Zimmer US Inc,
Petitioner,

v

Michigan Department of Treasury,
Respondent.

MICHIGAN TAX TRIBUNAL

MOAHR Docket No. 17-005054

Presiding Judge
David B. Marmon

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

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(10)

FINAL OPINION AND JUDGMENT

INTRODUCTION

On March 1, 2019, Respondent filed a Motion requesting that the Tribunal enter summary judgment in its favor in the above-captioned case under MCR 2.116(C)(10). More specifically, Respondent contends that Petitioner used the property at issue in Michigan and the property was also stored in Michigan. The exemptions under Rule 89 and Rule 82 do not apply. The instruments are not component parts of implants.

On April 1, 2019, Petitioner filed a response to Respondent's Motion and its own Motion requesting that the Tribunal enter summary judgment in its favor under MCR 2.116(C)(10). In its Motion, Petitioner contends that it did not use the instruments in Michigan. The instruments are exempt under Rule 89 and Rule 82. They are also component parts of prosthetic implants.

On April 19, 2019, Respondent filed a reply to Petitioner's Motion. In the response, Respondent contends that Petitioner must go beyond the pleadings to raise an issue of fact. Petitioner did not lease the instruments and the instruments are not eligible for an exemption as a component part. Petitioner has abandoned its argument that the instruments are part of a bundled transaction.

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

RESPONDENT'S CONTENTIONS

In support of its Motion and reply, Respondent contends that, under *WPGP1, Inc v Dep't of Treasury*,[1] Petitioner used the property at issue because it allowed its customers to retain possession and required them to reimburse Petitioner for lost or damaged instruments. The property was also stored in Michigan. Despite Petitioner's statements, the way that the instruments are shipped only concerns sales tax, not use tax. No exemption applies under Rule 89 because the statute underlying this rule was changed and now applies to sales of durable medical equipment for home use. Even if Rule 89 applied, Petitioner has failed to establish that the property was sold at retail pursuant to written prescription or order. More specifically, instruments made by Petitioner may be purchased on the internet. The instruments themselves do not help a person lead a normal life, the implants do. And the Legislature specifically exempted only the implants from sales tax. Petitioner is not entitled to a refund under Rule 82 because there is no lease. The hospitals receive the benefit of the instruments without

[1] *WPGP1, Inc v Dep't of Treasury*, 240 Mich App 414; 612 NW2d 432 (2000).

ever paying a cost and there are no "receipts generated from such a lease." Petitioner has not shown that they are in the business of leasing with a profit motive and has not established which of its customers qualify as non-profit hospitals. In its Motion, Petitioner argues for the first time that the instruments are exempt as a component part without making the assertion in the Petition. Petitioner does not qualify for an exemption for a "bundled transaction" because that exemption is limited to transactions related to telecommunication services, an argument it abandoned by not arguing it in its Motion.

PETITIONER'S CONTENTIONS

In support of its response, Petitioner contends that the *WPGP1* Court rejected the notion that owning property used by third parties in Michigan is a taxable use. Petitioner did not use the instruments in Michigan because it gave the instruments to common carriers outside Michigan. The instruments are exempt from use under Rule 89 because they are used to assist disabled persons in living a normal life. Even if the statute underlying Rule 89 has been rescinded, the rule has not, and Respondent has not shown that it is invalid or unenforceable. The instruments are prescription devices and thus must have a prescription or order as required by Rule 89. Under Rule 82, the instruments are non-taxable because Petitioner leased them to nonprofit hospitals. The instruments are also exempt as component parts of exempt prosthetic implants under *Lifting Gear Hire Corp v Dep't of Treasury*.[2]

STANDARD OF REVIEW

[2] *Lifting Gear Hire Corp v Dep't of Treasury*, 24 MTT 309 (Docket No. 448531), issued October 17, 2013.

