

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

Detroit Rescue Mission Ministries,
Petitioner,

v

MTT Docket No. 461058

City of Detroit,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

ORDER GRANTING PETITIONER’S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

INTRODUCTION

On July 2, 2014, Petitioner filed a Motion requesting that the Tribunal enter summary disposition in its favor in this case. Specifically, Petitioner contends that the property under appeal is entitled to an exemption from ad valorem taxes as a charitable institution, under MCL 211.7o. Petitioner moves for summary judgment under MCR 2.116(C)(9) and (10) as “there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law” and Respondent has “failed to state a valid defense” Respondent has not filed a response to Petitioner’s Motion.

The Tribunal, having reviewed Petitioner’s Motion, the evidence submitted, and the case file finds that Petitioner is entitled to an exemption under MCL 211.7o and has shown good cause to grant its Motion for Summary Disposition under MCR 2.116(C)(10).

PETITIONER’S CONTENTIONS

In support of its Motion, Petitioner states that it “owns and operates the property for the purpose of providing housing, Christian worship, detox, and life skills counseling for men,

including veterans. . . .” and that “Petitioner occupies the subject premises through its staff who provide 24/7 care and assistance to its patrons in accordance with Detroit Rescue Mission Ministries’ (“DRRM”) charitable purposes.” In regards to the subject parcel, it was acquired by Petitioner “in late 2012 for the purpose of operating a program to support men, including veterans, in need of assistance with life skills training, detoxification and housing along with Christian worship in furtherance of Petitioner’s charitable programs throughout the City of Detroit.” Furthermore, “Petitioner both owns and occupies the subject parcel solely for the purposes for which Petitioner is incorporated” and “[i]n determining the purpose for which a petitioner uses its property, the petitioner’s articles of incorporation are considered. *Holland Homes v. Grand Rapids*, 219 Mich App 384, 401; 557 NW2d 118 (1996) . . . [i]n the instant case, it cannot be refuted that the Petitioner owns and occupies the subject property by conducting activities which constitute a charitable gift without restriction for the benefit of the general public and an indefinite number of persons.”

Petitioner claims that it meets the criteria to be a charitable institution under Michigan law as “Petitioner provides a service to individuals in accordance with existing laws, for the benefit of an indefinite number of persons by bringing their minds or hearts under the influence of religion, by relieving their bodies from disease, suffering or constraint and by further assisting them to establish themselves for life at the subject property which lessens the burden of our government.” Petitioner also asserts that it “is a charitable institution as enumerated by the Michigan Supreme Court” and meets the factors laid out in *Wexford Medical Group v City of Cadillac*, 474 Mich 192; 713 NW2d 734.

In regards to its Motion under MCR 2.116(C)(9) Petitioner states that the standard “is whether defendant’s defenses are so clearly untenable as [a] matter of law that no factual development could possibly deny plaintiff’s right to recovery. *Hanon v Barber* (1980) 99 Mich App 851, 298 NW2d 866.” Specifically, in this case, “Respondent fails to plead any valid defense to its refusal of Petitioner’s tax exemption application. Contrary to the Respondent’s position, the Petitioner filed its appeal with the Tax Tribunal in accordance with the notice of denial it received from the City of Detroit which permits the filing of an appeal with the Tribunal within 35 days of receipt of said notice.” However, “Petitioner, however, did not receive the final determination [dated July 23 and July 16, 2013] until September 17, 2013 . . . [and] Petitioner invoked its appeal rights in accordance with the contents of the notice which stated that Petitioner had 35 days from receipt of the notice to file its appeal” and it “is disingenuous of Respondent to rely on an affirmative defense that exists only as a result of Respondent’s failure to notify Petitioner on or before the expiration of the 35 day appeal period.”

STANDARD OF REVIEW

There is no specific Tribunal rule governing motions for summary disposition. Therefore, the Tribunal is required to follow the Michigan Rules of Court in rendering a decision on motions for summary disposition. See TTR 215.

Summary disposition under MCR 2.116(C)(9) seeks a determination of whether the opposing party has failed to state a valid defense to the claim asserted against it. The motion is tested by the pleadings alone, with the court accepting all well pleaded allegations as true. See MCR 2.116(G)(5). “When a party’s defenses are so untenable as a matter of law that no factual

development could possibly deny the plaintiff's right to recovery, the motion is properly granted." *Hackel v Macomb County Comm*, 298 Mich App 311, 316; 826 NW2d 753 (2012).

