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

SS & F Property, LLC,
Petitioner,

v

MTT Docket No. 393516

City of Pontiac,
Respondent.

Tribunal Judge Presiding
Patricia L. Halm

ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(4)

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(5)

The issue brought by the City of Pontiac (Respondent) in this Motion for Summary Disposition is whether SS & F Property, LLC, (Petitioner) is a party-in-interest and, ultimately, whether Petitioner had standing to file the appeal in this case. Pursuant to the Petition, under appeal are the 2010 assessed and taxable values of Petitioner's property (subject property) located in the City of Pontiac, Oakland County.

RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

On December 14, 2010, Respondent filed a Motion requesting that the Tribunal grant partial summary disposition in its favor pursuant to MCR 2.116(C)(4) and a brief in support thereof. In its Motion, Respondent states, *inter alia*, that "Petitioner did not obtain an ownership interest in the property until closing on June 18, 2010; therefore, it was not a 'party in interest' that could invoke the jurisdiction of this Tribunal." (Motion, p1)

In its Brief, Respondent states, *inter alia*,

a. "On December 31, 2009, pursuant to MCL 211.2(2), the owner of the Property – Highwood Enterprises, LLC – was assessed the property taxes due for this location. . . On April 1, 2010. . . Petitioner. . . entered into a Purchase Agreement with Highwood Enterprises for the purchase of the Property." (Brief, p3)

b. "The Purchase Agreement affirmatively provided that all taxes and assessments, which became a lien upon the land at the date of closing, were to be paid by Highwood Enterprises. Current City and County taxes were then to be pro-rated and adjusted to the date of closing, payable by SS & F to Highwood Enterprises, a matter of contract between buyer and seller." (Brief, p4)

c. "On May 28, 2010, prior to closing on the sale of the Property and transfer of ownership, SS & F filed a Petition with this Tax Tribunal, disputing the 2010 assessment of the property. . .SS & F did not obtain an ownership interest in the property until June 18, 2010. (Brief, p4)

d. "According to the provision regarding petition to the local board of review, MCL 211.30, 'any person whose property is assessed is entitled to file a protest before the board of review regarding the assessment of his or her property." MCL 211.30(4); *Jefferson*¸ 154 Mich App at 394 (citing *Shaughnesy v Tax Tribunal*, 420 Mich 246; 362 NW2d 219 (1984) (Emphasis in original.). . . The jurisdiction provision…under MCL 205.735, is nearly identical to that found in the current jurisdictional provisions…." (Brief, p6)

e. "[T]he interrelationship between MCL 211.30 and MCL 205.735, and its affect on the meaning of a 'party in interest' on the jurisdiction of the Tribunal, was examined in *Jefferson*. In *Jefferson*, the school board of the Jefferson Schools sought to invoke the jurisdiction of the Tax Tribunal regarding the assessment of property owned by another party, the Detroit Edison Company. *Jefferson*, 154 Mich App at 391. . . After Jefferson Schools filed and served their petition, Detroit Edison filed a motion to dismiss, asserting that Jefferson Schools did not have standing to invoke the jurisdiction of the Tribunal under MCL 205.735. *Id.* at 392. The Tribunal agreed and dismissed the petitions. *Id.* at 391. Jefferson Schools appealed to the Court of Appeals. *Id."* (Brief, p7)

f. "Just as the Tribunal should in this matter, the Court of Appeals viewed the issue as whether Jefferson Schools had standing to protest another's property tax assessment. …[T]he Court specifically responded to Jefferson School's argument that it was a 'party in interest' under MCL 205.735 because it was "so 'directly impacted' by the fact that the property in question constitutes sixty percent of the school district's tax base, it must be considered a 'party in interest.' *Id.* at 396-397. The Court disagreed with the school's argument…[finding that] in order to be a 'party in interest' that may invoke the jurisdiction of the Tax Tribunal, the party must not merely be an interested party, but rather must hold an interest *in the property*." (Brief, pp7-9)

g. "MCL 205.735 and MCL 205.735a use the same 'party in interest' language to invoke the jurisdiction of the Tribunal. The Court in *Jefferson* found 'party in interest' to be a 'term of art' and determined that only a party with an interest *in the property* could file a petition and invoke the jurisdiction of the Tribunal. Therefore, it is presumed that the Legislature used 'party in interest,' as it was defined in *Jefferson*, in enacting MCL 205.735a, and meant that the amendment be read in harmony with

its still effective predecessor. To find to the contrary, as would be required to allow SS & F to invoke the jurisdiction of this Tribunal, would thus be contrary to the rules of statutory construction." (Brief, p10)

h. "As established in *Jefferson*…SS & F was required to have an interest *in the property* at the time it filed the petition with the Tax Tribunal, in order to invoke the Tribunal's jurisdiction. *Jefferson*, 154 Mich App 396-397; MCL 205.735a(6). SS & F, however, did not hold such an interest." (Brief, p12)