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.[3] In this case, both parties move for summary disposition under MCR 2.116(C)(10). 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 "when the affidavits or other documentary evidence, viewed in the light most favorable to the nonmoving party, show that there is no genuine issue as to any material fact and the moving party is therefore entitled to judgment as a matter of law."[4]

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.[5] The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider.[6] The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.[7] 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.[8] If the opposing party fails to

[3] See TTR 215.
[4] *Lowrey v LMPS & LMPJ, Inc,* 500 Mich. 1, 5; 890 NW2d 344 (2016) (citation omitted).
[5] See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)).
[6] See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).
[7] *Id.*
[8] See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).

present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.[9]

CONCLUSIONS OF LAW

The Tribunal has carefully considered the parties' Motions under MCR 2.116 (C)(10) and finds that granting Respondent's Motion and denying Petitioner's Motion is warranted. Michigan's Use Tax Act ("UTA"), MCL 205.91 *et seq*., "complements the sales tax and is designed to cover those transactions not covered by Michigan's General Sales Tax Act."[10] The UTA provides:

> There is levied upon and there shall be collected from every person in this state a specific tax, including both the local community stabilization share and the state share, for the privilege of using, storing, or consuming tangible personal property in this state at a total combined rate equal to 6% of the price of the property or services specified in section 3a or 3b.[11]

"Use" is defined by the UTA as "the exercise of a right or power over tangible personal property incident to the ownership of that property including transfer of the property in a transaction where possession is given."[12] Each party argues that the Court of Appeals' decision in *WPGP1* supports their contentions concerning use. In *WPGP1*, the plaintiff purchased two airplanes that had already been leased to Southwest Airlines ("Southwest").[13] The defendant argued that the plaintiff "used" the airplanes for UTA purposes because it owned them, leased them, allowed them to be flown in and out of an airport in Detroit, and used a Michigan mailing address.[14] The Court analyzed whether the plaintiff used the airplanes:

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[9] See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).
[10] *WPGP1*, 240 Mich App at 416.
[11] MCL 205.93(1).
[12] MCL 205.92(b).
[13] *WPGP1*, 240 Mich App at 416.
[14] *Id*.

> Because of the leases, plaintiff at no time used, stored, or consumed the property in Michigan. Despite plaintiff's ownership interest in the airplanes, the leases gave exclusive authority over the use, storage, and consumption of the airplanes during the duration of the leases to Southwest, and thus plaintiff exercised no right or power over the airplanes. In other words, by virtue of the leases, plaintiff ceded control of the airplanes to Southwest, and therefore could not have 'used' the airplanes for purposes of use tax liability under the UTA.[15]

That decision, however, was distinguished by the Supreme Court in *NACG Leasing v Dep't of Treasury*.[16] There, the Court discussed use in the context of the UTA:

> It is a basic precept of property law that a property owner has the right to the use and enjoyment of his or her personalty. A corollary to this right is the property owner's right to allow others to use his or her property in exchange for consideration. One way in which a property owner exercises this right is by executing a lease. Therefore, because the right to allow others to use one's personal property is a right incident to ownership, and a lease is an instrument by which an owner exercises that right, it follows that the execution of a lease is an 'exercise of a right or power over tangible personal property incident to the ownership of that property . . . .'[17]

In addition, the Court stated that "the act of ceding control of [personal property] can, itself, be an exercise of a right incident to ownership."[18] The *NACG Leasing* Court distinguished *Czars, Inc. v. Dep't Treasury*,[19] and *WPGP1* on the basis that neither of those cases involved a lease executed in Michigan.[20] By holding that ceding control through the execution of a lease in Michigan constitutes use,[21] the Court recognized that the act of ceding control had a significant connection to Michigan such that the

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[15] *Id*. at 418.
[16] *NACG Leasing v Dep't of Treasury*, 495 Mich 26; 843 NW2d 891 (2014). It is curious that neither party cited this Supreme Court decision directly on point.
[17] *Id*. at 28-29 (alteration in original).
[18] *Id*. at 30.
[19] *Czars, Inc v. Dep't Treasury*, 233 Mich App 632, 593 NW2d 209 (1999).
[20] *NACG Leasing*, 495 Mich at 30.
[21] *Id*.

