

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

Spartan Stores, Inc. and Family Fare, LLC,
Petitioners,

v

MTT Docket No. 397618

City of Grand Rapids,
Respondent.

Tribunal Judge Presiding
Kimbal R. Smith III

ORDER DENYING RESPONDENT'S
MOTION FOR IMMEDIATE CONSIDERATION

ORDER GRANTING RESPONDENT'S
MOTION FOR SUMMARY DISPOSITION

INTRODUCTION

On October 19, 2012, Respondent filed a Motion for Summary Disposition and Motion requesting that the Tribunal immediately consider its request for summary disposition pursuant to MCR 2.116(C)(4).

On November 2, 2012, the Tribunal defected Respondent for failure to pay the appropriate filing fee. The outstanding fee was submitted on November 13, 2012.

On October 26, 2012, Petitioner Spartan Stores, Inc. (hereafter "Petitioner") filed a response to the Motion.

On October 26, 2012, Family Fare, LLC, filed a Motion to be added as a co-Petitioner. No response to the Motion was filed. The Tribunal granted the Motion on November 28, 2012.¹

The issue brought by Respondent in its Motion is whether Petitioner is a party in interest and whether Petitioner had standing to file the appeal in this case. Petitioner is appealing the 2010, 2011, and 2012 assessed and taxable values.

¹ The inclusion of Family Fare, LLC, as a co-Petitioner after the filing of Respondent's Motion for Summary Disposition does not have any effect on the Tribunal's determination.

Based upon the Findings of Fact and the Conclusions of Law, the Tribunal finds that granting Respondent's Motion is appropriate as Petitioner has failed to submit sufficient and reliable evidence proving it is a party-in-interest and was authorized to appeal the assessment of the subject property for the tax years at issue.

RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

Respondent contends that Spartan Stores, Inc., has no standing as a party in interest under MCL 205.735a(6). Respondent states that Spartan Stores, Inc., is the owner of Family Fare, LLC, and that Family Fare, LLC, has assumed the lease of D&W Food Centers, Inc. Family Fare, LLC, is now the lessee of a portion of the subject property. Jade Pig Ventures-Breton Meadows is the owner and lessor. Respondent states that the subject property is a shopping center "with multiple lessees on one parcel." Family Fare, LLC, pays a portion of the property taxes to Jade Pig Ventures as additional rent. Respondent states that the City Assessor and valuation expert were told by Spartan Stores, Inc., that it was unable to get leases for the other tenants and did not have authority to allow access to the remainder of the subject property during a site visit.

Respondent argues that Family Fare, LLC, is a tenant for only a portion of the subject property and pays to the lessor only a portion of the property taxes. Respondent contends that because of this, and because Family Fare, LLC has no interest in the remaining portion of the subject, it is not a party in interest. Respondent cites *Walgreen Co v Macomb Twp*, 280 Mich App 58; 760 NW2d 594 (2008), in support of this contention. Respondent further argues that if Petitioner was a party in interest, it would have been able to allow access to the entire property and provide the leases for the other tenants. Respondent contends that Family Fare, LLC, has "an interest in a rental space in a shopping center, and the lease contract." Further, if Family Fare, LLC, decided not to pay its share of the taxes, it would not owe the City anything. Respondent asserts that the City's recourse for any unpaid taxes would be to "pursue payment from the owner of the property because the owner is the only recognized owner and taxpayer to the property."

PETITIONER'S RESPONSE

Petitioner contends that it is a party in interest. Petitioner states that, pursuant to the lease, Family Fare, LLC, is "responsible for Tenant's Share of all Operating Costs incurred and all Taxes levied or billed . . . during the Term with respect to the Project."

Petitioner contends that it is responsible for 78.71% of the taxes for the subject property. The lease contains no provision regarding Petitioner's right to file an appeal to contest the assessment of the subject property. Petitioner argues that because the lessor did not file an appeal, Petitioner had the right to do so as a party in interest that "bear[s] the economic burden of paying approximately 78.71% of the property taxes." Petitioner states that it did not have permission, at the time of the site visit, to enter the non-retail areas it did not lease or to provide Respondent with a copy of those leases. Petitioner subsequently contacted the lessor to allow access and provide a copy of the leases.

Petitioner contends that *Walgreen Co* does not apply because it dealt with the issue of whether a lessee has standing to appeal to the March Board of Review, which is not an issue present in this case. Petitioner asserts that a similar motion was filed in MTT Docket No. 370323 and it was determined that Spartan Stores, Inc., was a party in interest.

