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

Grand Rapids Educational Center, Inc.,
Petitioner,

v

MTT Docket No. 440053

Plainfield Township,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(8) AND (C)(10)

FINAL OPINION AND JUDGMENT

INTRODUCTION

On November 12, 2013, Respondent filed a motion requesting that the Tribunal enter summary judgment in its favor in the above-captioned case. More specifically, Respondent contends that Petitioner operates a for-profit, post-secondary education school and its personal property is not entitled to exemption under MCL 211.9(1)(a).

Petitioner has not filed a response to Respondent's Motion.

The Tribunal has reviewed the Motion, 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 Petitioner is seeking exemption for its personal property under MCL 211.9(1)(a), however, Petitioner acknowledges in paragraph 8 of the Petition that it operates a for-profit, post-secondary education school. Respondent contends that as a matter of law, personal property of a for-profit educational institution is not exempt from taxation under MCL 211.9(1)(a). Respondent further argues that the rules of statutory construction require exemption statutes to be strictly construed in favor of the taxing authority and may not be allowed unless legislative intent to grant such an exemption clearly appears. Respondent cites to the Tribunal's recent decision in *SBC Health Midwest, Inc v City of Kentwood*, MTT Docket No. 416230 (October 8, 2013), holding that MCL 211.9(1)(a) and 211.7n must be read together as they both relate to an exemption for personal property of an educational institution. Respondent states that the only interpretation of the statutes that avoids conflict is to read 211.9(1)(a) as also providing exemption for non-profit educational institutions.

APPLICABLE LAW

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. See TTR 215. In this case, Respondent moves for summary disposition under MCR 2.116(C)(8) and (C)(10).

Motions under MCR 2.116(C)(8) are appropriate when "[t]he opposing party has failed to state a claim on which relief can be granted." Dismissal 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. See *Transamerica Ins Group v Michigan Catastrophic Claims Ass'n*, 202 Mich App 514, 516; 509 NW2d 540 (1993). In reviewing a motion 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. See *Meyerhoff v Turner Construction Co*, 202 Mich App 499, 502; 509 NW2d 847 (1993).

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. See *Smith v Globe Life Ins Co*, 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 (C)(10) will be denied. See *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. See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)). The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider. See *Neubacher v Globe Furniture Rentals, Inc*, 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 non-moving party, the non-moving 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. See *McCart v J Walter Thompson USA, Inc*, 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. See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

CONCLUSIONS OF LAW

The Tribunal has carefully considered Respondent's Motion under MCR 2.116 (C)(8) and (C)(10) and finds that the Motion should be granted. The Tribunal must determine whether Petitioner has failed to state a claim on which relief can be granted or whether there is a genuine issue of material fact regarding an exemption from taxation for Petitioner's personal property. Petitioner claims it should be exempt under MCL 211.9(1)(a), which provides an exemption for:

> The personal property of charitable, educational, and scientific institutions incorporated under the laws of this state. This exemption does not apply to secret or fraternal societies, but the personal property of all charitable homes of secret or fraternal societies and nonprofit corporations that own and operate facilities for the aged and chronically ill in which the net income from the operation of the nonprofit corporations or secret or fraternal societies does not inure to the benefit of a person other than the residents is exempt.

In its Petition, Petitioner states that "Petitioner operates a for-profit, post-secondary education school in Grand Rapids, Michigan" and further contends that "personal property owned by an educational institution, regardless of whether the institution is for-profit or not-for-profit, is exempt under Michigan Statute Section 211.9(a)[sic]." The key issue in the present appeal is the same as the issue recently before the Tribunal in *SBC Health Midwest, Inc v City of Kentwood*, MTT Docket No. 416230 (October 8, 2013). As stated in that Opinion, it must be decided whether MCL 211.9(1)(a) can be applied, standing alone, to provide an exemption for personal property of an educational institution or if it must be read in conjunction with MCL 211.7n, which states:

> Real estate or personal property owned and occupied by **nonprofit** theater, library, educational, or scientific institutions incorporated

> under the laws of this state with the buildings and other property thereon while occupied by them solely for the purposes for which the institutions were incorporated is exempt from taxation under this act. In addition, real estate or personal property owned and occupied by a nonprofit organization organized under the laws of this state devoted exclusively to fostering the development of literature, music, painting, or sculpture which substantially enhances the cultural environment of a community as a whole, is available to the general public on a regular basis, and is occupied by it solely for the purposes for which the organization was incorporated is exempt from taxation under this act. [Emphasis added.]

The statutory, Constitutional, and case law analysis contained in *SBC Health Midwest* is also applicable to the present case. Both MCL 211.9(1)(a) and 211.7n relate to an exemption for personal property of an educational institution. The distinction is that MCL 211.7n contains the term "nonprofit" while MCL 211.9(1)(a) does not. It is Respondent's argument that the statutes share a common purpose and must be read together as in *pari materia*. This argument is supported by Michigan case law. Specifically, the Supreme Court has held:

> Statutes in pari materia are those which relate to the same person or thing, or to the same class of persons or things, or which have a common purpose; and although an act may incidentally refer to the same subject as another act, it is not in pari materia if its scope and aim are distinct and unconnected. It is a well established rule that in the construction of a particular statute, or in the interpretation of its provisions, all statutes relating to the same subject, or having the same general purpose, should be read in connection with it, as together constituting one law, although they were enacted at different times, and contain no reference to one another. *Palmer v State Land Office Bd*, 304 Mich 628, 636-637; 8 NW2d 664 (1943).