taxpayers subjected themselves to use tax. Here, is not clear where the agreements to provide instrumentation were executed because Petitioner appears to sign these documents electronically.[22] The Tribunal nonetheless concludes that every portion of the transaction was significantly connected to Michigan. Petitioner marketed its products to hospitals in Michigan.[23] Petitioner then sent its instruments to Michigan hospitals for exclusive use in Michigan hospitals with no expectation that the instruments would return from Michigan.[24] Thus, despite Petitioner's assertion that it gave the instruments to a common carrier outside of Michigan, it made an effort to secure business in Michigan and sent its personal property to Michigan hospitals for exclusive use in Michigan. Finally, unlike airplanes, surgical tools are generally not self-propelled, and are expected to stay with the hospital to which they are provided. The Tribunal therefore concludes that Petitioner ceded control of the personal property, a right incident to ownership,[25] in a transaction with a significant connection to Michigan because it was specifically directed at, and occurred in, Michigan. This is consistent with the Supreme Court's decision in *NACG Leasing* and stands in contrast to *WPGP1*, where the lessor had no control over the fact that property would be physically present in Michigan.[26] The Tribunal therefore concludes that there is no genuine dispute of material fact and that Petitioner "used" the instruments as described in *NACG Leasing*.

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[22] See Pricing Agreement, attached as exhibit 2 to Respondent's Motion for Summary Disposition, March 1, 2019, pdf p 26. It appears from the manner this agreement is redacted that Petitioner's customers physically sign these agreements, which likely occurred in Michigan.
[23] Joint Stipulation of Facts ("JSF"), January 11, 2019, ¶ 3, p 1.
[24] Petitioner's Answers to Requests to Admit, attached as exhibit 6 to Respondent's Motion for Summary Disposition, ¶ 12, pdf p 61.
[25] *NACG Leasing*, 459 Mich at 30
[26] See *WPGP1*, 240 Mich App at 418.

Petitioner argues that its "use" is exempt because it leases the instruments to non-profit hospitals under Mich Admin Code R 205.132 ("Rule 82"). Rule 82 provides:

> (1) A person engaged in the business of renting or leasing tangible personal property to others shall pay the Michigan sales or use tax at the time he purchases tangible personal property, or he may report and pay use tax on the rental receipts from the rental thereof. A person remitting tax on the purchase price as a purchaser-consumer or remitting tax on rental receipts as a lessor, shall follow 1 or the other methods of remitting for his entire business operation. A person remitting tax on rental receipts shall be the holder of a sales tax license, or a registration as is provided in the use tax act. Each month such lessor shall compute and pay use taxes on the total rentals charged.
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> (2) A lessor remitting tax on rental receipts may deduct direct rentals to the United States, the state of Michigan or its local governmental entities, churches (excluding vehicles), schools and other qualified nonprofit institutions or agencies, or to persons or concerns for use in agricultural producing or industrial processing. However, rentals to construction contractors engaged in contract work for such entities are taxable.

To qualify for the deduction in Rule 82(2), a person must be "engaged in the business of renting or leasing tangible personal property to others." The UTA defines "business" as "all activities engaged in by a person or caused to be engaged in by a person with the object of gain, benefit, or advantage, either direct or indirect."[27] In *Devonair Enterprises, LLC v Dep't of Treasury*, the Court of Appeals considered three factors in its analysis: "(1) whether the rates and terms of the lease are consistent with leases resulting from an arm's-length transaction, (2) whether the taxpayer holds itself out to the public as a lessor, and (3) whether the amount of time that the property is leased is sufficient to produce revenue consistently with other leasing businesses."[28]

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[27] MCL 205.92(h).