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 this subsection, 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 Petitioner's Motion under MCR 2.116(C)(9) and (10) and finds that there is no genuine issue of material fact in this case, Petitioner has satisfied the requirements for an exemption under MCL 211.7o, and is entitled to summary disposition as a matter of law under MCR 2.116(C)(10). The General Property Tax Act provides that "all property . . . within the jurisdiction of this state, not expressly exempted, shall be subject to taxation." See MCL 211.1. There is no dispute that the subject property, but for any exemption afforded, is subject to ad valorem taxation. See *Michigan Bell Telephone Company v Dep't of Treasury*, 229 Mich App 200, 207; 582 NW2d 770 (1998). Exemption statutes are subject to a rule of strict construction in favor of the taxing authority. See *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661, 664; 378 NW2d 737 (1985); *Ladies Literary Club v Grand Rapids*, 409 Mich 748, 753-54; 298 MW2d 422 (1980). The petitioner must prove, by a preponderance of the evidence, that it is entitled to an exemption. See *ProMed Healthcare v Kalamazoo*, 249 Mich App 490; 644 NW2d 47 (2002). Nevertheless, tax exemption statutes are to be interpreted according to ordinary rules of statutory construction. See *Inter Cooperative Council v Dep't of Treasury*, 257 Mich App 219; 668 NW2d 181 (2003).

The Michigan Court of Appeals has stated that when determining the applicability of a tax exemption:

It is a well-settled principle that, when a specific privilege or exemption is claimed under a statute, charter or act of incorporation, it is to be construed strictly against the property owner and in favor of the public. This principle

applies with peculiar force to a claim of exemption from taxation. Exemptions are never presumed, the burden is on a claimant to establish clearly his right to exemption, and an alleged grant of exemption will be strictly construed and cannot be made out of inference or implication but must be beyond reasonable doubt. In other words, since taxation is the rule, and exemption the exception, the intention to make an exemption ought to be expressed in clear and unambiguous terms; it cannot be taken to have been intended when the language of the statute on which it depends is doubtful or uncertain; and the burden of establishing it is upon him who claims it. *Michigan Bell Telephone Co. v Dep't of Treasury*, 229 Mich App 200, 207-208, 581 NW2d 770, 773 (1998); See [*Detroit v Detroit Commercial College*, 322 Mich 142, 149, 33 NW2d 737 (1948, quoting 2 Cooley, Taxation (4th ed.), § 672, p. 1403.]

Petitioner contends that the subject property is exempt from ad valorem property taxation because Petitioner qualifies as a charitable institution under MCL 211.7o. MCL 211.7o provides an exemption from ad valorem taxation if Petitioner can show that the property under appeal was “owned and occupied by a nonprofit charitable institution solely for the purposes for which it was incorporated . . .” MCL 211.7o. In *Liberty Hill Housing Corp v City of Livonia*, the Michigan Supreme Court set a three factor test that guides the exemption analysis under MCL 211.7o: “(1) the real estate must be owned and occupied by the exemption claimant; (2) the exemption claimant must be a nonprofit charitable institution; and (3) the exemption exists only when the buildings and other property thereon are occupied by the claimant solely for the purposes for which it was incorporated.” 480 Mich 44, 50; 746 NW2d 282 (2008) (citing *Wexford Medical Group v Cadillac*, 474 Mich 192, 203; 713 NW2d 734 (2006)).

Petitioner has provided sufficient evidence to show by a preponderance of the evidence that it both owns and occupies the property within the meaning of MCL 211.7o. In order to occupy the property, the entity moving for the exemption must “at a minimum have a regular physical presence on the property.” *Liberty Hill Housing Corp*, 480 Mich at 44. Furthermore,

“[t]he term occupy requires more than merely having the right to occupy . . . the charitable institution must actually occupy the property, i.e., maintain a regular physical presence there.” *Id.* at n 15. In its brief in support, Petitioner states that it “occupies the subject premises through its staff who provide 24/7 care and assistance to its patrons.” Plaintiffs Brief in Support at 3. In the Petition, which was submitted as an exhibit to the Motion, Petitioner states that the subject property is “used and occupied exclusively by Petitioner” Petition, paragraph 4. The “24/7” presence of Petitioner’s employees on the subject property shows that Petitioner has maintained a physical presence at the subject property. Furthermore, Petitioner submitted a warranty deed showing that it owns the subject property and acquired it on December 21, 2012. See Petitioners Exhibit 1.

Petitioner must next prove that it is a “nonprofit charitable institution.” *Id.* at 50. In *Wexford Medical Group v City of Cadillac*, the Michigan Supreme court laid out a six part test to determine whether or not the claimant is a charitable institution and stated that charity:

[is] a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government.” [*Id.*, quoting *Jackson v. Phillips*, 96 Mass (14 Allen) 539 (1867) (emphasis deleted; alterations in original).]

474 Mich. 192, 214; 713 NW2d 734, 746 (2006). The factors put forth by the court in *Wexford* to determine whether or not the party is a Charitable Institution are:

“1) a charitable institution must be a nonprofit institution, 2) a charitable institution is one that is organized chiefly, if not solely, for charity, 3) A charitable institution does not offer its charity on a discriminatory basis by choosing who, among the group it purports to serve, deserves the services. Rather, a charitable institution serves any person who needs the particular type of charity being offered, 4) [a] charitable institution brings people's minds or hearts under

the influence of education or religion; relieves people's bodies from disease, suffering, or constraint; assists people to establish themselves for life; erects or maintains public buildings or works; or otherwise lessens the burdens of government, 5) [a] charitable institution can charge for its services as long as the charges are not more than what is needed for its successful maintenance, and 6) [a] charitable institution need not meet any monetary threshold of charity to merit the charitable institution exemption; rather, if the overall nature of the institution is charitable, it is a charitable institution regardless of how much money it devotes to charitable activities in a particular year.”