i. "On the date of SS & F's petition to this Tribunal, May 28, 2010, SS & F was only a party to a purchase agreement for the Property, and thus had an interest in a contract only. A purchase agreement is a contract for the *sale of* an interest in land only, not an interest in land itself. *Zurcher v Herveat*, 238 Mich App 267, 291; 605 NW2d 329 (1999.)" (Emphasis in original.) (Brief, p12)

j. "This proposition is further supported by the fact that the Purchase Agreement makes clear that, at the time SS & F filed its petition, its purchase of the property was still contingent on the inspection, and Highwood's ability to provide clear title. Further, in the event SS & F defaulted in the agreement, and refused to close on the property, Highwood Enterprises' **sole remedy** was to 'declare forfeiture [t]hereunder and retain the deposit as liquidated damages' for the breach of contract. Highwood Enterprises was not entitled to force purchase of the Property and transfer of the ownership interest, thus leaving Highwood Enterprises liable for all taxes assessed against it as owner of the Property for 2010 and beyond. Therefore, SS & F had only an interest in the contract, not an interest in the land, and was not a 'party in interest' that could invoke the jurisdiction of the Tax Tribunal under MCL 205.735a." (Emphasis in original.) (Brief, p13)

k. "[I]n *Jefferson*, the Court held that the Legislature specifically provided for the proper means for the school board to challenge the assessment, i.e. through intervention or impleading. Likewise, the Legislature, and the Tax Tribunal, provided for the proper means for SS & F to protect its interest in the land before closing [MCL 205.735a(9) and TTR 220]…[T]he proper procedure for the challenge to the 2010 assessment of the property was for Highwood Enterprises to file a petition with the Tax Tribunal, as the real 'party in interest,' and then obtain leave from the Tribunal to amend the petition upon the transfer of ownership interest to SS & F on the day of closing, June 18, 2010. Such a process would be unnecessary if a party was permitted to file a petition *before* the change of ownership interest." (Brief, p14)

l. "Secondly, and perhaps more importantly, to hold otherwise would create a slippery slope in which individuals which have only contracted to purchase property can come under the jurisdiction of this Tribunal to challenge the assessment of property owned by someone else. As stated in *Jefferson*, such would 'enlarge the area of litigation in the absence of clear legislative authorization' to do so. See *Jefferson*, 154 Mich App at 397. Public policy weights heavily against this scenario. *Id.*" (Brief, p14)

m. "[R]egardless of whether Petitioner was ultimately required to pay a portion of the assessed taxes for the property, it did not have an ownership interest at the time it filed the Petition. Therefore, Petitioner is not a 'party in interest' that may properly invoke the Tribunal's jurisdiction and thus, there is no basis for this Tribunal to exercise jurisdiction over the controversy. (Brief, pp14-15)

Petitioner did not file a response to Respondent's Motion.

FINDINGS OF FACT

The subject property is located in the City of Pontiac and is known as Parcel No. 64-14-09-352-014. The property is classified for assessment purposes as industrial real property. In its Motion, Respondent asserts that Parcel No. 14-09-301-35 is also under appeal; however, the Petition only lists Parcel No. 64-14-09-352-014.

As of December 31, 2009, Highland Enterprises, LLC, was the owner of record on Respondent's assessment roll. On April 1, 2010, Petitioner entered into a Purchase Agreement for the purchase of the subject property from Highwood Enterprises, LLC. On May 28, 2010, Petitioner filed its petition challenging the subject property's 2010 assessment. On June 28, 2010, Petitioner became the legal owner of the subject property.

MOTIONS FOR SUMMARY DISPOSITION

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. TTR 111(4). In the instant case, Respondent moved for summary disposition under MCR 2.116(C)(4). This Court Rule states that a Motion for Summary Disposition is appropriate where the ". . . court lacks jurisdiction of the subject matter." MCR 2.116(C)(4). Jurisdictional questions under MCR 2.116(C)(4) are questions of law that are also reviewed de novo. *South Haven v Van Buren Co Comm'rs*, 270 Mich App 233, 237; 715 NW2d 81 (2006). Further, when reviewing a motion under MCR 2.116(C)(4), the Tribunal must consider any and all affidavits, pleadings, depositions, admissions, and documentary evidence submitted by the parties to

determine whether the defendant is entitled to judgment as a matter of law or whether a genuine issue of material fact exists. MCR 2.116(G)(5).

CONCLUSIONS OF LAW

The Tribunal has considered Respondent's Motion for Summary Disposition under the criteria for MCR 2.116(C)(4) and, based on the pleadings and other documentary evidence filed with the Tribunal, determines that Respondent's Motion should be denied. For the reasons set forth herein, the Tribunal finds that while it has subject matter jurisdiction in this case, it does not have the authority to render a decision as to Petitioner's appeal of the subject property's 2010 assessment as Petitioner was not a party in interest and could not have invoked the Tribunal's jurisdiction. Therefore, summary disposition is appropriate under MCR 2.116(C)(5).