The Supreme Court has also held that "[i]t is elementary that statutes in *pari materia* are to be taken together in ascertaining the intention of the legislature, and

that courts will regard all statutes upon the same general subject-matter as part of one system." *Dearborn Twp Clerk v Jones*, 335 Mich 658, 662; 57 NW2d 40 (1953).[1] MCL 211.9(1)(a) and 211.7n both relate to the same general subject matter and have the same general purpose - the exemption for personal property of educational institutions. As such, the statutes are in *pari materia* and must be read together to ascertain the legislative intent with respect to the exemption. In determining which statute should be controlling, the Court of Appeals has held:

> Where two statutes are in pari materia and one is specific to the subject matter while the other is only generally applicable, the specific statute, which is treated as an exception to the general one, prevails. This rule is particularly persuasive when one statute is both more specific and more recent. *Hill v Dep't of Treasury*, 202 Mich App 700, 704; 509 NW2d 905 (1993). [(Internal citations omitted.] See also *Parise v Detroit Entertainment, LLC*, 295 Mich App 25; 811 NW2d 98 (2011).

The Court of Appeals has further stated that "[i]f the two statutes appear to conflict, however, a newer statute prevails over the older. This is because the Legislature is presumed to be aware of, and thus to have considered the effect on, all existing statutes when enacting new laws." *People v Bragg*, 296 Mich App 433, 451; 824 NW2d 170 (2012). This is true even if the statutes contain no reference to one another. See *Maple Grove Twp v Misteguay Creek Intercounty Drain Bd*, 298 Mich App 200; 828 NW2d 459 (2012). MCL 211.9(1)(a) was first enacted in 1893, while MCL 211.7n was enacted in 1980. MCL 211.7n is therefore the more recent and more specific of the two. MCL 211.7n was enacted as a result of the renumbering of MCL 211.7, as established by Public Act 203 of

[1] See also *Houghton Lake Area Tourism & Convention Bureau v Wood*, 255 Mich App 127; 662 NW2d 758 (2003), *People v Harper*, 479 Mich 599; 739 NW2d 523 (2007), and *People v Kern*, 288 Mich App 513; 794 NW2d 362 (2010).

1893. However, even if the Tribunal utilized this date, both statutes were enacted in 1893 and neither statue would prevail over the other. In *People v Bragg*, 296 Mich App 433; 824 NW2d 170 (2012), the Court of Appeals referenced the consideration of existing statutes when *enacting* new laws. Thus, the Court of Appeals unambiguously dictated the consideration of the *enactment* of laws and not amendments to preexisting statutes. As such, the statutes should be read together, and given equal weight, to ascertain the legislative intent. Under Michigan case law, MCL 211.7n would prevail over MCL 211.9(1)(a) in determining whether Petitioner's personal property could be exempt from taxation.

Having determined that the language of MCL 211.7n is controlling as the more recent and more specific statute, the Tribunal must next determine what effect the term "nonprofit" is to be given within the context of the statute. In reading MCL 211.7n in its entirety, the second sentence also includes the term nonprofit and states "real estate or personal property owned and occupied by a nonprofit organization organized under the laws of this state devoted exclusively to fostering the development of literature, music, painting, or sculpture . . . ." When MCL 211.7n is read in its entirety, it is clear that it was meant to apply to various types of *nonprofit* organizations and institutions. The first sentence in the statute cannot logically be read to apply the term nonprofit only to theaters, but not to libraries and educational or scientific institutions, with the second sentence than applying to nonprofit organizations again.

The finding that the exemption is meant to apply to nonprofit educational institutions is further supported by Article 9, Section 4 of the Michigan Constitution, which states "[p]roperty owned and occupied by **non-profit** religious or educational organizations and used exclusively for religious or educational

purposes, as defined by law, shall be exempt from real and personal property taxes." [Emphasis added.] As stated by the Court of Appeals in *People v Meconi*, 277 Mich App 651, 658-659; 746 NW2d 881 (2008), "it is a fundamental axiom of American law, rooted in our history as a people and requiring no citations to authority, that the requirements of the Constitution prevail over a statute in the event of a conflict." [Internal citation omitted.] The language in Article 9, Section 4 of the Constitution specifically provides an exemption from taxation for personal property only for nonprofit educational organizations. If MCL 211.7n is read to require that all the enumerated organizations are nonprofit, it is then in conformity with the provisions of the Constitution that also relate to the same exemption.

Given the above, the Tribunal finds that Petitioner's personal property is not entitled to an exemption under MCL 211.9(1)(a) and 211.7n, as Petitioner is not a *nonprofit* educational institution, as required by the controlling statute and the Michigan Constitution. Accordingly, Respondent is entitled to summary disposition under MCR 2.116(C)(8) and (C)(10), as Petitioner has failed to state a claim on which relief can be granted and there is a genuine issue of material fact regarding an exemption from taxation for Petitioner's personal property.

JUDGMENT

IT IS ORDERED that Respondent's Motion for Summary Disposition under MCR 2.116(C)(8) and (C)(10) is GRANTED.

IT IS FURTHER ORDERED that the case is DISMISSED.

This Opinion resolves the last pending claim and closes the case.

By: Steven H. Lasher

Entered: Jan. 7, 2014
klm