

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

Elm Investment Company,
Petitioner,

v

MTT Docket No. 320438

City of Detroit,
Respondent.

Tribunal Judge Presiding
Kimbal R. Smith III

ORDER DENYING PETITIONER’S MOTION FOR SUMMARY DISPOSITION

ORDER GRANTING RESPONDENT’S MOTION FOR SUMMARY
DISPOSITION

The Tribunal, having given due consideration to the file in the above-captioned case, finds:

1. Administrative Law Judge Thomas A. Halick issued a Proposed Order on October 21, 2011. The Proposed Opinion and Judgment states, in pertinent part, “the parties shall have 20 days from date of entry of this Proposed Opinion and Judgment to file exceptions and written arguments with the Tribunal. . . . The exceptions and written arguments shall be limited to the evidence admitted at the hearing.”
2. On November 2, 2011, Petitioner filed exceptions to the Proposed Order. In the exceptions, Petitioner states:
 - a. “The proposed opinion states on page 3 that the judgment of foreclosure did not extinguish the tax debt owing . . . Michigan case law supports the opposite proposition, that the judgment of tax foreclosure extinguishes the tax debt owed when property becomes absolute in the foreclosing governmental unit (FGU) which is either the county or the State.”
3. On November 9, 2011, Respondent filed a response to Petitioner’s exceptions. In the response, Respondent states:

- a. “In filing its exception Petitioner has failed to demonstrate good cause for modification of the proposed opinion. . . . Specifically, Petitioner has not alleged or demonstrated that an error of law, mistake of fact or fraud has occurred as required by Tax Tribunal Rule 205.1348. Petitioner has merely reiterated its argument in chief.”
4. The Administrative Law Judge properly considered the testimony and evidence submitted in the rendering of the Proposed Opinion and Judgment. In its exceptions, Petitioner merely restates its arguments advanced in its Motion for Summary Disposition. As such, the Tribunal finds that the Administrative Law Judge fully and adequately addressed all of Petitioner’s exceptions in his Proposed Opinion and Judgment. Further, as Respondent contends, Petitioner has failed to demonstrate good cause to justify the modifying of the Proposed Opinion and Judgment. More specifically, Petitioner did not demonstrate there was an error of law, mistake of fact, or fraud in the issuing of the Proposed Order.
5. Given the above, Petitioner has failed to show good cause to justify the modifying of the Proposed Opinion and Judgment or the granting of a rehearing. See MCL 205.762. As such, the Tribunal adopts the Proposed Opinion and Judgment as the Tribunal’s final decision in this case. See MCL 205.726. The Tribunal also incorporates by reference the Findings of Fact and Conclusions of Law contained in the Proposed Opinion and Judgment in this Final Opinion and Judgment. Therefore,

IT IS ORDERED that Petitioner’s Motion for Summary Disposition is DENIED.

IT IS FURTHER ORDERED that Respondent’s Motion for Summary Disposition is GRANTED and this case shall be DISMISSED.

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

MICHIGAN TAX TRIBUNAL

Entered: April 10, 2012 By: Kimbal R. Smith III
krb

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

Elm Investment Company,
Petitioner,

v

MTT Docket No. 320438

City of Detroit,
Respondent.

Administrative Law Judge Presiding
Thomas A. Halick

ORDER DENYING PETITIONER’S MOTION FOR SUMMARY DISPOSITION

PROPOSED ORDER GRANTING RESPONDENT’S
MOTION FOR SUMMARY DISPOSITION

The parties filed cross motions for summary disposition, supporting briefs, and reply briefs. Petitioner seeks a refund of property taxes paid for the year 2005. Respondent denies that Petitioner is entitled to a refund and requests that the case be dismissed.

Standard of Review

Petitioner seeks summary disposition under MCR 2.116(C)(7) and (10), TTR 230, and TTR 111. Respondent seeks judgment under MCR 2.116(C)(8) and (10). Judgment shall be granted under the standards applicable to MCR 2.116(C)(10), if there is no genuine issue of material fact, based on the well-pled facts, documentary evidence, and affidavits. MCR 2.116(G)(5). “Affidavits, depositions, admissions, or other documentary evidence in support of the grounds asserted in the motion are required . . . (b) when judgment is sought based on subrule (C)(10).” MCR 2.116(G)(3)(b).

“When a motion under subrule (C)(10) is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his or her pleading, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, judgment, if appropriate, shall be entered against him or her.” MCR 2.116(G)(4).

The facts and admissible evidence must be considered in the light most favorable to the nonmoving party. *Maiden v Rozwood*, 461 Mich 109; 597 NW2d 817 (1999). A court may not make findings of fact or weigh credibility when deciding the motion. *In Re Handleman*, 266 Mich App 433 (2005). The trial court must give the benefit of any reasonable doubt to the nonmoving party. *Schultes v Naylor*, 195 Mich App 640, 645; 491 NW2d 240 (1992). The court must then determine whether a

record might be developed that would leave open an issue upon which reasonable minds might differ. *Featherly v Teledyne Industries, Inc*, 194 Mich App 352, 357; 486 NW2d 361 (1992).

A motion under MCR 2.116(C)(8) tests the legal sufficiency of the claim based only on the pleadings.

Under MCR 2.116(C)(7), the moving party must prove that the claim is barred by operation of law, including release, payment, or prior judgment. A motion under MCR 2.116(C)(7) must be supported by affidavits, depositions, admissions, or other documentary evidence, unless the grounds asserted appear on the face of the pleadings. MCR 2.116(G)(2).