Id. at 216 [internal quotations omitted]. Petitioner contends that it is a “nonprofit institution” as it is “incorporated under Michigan law, and it is a 501(c)(3) charitable institution;” however, the fact that Petitioner is exempt from taxation under federal law is not a determinative factor in this case as the Michigan standard for a charitable exemption is more rigorous than the federal standard. The fact that a petitioner may qualify as a tax exempt entity under federal law (i.e., Section 501(C)(3) of the Internal Revenue Code) creates no presumption in favor of an exemption from property taxes. See *Ladies Literary Club v Grand Rapids*, 409 Mich 748, 753 n 1; 298 NW2d 422 (1980); see also *American Concrete Institute v State Tax Comm*, 12 Mich App 595, 606; 163 NW2d 508 (1968) (“The Institute’s exemption from Michigan ad valorem tax is not determinable by its qualification as an organization exempt from income tax under section 501(c)(3) of the internal revenue code of 1954, but by the much more strict provisions of the Michigan general property tax act . . .”). However, while Petitioner does not provide any formal evidence that it is a nonprofit institution under either Michigan or Federal law, Petitioner’s articles of incorporation clearly state that it is a nonprofit organization as does its Motion and the affidavit of DRRM’s President, Chad Audi.

Petitioner also qualifies as a charitable institution under *Wexford* as its bylaws clearly state both a religious and charitable purpose. By providing “housing, Christian worship, detox,

and life counseling for men” in Detroit, Petitioner satisfies the requirements of a charitable organization. While Petitioner does serve a limited population in that it discriminated based on sex in regards to this property the population is not so limited that it would disqualify Petitioner. See *Congregation Yagdil Torah v Southfield*, unpublished opinion per curiam of the Court of Appeals, issued July 22, 2014 (Docket No. 314735).

As to the fourth and sixth factors, Petitioner states that it assists men and veterans in providing “housing . . . [and] detox,” which would relieve their bodies from suffering. Furthermore, Petitioner’s mission statement indicates that its goal is to share “the love of Jesus Christ and the message of hope in His Gospel,” which would fit within the requirements that the organization bring the “minds or hearts under the influence of . . . religion” and bring[s]. . . minds or hearts under the influence of . . . religion” through its programs and “relieves suffering” by providing housing and support for homeless men. *Wexford*, at 214. Furthermore, Petitioner’s programs relieve the “burden of government” by providing housing, support, and education for the people who use its facilities that, in some cases, would rely on the government for those same services.

In support of its claim that the fifth factor is satisfied, Petitioner states that “DRRM utilizes it[s] charitable contributions to support its facilities . . .” which leads to the conclusion that Petitioner does not charge its clients but instead relies on outside funding to support its organization. As such, Petitioner has shown that it is a “non-profit charitable institution.”

The only remaining issue is whether or not the “buildings and other property thereon are occupied by the claimant solely for the purposes for which it was incorporated.” Petitioner’s Articles of Association state that “the purpose of the [] corporation is to hold real and personal

property . . . for philanthropic purposes, including general gospel and mission work at the City of Detroit.”¹ This statement is clarified in the Amended Articles of Association to include “help[ing] the disadvantaged, the homeless and transient . . . through programs and services addressing their spiritual, physical, emotional, and social needs.” Amended Articles of Association, p. 1. The Articles of Association also state that the same programs and services are offered to “women and children.” *Id.* DRRM uses the property under appeal to provide “housing, Christian worship, detox, and life skills counseling . . . in accordance with DRRM[‘s] purposes.” Affidavit of Chad Audi, President DRRM, at 2. Petitioner’s use of the property falls within the broad umbrella of purpose articulated in its Articles of Association and, as such, Petitioner has satisfied the requirements for an exemption under MCL 211.7o.

Petitioner has shown that it satisfies the requirements of MCL 211.7o and as Respondent has failed to present any evidence that would indicate the existence of a material factual dispute Petitioner is entitled to Summary Disposition under MCR 2.116(C)(10). As such, it is not necessary for the Tribunal to consider whether or not Petitioner is entitled to Summary Disposition under MCR 2.116(C)(9).

Therefore,

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

¹ Articles of Association are defined by Black’s Law Dictionary as “a governing document – similar to articles of incorporation – that legally creates a nonstick or nonprofit organization . . .” and, as such, will be treated as articles of incorporation for purposes of this Order. ARTICLES OF ASSOCIATION, Black’s Law Dictionary (9th ed. 2009).

IT IS FURTHER ORDERED that Petitioner is entitled to a charitable property exemption under MCL 211.7o for the 2013 and 2014 tax years.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally provided in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, and prior to July 1, 2012, at the rate of 1.09%, and (iv) after June 30, 2012, through December 31, 2014, at the rate of 4.25%.

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

By: Steven H. Lasher

Entered: Nov 26, 2014
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