FINDINGS OF FACT

The subject property is located in the City of Grand Rapids and is known as 4325 Breton Road SE, Parcel No. 41-18-21-485-020. The property is classified for assessment purposes as commercial real property.

The property is currently owned by Jade Pig Ventures-Breton Meadows. The original lease was assigned to Family Fare, LLC, on March 27, 2006. Spartan Stores, Inc. is the owner of Family Fare, LLC. Per the December 22, 1999, Amended and Restated Lease, Article 3.2(a) "[a]s part of Additional Rent, Tenant shall be responsible for Tenant's Share of all Operating Costs incurred and all Taxes levied or billed . . . during the Term with respect to the Project." There is no provision in the lease allowing the lessee to appeal the assessment of the subject property.

APPLICABLE LAW

Respondent moves for dismissal under MCR 2.116(C)(4). Dismissal under this Court Rule 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. MCR 2.116(G)(5). 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 to MCR 2.116(C)(4) is appropriate where the plaintiff has failed to exhaust administrative remedies. *Citizens for Common Sense in Government v Attorney General*, 243 Mich App 43; 620 NW2d 546 (2000).

CONCLUSIONS OF LAW

The Tribunal, having considered the Motion, the response, and the case file, finds that Respondent's Motion should be granted because the Tribunal lacks jurisdiction over this appeal, as Petitioner is not a party in interest. The Tribunal further finds that, although Respondent requested immediate consideration of the Motion, Respondent failed to include a statement indicating that it had notified Petitioner of the filing for immediate consideration and indicating whether Petitioner would be filing a response. In addition, Respondent failed to remit the necessary filing fee until November 13, 2012. As such, immediate consideration is not appropriate.

For an appeal of the valuation of commercial property, the jurisdiction of the Tribunal is invoked "by a party in interest, as petitioner, filing a written petition on or before May 31 of the tax year involved." MCL 205.735a(6). The Michigan Rules of Court also provide that actions must be prosecuted in the name of the "real party in interest." MCR 2.201(B). To have standing before the Tribunal, a party must be aggrieved by a decision of a board of review. *Covert Twp v Consumers Power Co*, 217 Mich App 352; 551 NW2d 464 (1996) citing *Richland Twp v State Tax Comm*, 210 Mich App 328, 335; 533 NW2d 369 (1995). In this case, however, Petitioner was not required to protest the assessment of the subject property to the Board of Review, as the property is classified as commercial. See MCL 205.735a. A party is aggrieved by a judgment or order when it operates on the party's rights and property or bears directly on the party's interest. *Covert Twp* at 356 citing *Midland Cogeneration Venture Ltd Partnership v Public Service Comm*, 199 Mich App 286, 304; 501 NW2d 573 (1993). An appeal can be taken only by parties who are affected by the judgment appealed from. In other words, there must be some substantial rights of the parties that would be prejudiced by the judgment. *Covert Twp* at 356 citing *Grace Petroleum Corp v Public Service Comm*, 178 Mich App 309, 312-313; 443 NW2d 790 (1989).

The Tribunal finds that Respondent's reliance on *Walgreen Co* is misplaced because Petitioner is not required to protest to the Board of Review and therefore there is no issue with regard to whether Petitioner, a lessee, has standing to bring an appeal to the March Board of Review. Here, Spartan Stores, Inc., is the owner of Family Fare, LLC, a lessee of the subject property responsible for the payment of 78.71% of the property taxes. Pursuant to Article 3 of the lease, Petitioner is responsible for the taxes as part of additional rent. Petitioner's reference to MTT Docket No. 370323, in which a summary disposition in favor of the respondent was denied, is not determinative as to the outcome of the present appeal. In Docket No. 370323, the lessee was responsible for "payment of all property tax on the subject property." Further, the lease agreement in that case gave Family Fare, LLC, the right to contest the valuation of the subject property if the owner failed to do so. Conversely, Petitioner here is not responsible for 100% of the property taxes for the subject property and there is no provision that Petitioner may appeal the valuation if the owner chose not to do so. Petitioner also did not have a letter of authorization to appeal the assessment of the subject property on the owner's behalf. As indicated by Respondent, if the property taxes were not paid, Respondent's actions would be against the owner, Jade Pig Ventures, and not Petitioner. As such, the Tribunal finds that Petitioner is not a proper party in interest with standing to appeal the assessment of the subject property for the 2010 – 2012 tax years. Petitioner has failed to invoke the Tribunal's jurisdiction pursuant to MCL 205.735a(6) and summary disposition is appropriate under MCR 2.116(C)(4). Therefore,

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

MICHIGAN TAX TRIBUNAL

By: Kimbal R. Smith III

Entered: December 05, 2012