

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

Southern Michigan Rubber Inc.,
Petitioner,

v

MTT Docket No. 16-000186

Michigan Department of Treasury,
Respondent.

Tribunal Member Presiding
Steven H Lasher

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

INTRODUCTION

On July 1, 2016, Respondent filed a motion requesting that the Tribunal enter summary disposition in its favor and dismiss the above-captioned case. In the Motion, which was filed pursuant to MCR 2.116(C)(4), Respondent contends that it is entitled to judgment as a matter of law because Petitioner failed to file its appeal within 35 days of the issuance of the final assessments at issue, as required by MCL 205.22.

Petitioner has not filed a response to the Motion.

RESPONDENT'S CONTENTIONS

Respondent contends that it is entitled to judgment pursuant to MCR 2.116(C)(4) because Petitioner failed to file its appeal within 35 days of the issuance of the final assessments at issue, as required by MCL 205.22. Petitioner filed MBT returns for the 2010 and 2011 tax years seeking the SBAC credit. Treasury denied the SBAC credit for both years and adjusted Petitioner's returns accordingly. Petitioner did not contest the intents to assess issued on June 5, 2014, and final assessments were issued on August 14, 2014. These assessments became final and not subject to review on November 12, 2014, per MCL 205.22(5). Petitioner filed its petition with the Tribunal 536 days later on February 6, 2016.

APPLICABLE LAW

There is no specific Tribunal rule governing motions for summary disposition; thus the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions.¹

¹ See TTR 215.

A. Motions for Summary Disposition under MCR 2.116(C)(1).

This court rule states that a motion for summary disposition is appropriate where the “court lacks jurisdiction over the person or property.”² When presented with a motion for summary disposition pursuant to MCR 2.116(C)(1), the Tribunal considers all affidavits, pleadings, depositions, admissions, and documentary evidence submitted by the parties in the light most favorable to the nonmoving party.³

B. Motions 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.⁴ 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.” MCR 2.116(G)(6). A motion under MCR 2.116(C)(4) is appropriate where the plaintiff has failed to exhaust its administrative remedies.⁵

C. Motions for Summary Disposition under MCR 2.116(C)(7).

Under MCR 2.116(C)(7), the claim is barred because of “release, payment, prior judgment, immunity granted by law, statute of limitations, statute of frauds, an agreement to arbitrate or to litigate in a different forum, infancy or other disability of the moving party, or assignment or other disposition of the claim before commencement of action.”

In *RDM Holdings, LTD v Continental Plastics Co*,⁶ the Michigan Court of Appeals addressed a motion for summary disposition filed under MCR 2.116(C)(7). The Court stated:

[T]his Court must consider not only the pleadings, but also any affidavits, depositions, admissions, or other documentary evidence filed or submitted by the parties. The contents of the complaint must be accepted as true unless contradicted by the documentary evidence. This Court must consider the documentary evidence in a light most favorable to the nonmoving party. If there is no factual dispute, whether a plaintiff’s claim is barred under a principle set forth in MCR 2.116(C)(7) is a question of law for the court to decide. If a factual dispute exists, however, summary disposition is not appropriate.⁷

D. Motions for Summary Disposition under MCR 2.116(C)(10).

² MCR 2.116(C)(1).

³ See MCR 2.116(G)(5); see also *Yoost v Caspari*, 295 Mich App 209, 221; 813 NW2d 783 (2012).

⁴ *Id.*

⁵ See *Citizens for Common Sense in Gov’t v Attorney Gen*, 243 Mich App 43; 620 NW2d 546 (2000).

⁶ *RDM Holdings, LTD v Continental Plastics Co*, 281 Mich App 678; 762 NW2d 529 (2008)

⁷ *Supra* at 687.

MCR 2.116(C)(10) provides for summary disposition when “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.”⁸ The Michigan Supreme Court, in *Quinto v Cross and Peters Co.*,⁹ provided the following explanation of MCR 2.116(C)(10):

MCR 2.116 is modeled in part on Rule 56(e) of the Federal Rules of Civil Procedure . . . [T]he initial burden of production is on the moving party, and the moving party may satisfy the burden in one of two ways.