MCL 205.731 establishes the Tribunal's subject matter jurisdiction over property tax matters. In pertinent part, MCL 205.731 provides that:

> The tribunal has exclusive and original jurisdiction over all of the following:
>
> (a) A proceeding for direct review of a final decision, finding, ruling, determination, or order of an agency relating to assessment, valuation, rates, special assessments, allocation, or equalization, under the property tax laws of this state.
>
> (b) A proceeding for a refund or redetermination of a tax levied under the property tax laws of this state.

Given this, it is clear that the Tribunal not only has subject matter jurisdiction in this case, the Tribunal has exclusive jurisdiction in this case.

Pursuant to MCL 211.2(2): "The taxable status of persons and real and personal property for a tax year shall be determined as of each December 31 of the immediately preceding year, which is considered the tax day...." In this case there is no dispute that Highwood Enterprises, LLC, and not Petitioner, owned the subject property on December 31, 2009.

MCL 211.2 provides that: "Real property shall be assessed in the township or place where situated, **to the owner** if known, and also to the occupant, if any." (Emphasis added.) Again, there is no dispute that the subject property's assessment notice was sent to the owner, Highwood Enterprises, LLC. Given this, the question is what standing, if any, did Petitioner have to file this appeal?

"The concept of standing in the context of a legal proceeding means that a party must have suffered an actual, particularized impairment of a *legally protected* interest, that the opposing party can be in some way shown to be responsible for that impairment, and that a favorable decision by a court could likely redress that impairment." *Walgreen Co v Macomb Twp*, 280 Mich App 58, 62; 760 NW2d 594 (2008). In this case, Petitioner did not have a legally protected interest as to the taxes assessed against the subject property until it became the owner of the property on June 28, 2010. As Respondent suggested, Petitioner could have walked away from the Purchase Agreement at any time with only the loss of the deposit to consider.

With so little at stake, Petitioner had even less of a legally protected interest than the petitioner in *Walgreen*. In *Walgreen*, the petitioner had a long-term lease of the property at issue. In addressing whether the petitioner was a party in interest, the Court stated:

> We do not suggest, as the dissent implies we do, that a long-term lessee like petitioner has *no* interest in the property it leases. But, even if the terms of the lease obligate it to pay the taxes, that does not mean that petitioner has a "legally protected interest" under the GPTA. Petitioner was not "a person whose property is assessed on the assessment roll" or the agent of that person. Rather, the assessment roll showed that another individual was responsible for the taxes. *Id*., p66.

In this case, Petitioner was not a person whose property was assessed on the assessment roll; instead, that person was Highwood Enterprises, LLC, who was responsible for the taxes. As the court stated in Walgreen: "Petitioner, as the party seeking the benefit of standing, had the burden of showing standing." *Id*., p67. In this case, Petitioner did not respond to Respondent's

Motion and presented no evidence to support that it had standing in this case. Interestingly, Petitioner did not assert in its Petition that it owned or had an interest in the subject property. For these reasons, Petitioner has not met its burden of proof of showing standing.

The requirements that must be met in order for the Tribunal to acquire jurisdiction in an appeal are set forth in Section 35a of the Tax Tribunal Act. In relevant part, Section 35a provides:

> (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 real property, industrial real property. . .is invoked by a **party in interest**, as petitioner, filing a written petition on or before May 31 of the tax year involved. (Emphasis added.)

While Petitioner filed its petition prior to the May 31, 2010 deadline, it did not become the legal owner of the subject property until June 28, 2010. Therefore, Petitioner was not a party in interest at the time the petition was filed.

Moreover, at the time the petition was filed, and at all times prior to the May 31, 2010, filing deadline, Petitioner did not have a legally protected interest in the subject property. Petitioner merely had an agreement to purchase the subject property. Pursuant to paragraph 3 of the Agreement of Sale, signed April 1, 2010, Petitioner was required to complete the sale within 60 days of receipt of title insurance. Pursuant to Agreement No. 1 to the Agreement of Purchase and Sale (Respondent's Exhibit B), the parties did not agreed until June 17, 2010, to close on the agreement on June 18, 2010.

To summarize, Petitioner was not, when it filed its petition, a party in interest. Moreover, Petitioner did not become a party in interest until after the filing deadline had passed. Given this, Petitioner lacked the legal capacity to file its petition in this case. Given this, Respondent is entitled to summary disposition pursuant to MCR 2.116(C)(5).

Therefore,

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

IT IS FURTHER ORDERED that Summary Disposition is GRANTED in favor of Respondent pursuant to MCR 2.116(C)(5).

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: March 21, 2011 By: Patricia L. Halm