[28] *Devonair Enterprises, LLC v Dep't of Treasury*, 297 Mich App 90, 93, 101-103; 823 NW2d 328 (2012); see also *FMG Leasing LLC v Dep't of Treasury*, unpublished per curiam opinion of the Court of Appeals, issued June 26, 2014 (Docket No. 312448), p 5 (reasoning that "[a]lthough petitioner argues that the three factors referenced by this Court in *Devonair*, 297 Mich App at 93, were not actually adopted by this

Here, Petitioner supplies the instruments necessary to implant its products "at no extra cash charge."[29] Petitioner also stipulated that, when it sells its implants to "hospitals or other surgical facilities, the contract normally provides that the customer will reimburse [Petitioner] for any loss, damage or destruction of its instrumentation."[30] Petitioner also admitted that its customers do not return the instruments to Petitioner in the normal course of business.[31] The rate of the "lease" is thus zero dollars, and Petitioner does not expect the instruments to be returned to it. Although Petitioner's state that the cost of the instruments is *factored* into the implants,[32] its customers still do not pay a fee for using the instruments. The Tribunal concludes that there is no genuine issue of material fact that these terms are not consistent with an arm's-length transaction because a lessor would not agree to transfer possession of its personal property for no fee and with no expectation that it be returned.

With respect to whether Petitioner holds itself out to the public as a lessor, in the Joint Stipulation of Facts, Petitioner agreed that it is "engaged in manufacturing and marketing orthopedic implants, like prosthetic hip, knee, shoulder and elbow joints."[33] Petitioner provides no marketing material that indicates that it holds itself out as a lessor of instruments. It does provide surgical techniques that describe how to use the

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Court, and thus should not have been considered by the Tax Tribunal in this case, it is apparent that this Court considered each of those factors in its analysis and found that they supported the Tax Tribunal's decision to disallow the lessor exception under MCL 205.95(4).").

[29] JSF, ¶¶ 4, 5, p 2.

[30] JSF, ¶ 11, p 2.

[31] Petitioner's Answers to Requests to Admit, attached as exhibit 6 to Respondent's Motion for Summary Disposition, ¶ 12, pdf p 61.

[32] Affidavit of Jocelyn Dixon, attached as part of exhibit 4 to Petitioner's Motion for Summary Disposition, April 1, 2019, pdf p 163.

[33] JSF, ¶ 2, p 2.

instruments to implant Petitioner's prostheses,[34] but this information does not raise a genuine issue of material fact that Petitioner holds itself out as a lessor of instruments. In fact, to the extent that the surgical techniques can be considered marketing material, they promote the features and benefits of the protheses, not of Petitioner as a lessor of the instruments used to implant the prostheses. For example, the surgical technique for the Fitmore Hip Stem states that it "is a curved uncemented stem with a trapezoidal cross-section, which is coated proximally with Ti-VPS (Titanium Vacuum Plasma Spray) and rough-blasted distally."[35] It goes on to explain that the stem "offers a wide range of offset options to address a variety of anatomic offsets among individuals."[36] Nowhere in the material does Petitioner promote the benefits it provides as a lessor of instruments.

Finally, as described above, Petitioner allows its customers to keep the instruments for an indefinite period of time. Although in isolation this could be considered a length of time such that it could produce revenue consistent with other leasing business, that Petitioner is not paid directly for the use of the instruments indicates that no length of time is sufficient to produce revenue. Considering the same factors analyzed by the *Devonair* Court, the Tribunal concludes that Petitioner has failed to raise a genuine issue of material fact that it is engaged in the business of leasing.