First, the moving party may submit affirmative evidence that negates an essential element of the nonmoving party's claim. Second, the moving party may demonstrate to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim. If the nonmoving party cannot muster sufficient evidence to make out its claim, a trial would be useless and the moving party is entitled to summary judgment as a matter of law. In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4).

In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving 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. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *Id.* at 361-363. (Citations omitted.)

In the event, however, it is determined that an asserted claim can be supported by evidence at trial, a motion under subsection (C)(10) will be denied.¹⁰

CONCLUSIONS OF LAW

Pursuant to MCL 205.22(1), “[a] taxpayer aggrieved by an assessment, decision, or order of the department may appeal the contested portion of the assessment, decision, or order to the tax tribunal within 35 days”¹¹ Further, an “assessment, decision, or order of the department, if

⁸ *Id.*

⁹ *Quinto v Cross and Peters Co.*, 451 Mich 358; 547 NW2d 314 (1996)(citations omitted).

¹⁰ *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).

¹¹ *Id.*

not appealed in accordance with this section, is final and is not reviewable in any court by mandamus, appeal, or other method of direct or collateral attack.”¹² Respondent contends that Petitioner failed to timely file its petition in accordance with MCL 205.22(1), and as such, the Tribunal lacks subject-matter jurisdiction over its appeal of the final assessments at issue. The Tribunal notes, however, that subject-matter jurisdiction is defined as “[j]urisdiction over the nature of the case and the type of relief sought”¹³ The Tribunal would have jurisdiction over the nature of this case and the type of relief sought regardless of whether the petition was timely filed. See *Bonar v Dep’t of Treasury*,¹⁴ wherein the Court of Appeals held that “the MTT has subject matter jurisdiction over tax appeals even when that jurisdiction is not properly invoked in a particular case.” Accordingly, Respondent’s motion would have been more appropriately filed under MCR 2.116(C)(7), and shall be granted under that provision, because this appeal is barred by the 35-day statute of limitations and the Tribunal has no equitable power or authority to grant a delayed appeal.¹⁵ Alternatively, the motion could be granted under MCR 2.116(C)(1), which entitles the moving party to summary disposition when the court lacks jurisdiction over the person or property. Although MCR 2.116(D)(1) states that a motion on such grounds must be raised in a party’s first motion or responsive pleading, whichever is filed first, lack of “jurisdiction is so serious a defect in the proceedings that a tribunal is duty-bound to dismiss a plaintiff’s claim even if the defendant does not request it.”¹⁶ Moreover, jurisdictional issues may be raised at any time under the Tribunal’s Rules of Practice and Procedure.¹⁷

JUDGMENT

Given the above, the Tribunal finds that the petition filed in the above-captioned case is untimely and the appeal is barred by the statute of limitations. Therefore,

IT IS FURTHER ORDERED that Respondent’s Motion for Summary Disposition is GRANTED.

IT IS FURTHER ORDERED that Assessment Numbers UD09310 and UD09311 are AFFIRMED.

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.

¹² MCL 205.22(4).

¹³ Black’s Law Dictionary (9th ed).

¹⁴ *Bonar v Dep’t of Treasury*, unpublished opinion per curiam of the Court of Appeals, issued May 30, 2013 (Docket No. 310707), p 2 n 1.

¹⁵ The Tribunal’s powers are limited to those authorized by statute and do not include powers of equity. See *Federal-Mogul Corp v Dep’t of Treasury*, 161 Mich App 346; 411 NW2d 169 (1987) and *Elec Data Sys Corp v Flint Twp*, 253 Mich App 538; 656 NW2d 215 (2002).

¹⁶ *Electronic Data Systems Corp v Flint Twp*, 253 Mich App at 544.

¹⁷ TTR 229(3)(a).

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.¹⁸ 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.¹⁹ 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.²⁰ Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.²¹

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."²² A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.²³ The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.²⁴

Entered: August 12, 2016
ejg

By: Steven H. Lasher

¹⁸ See TTR 261 and 257.

¹⁹ See TTR 217 and 267.

²⁰ See TTR 261 and 225.

²¹ See TTR 261 and 257.

²² See MCL 205.753 and MCR 7.204.

²³ See TTR 213.

²⁴ See TTR 217 and 267.