assessing unit failed to comply with MCL 211.24c.²³ MCL 205.735a determines the Tribunal's jurisdiction in the present case, and the Tribunal has no "equitable powers" to waive or consent to jurisdiction when jurisdiction is lacking.²⁴ The Tribunal lacks jurisdiction over the subject matter; therefore, the Tribunal shall not proceed further except to dismiss the case.²⁵

JUDGMENT

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

IT IS FURTHER ORDERED that the case 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.²⁶ 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.²⁷ 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.²⁸ Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.²⁹

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."³⁰ A copy of the claim

²³ *Id.* at 121.

²⁴ *Id.* See *Electronic Data Sys Corp v Flint Twp*, 253 Mich App 538, 547-548 (2002)

²⁵ See *McCleese v Todd*, 232 Mich App 513, 521 (1997). See *Fox v Board of Regents of University of Mich*, 375 Mich 238, 242-243 (1965)

²⁶ See TTR 261 and 257

²⁷ See TTR 217 and 267

²⁸ See TTR 261 and 225

²⁹ See TTR 261 and 257

³⁰ See MCL 205.753 and MCR 7.204

must be filed with the Tribunal with the filing fee required for certification of the record on appeal.³¹ The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.³²

By Steven H. Lasher

Entered: March 26, 2018
tao

³¹ See TTR 213

³² See TTR 217 and 267