Even assuming for purposes of argument that Petitioner is engaged in the business of leasing, section 2 of Rule 82 states that "[a] lessor remitting tax on rental receipts may deduct direct rentals . . ." to nonprofit organizations. Petitioner, however,

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[34] See, e.g., Persona Surgical Technique, attached as part of exhibit 1 to Petitioner's Motion for Summary disposition, pdf pp 26-47.
[35] Fitmore Hip Stem Surgical Technique, attached as part of exhibit 1 to Petitioner's Motion for Summary Disposition, pdf p 125.
[36] Fitmore Hip Stem Surgical Technique, attached as part of exhibit 1 to Petitioner's Motion for Summary Disposition, pdf p 125.

fails to provide the Tribunal any documentation of any "rental receipts" or that any of its customers are nonprofit organizations. The "Sales and Use Tax Review" apparently provided to Respondent is simply a listing of instruments, along with a city name and county name.[37] Nothing indicates that these are invoices from leases or rentals, or the name of the hospital. Petitioner has therefore failed to raise a genuine issue of material fact that it qualifies to deduct use tax under Rule 82. The Tribunal further notes that underlying the deduction in Rule 89(2) is that the monies received in exchange for allowing nonprofit institutions to use the lessor's personal property are not subject to use tax. Here, it is undisputed that Petitioner received no money in exchange for allowing hospitals to use its instruments. The money at issue was the use tax for exercising a right incidental to ownership, not for renting or leasing the instruments.

Petitioner next argues that it is exempt from use tax under Mich Admin Code R 205.139 ("Rule 89"). That rule states:

> Retail sales of any apparatus, device, appliance, or equipment used to replace or substitute for any part of the human body, or used to assist the disabled person to lead a reasonably normal life, are exempt if purchased on a written prescription or order issued by a licensed health professional.[38]

As Respondent correctly argues, the authority for this rule, MCL 205.94(1)(p) was changed in 2004.[39] The previous version allowed an exemption for:

> . . . any other apparatus, device, or equipment used to replace or substitute for any part of the human body, or used to assist the disabled person to lead a reasonably normal life when the tangible personal property is purchased on a written prescription or order issued by a health professional. . . .[40]

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[37] See Michigan Sales & Use Tax Review, attached as exhibit 4 to Respondent's Motion for Summary Disposition, pdf pp 38-47.
[38] Mich Admin Code R 205.139(2).
[39] See 2004 PA 172.
[40] MCL 205.94(1)(p), as amended 202 PA 669.

The current version of MCL 205.94(1)(p) exempts from tax "[t]he sale of a prosthetic device, durable medical equipment, or mobility enhancing equipment." Importantly, both versions of the statute, along with Rule 89, apply to *retail sales* of particular items. Petitioner never asserts, nor provides any proof, that it sold the instruments at retail and paid tax. Rule 89 also imposes a recordkeeping requirement:

> To support the exemption claimed for prescription sales when filing the required tax return, the seller shall keep a record showing the date the prescription was issued, the name of the person issuing it, the name of the individual for whose consumption it was issued, a brief description of the property sold, and the amount charged to the customer. The prescription should be attached to the seller's copy of the sales invoice or retained in such a manner as will permit the department to verify the authenticity of the exemption.[41]

Petitioner has not provided a single record for the sale of an instrument by prescription. Accordingly, the Tribunal concludes that there is no genuine dispute of material fact whether Petitioner qualifies for the Rule 89 exemption.

Petitioner argues in its Motion that the instruments are exempt as component parts of exempt prosthetic implants. The Tribunal notes that Petitioner failed to plead this issue in either the Petition or in its Prehearing Statement.[42] The Tribunal could therefore conclude that Petitioner has waived this claim.[43] However, because Petitioner argues this issue at the informal conference held by Treasury,[44] and because the parties have briefed the issue, the Tribunal will address it. Petitioner relies on a

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[41] Rule 89(4).
[42] See Petition, December 18, 2017; Petitioner's Prehearing Statement, November 13, 2018, ¶¶ 13-17, pdf p 10.
[43] See *Baker v Marshall*, 323 Mich App 590, 595; 919 NW2d 407 (2018); MCR 2.111(B)(1).
[44] See Informal Conference Recommendation, attached as part of exhibit 5 to Respondent's Motion for Summary Disposition, pdf p 50.