Summary of Undisputed Material Facts

Petitioner acquired title to the subject property at a tax foreclosure auction held by the Wayne County Treasurer, who issued a deed to Petitioner on September 29, 2005. Petitioner received a tax bill for the 2005 summer property taxes in the amount of \$238.24, which Petitioner paid. Petitioner seeks a refund of the 2005 taxes paid. Petitioner has referred to this as a “test case.”

The subject property was sold for the delinquency of the 2003 property tax assessment. These taxes became a debt due on December 31, 2002. The taxes remained unpaid on March 1, 2004, and the property was forfeited for nonpayment of the 2003 taxes. Thereafter, the Treasurer commenced a foreclosure action. The judgment of foreclosure was entered on or about March 31, 2005. The taxpayer failed to pay the taxes and absolute title vested to the Treasurer on March 31, 2005.

The property taxes for 2005 were assessed to the property on December 31, 2004, and became a debt due to the local unit of government at that time.

Law and Analysis

The taxable status of real property for a tax year is determined on December 31 of the preceding year (“Tax Day”). MCL 211.2(2). Property taxes become a debt due to the local unit of government on Tax Day. *Id.* Property taxes become a lien on a property on either December 1 of the tax year or another date that is established by the city or village charter. MCL 211.40. The Detroit City Charter established July 1 as the lien date. Therefore, the 2005 taxes were a debt due on December 31, 2004, and became a lien against the property on July 1, 2005.

If property taxes for a tax year remain unpaid as of March 1 of the following year, the property is forfeited to the county treasurer for the delinquent taxes. MCL 211.78g(1). “Forfeiture” means that the county treasurer acquires the right to sue to foreclose upon the lien if the property is not redeemed. The treasurer does not acquire any right, title, or interest in the property as a result of the forfeiture. MCL 211.78(7)(b). Real Property Taxes in Michigan p 134. The county treasurer is required to notify parties that the property was forfeited and that title will be lost if the taxes are not paid by March 31 immediately after entry of a judgment of foreclosure (this is March 31 of the year

following the forfeiture). The foreclosure action is commenced in circuit court, not later than June 15 following the forfeiture. A hearing is held not more than 30 days before the following March 1.

In this case, the subject property was sold for the delinquency of the 2003 property tax assessment. The property was forfeited for nonpayment of the 2003 taxes on March 1, 2004. Thereafter, a judgment of foreclosure was entered on or before March 31, 2005. The taxpayer failed to pay the taxes and absolute title vested in the Treasurer on March 31, 2005. This had the effect of extinguishing all liens that had attached as of that date (the liens that attached on July 1, 2003 and July 1, 2004).

Property taxes for 2005 were assessed to the property on December 31, 2004, and became a debt due to the local unit of government at that time. The taxes were due prior to the time the county treasurer took absolute title to the property on March 31, 2005. The judgment of foreclosure did not extinguish that tax debt. The lien that secured the 2005 taxes arose by operation of law on July 1, 2005. That lien was security for the 2005 property taxes, which were already a debt due to the city. Therefore, when Petitioner acquired the property at the auction on September 9, 2005, the property was subject to the lien that arose July 1, 2005, that secured the 2005 property taxes, which were imposed on the property before the treasurer took title.

As pointed out in Respondent's Brief in Support, the tax lien that arose on July 1, 2005, was not extinguished pursuant to MCL 211.78k(c). It could not have been extinguished because it was not in existence at the time the fee simple title vested in the treasurer on March 31, 2005, pursuant to the judgment of foreclosure. The statute plainly refers to all tax liens in existence as of the date of foreclosure – that is, the liens that arose on July 1, 2003 (for 2003 taxes) and July 1, 2004 (for 2004 taxes) – the liens that secured the delinquent taxes that were the subject of the judgment of foreclosure.

The foregoing discussion together with the law and analysis set forth in Respondent's Motion for Summary Disposition and Brief in Support establish that Petitioner's position lacks merit. Petitioner claims that the city had no "right to make a summer tax assessment lien on July 1. . . ." Petitioner is misguided in several respects – most significantly by confusing the Tax Day (when the taxes were assessed and become a debt due) with the date that the tax lien arose (July 1).

Furthermore, there is no merit to Petitioner's interpretation of MCL 211.78(m)(6). That section plainly states that taxes that are due on the property as of December 31 (in this case, the Tax Day for the 2005 tax year in which the foreclosure judgment is entered) are canceled *if the property is transferred to the state, city, village, or township or retained by the foreclosing governmental unit*. By so stating, the only reasonable interpretation is that the 2005 property taxes were *not* canceled because the property was sold at auction to a private party. This statute does not refer to the vesting of title in the treasurer by operation of law on March 31, 2005, but rather only applies if the property is transferred to the state, city, village or township or retained by the foreclosing unit, none of which occurred in this case. There is no genuine issue of material fact and Respondent is entitled to a judgment as a matter of law.

Judgment

IT IS ORDERED that Petitioner's Motion for Summary Disposition is DENIED.

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition is GRANTED and this case shall be DISMISSED.

IT IS FURTHER ORDERED that the parties shall have 20 days from date of entry of this Proposed Opinion and Judgment to file exceptions and written arguments with the Tribunal consistent with Section 81 of the Administrative Procedures Act (MCL 24.281). The exceptions and written arguments shall be limited to the evidence admitted at the hearing. This Proposed Opinion and Judgment, together with any exceptions and written arguments, shall be considered by the Tribunal in arriving at a final decision in this matter pursuant to Section 26 of the Tax Tribunal Act (MCL 205.726).

MICHIGAN TAX TRIBUNAL

Entered: October 21, 2011

By: Thomas A. Halick