Technical Advice Letter ("TAL") provided by Respondent.[45] In the TAL, Respondent addresses the argument that surgical instruments fall within the exemption provided in MCL 205.54a(1)(h) and 205.94(1)(p).[46] The exemption contained in MCL 205.54a(1)(h) is now contained in MCL 205.54a(1)(k) and exempts from sales tax "[t]he sale of a prosthetic device, durable medical equipment, or mobility enhancing equipment." MCL 205.94(1)(p) exempts from use tax "[t]he sale of a prosthetic device, durable medical equipment, or mobility enhancing equipment." The TAL concluded that the instruments did not apply by themselves under these statutes:

> Based on the information provided, it is the department's position that the instruments do not qualify for exemption in their own right as prosthetic devices under the aforementioned Michigan statutes. However, the department would agree that *instruments included as a component part of the joint replacement system would qualify for exemption as part of the sale of an exempt prosthetic device*.[47]

Respondent agrees that a taxpayer is entitled to rely on a representation made in a technical advice letter.[48] However, Petitioner must still show that the instruments are "included as a component part of the joint replacement system . . . as part of the sale of an exempt prosthetic device." Both parties argue that the Tribunal's decision in *Lifting Gear Hire Corp v Dep't of Treasury* supports its position. There, the Tribunal considered whether personal property was installed as a component part of a pollution control facility under MCL 205.54a(1)(*l*).[49] The Tribunal considered dictionary definitions for "component" and "part" and concluded that it means "constituent or essential

[45] See Technical Advice Letter ("TAL"), attached as exhibit 7 to Petitioner's Motion for Summary Disposition, pdf pp 327-329.
[46] The TAL incorrectly cites this section as MCL 205.54a(h) and MCL 205.94(p).
[47] TAL, pdf p 329 (emphasis added).
[48] MCL 205.6a(1).
[49] *Lifting Gear Hire Corp*, 24 MMT at 316.

element."[50] Importantly, the Tribunal stated that, although "tangible personal property assisted in the *installation* of component parts, the Tribunal finds that this assistance and any equipment 'necessary and required' to fulfill such process does not render the same to be exempt from sales tax. . . ."[51] Here, Petitioner argues that the instruments are components because they are surgically indispensable. Petitioner has admitted that the instruments are not worn in or on the body.[52] The instruments are certainly used to implant tax-exempt prostheses, but they are not a physical part of the prostheses themselves. In other words, the instruments, absent a surgeon accidentally leaving one in a patient, are not implants. And, similar to the Tribunal's reasoning in *Lifting Gear*, the personal property assists in the *installation* of the implants. In other words, the instruments are essential to implanting tax-exempt prostheses, but are not essential elements of the physical implants. Accordingly, the Tribunal concludes that Petitioner has failed to raise a genuine issue of material fact that the instruments are component part of the exempt prostheses.

The Petition alleges that the instruments are not subject to use tax because they are part of a bundled transaction under MCL 205.93a(5)(b)(v)(D).[53] However, Petitioner fails to brief this issue, and the Tribunal therefore concludes that it is abandoned.[54]

JUDGMENT

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

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[50] *Id*. at 317.
[51] *Id*.
[52] Petitioner's Answers to Requests to Admit, attached as exhibit 6 to Respondent's Motion for Summary Disposition, ¶ 3, pdf p 60.
[53] Petition, ¶¶ 45-48, p 8
[54] *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003).

IT IS FURTHER ORDERED that Petitioner's Motion for Summary Disposition under MCR 2.116(C)(10) is DENIED.

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.[55] 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.[56] 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.[57] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[58]

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

[55] See TTR 261 and 257.
[56] See TTR 217 and 267.
[57] See TTR 261 and 225.
[58] See TTR 261 and 257.

filed more than 21 days after the entry of the final decision, it is an "appeal by leave."[59] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.[60] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[61]

By _____

Entered: May 6, 2019
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[59] See MCL 205.753 and MCR 7.204.
[60] See TTR 213.
[61] See TTR 217 and 267.