

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

Kaye Center, LLC,
Petitioner,

v

MTT Docket No. 417571

City of Southfield,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

ORDER GRANTING RESPONDENT'S MOTION FOR LEAVE TO FILE AMENDED
ANSWER

FINAL OPINION AND JUDGMENT

I. INTRODUCTION

Petitioner is appealing the valuation of the subject property by Respondent for the 2011 tax year. On September 9, 2011, Respondent filed a Motion for Summary Disposition pursuant to MCR 2.116(C)(10) and a Motion for Leave to File Amended Answer. Petitioner has not filed a response to Respondent's Motions. For the reasons stated herein, the granting of Respondent's Motions is appropriate at this time.

II. RESPONDENT'S CONTENTIONS

Respondent contends that on May 31, 2011, Petitioner filed a Petition with the Tribunal contesting the taxable value of the subject property for the 2011 tax year. Respondent determined the true cash value to be \$3,116,440. Petitioner stated in its petition that the true cash value of the subject property is not greater than \$2,916,440. Petitioner's Petition was signed by its representative, Myles B. Hoffert, Esq., in accordance with MCR 2.114. Respondent contends

that pursuant to MCR 2.114(D), “a signature of an attorney constitutes a certification that the signer has read the document, the document is well grounded in fact, and the document is not interposed for any improper purpose.” Respondent contends in its Motion for Leave to File Amended Answer that “after considering the facts and circumstances surrounding this appeal, Respondent concurs in the relief requested by Petitioner.” Respondent also contends this in its Motion for Summary Disposition. For this reason, Respondent asks the Tribunal to grant its Motion for Summary Disposition under MCR 2.116(C)(10), which states that a motion for summary disposition may be granted 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.’ ” Respondent also asks the Tribunal to grant its Motion for Leave to File Amended Answer pursuant to TTR 225.

III. FINDING OF FACTS

On May 31, 2011, Petitioner filed a petition with the Tribunal contending that the true cash value was no higher than \$2,916,440 for the 2011 tax year. The subject property, parcel no. 76-24-18-226-050, is real commercial property located at 28610 Northwestern Highway in the City of Southfield. Respondent assessed the true cash value at \$3,116,440. Respondent has amended its answer to petition and agrees with the relief Petitioner is seeking.

IV. APPLICABLE LAW

Respondent moves for summary disposition pursuant to MCR 2.116(C)(10). In *Occidental Dev LLC v Van Buren Twp*, MTT Docket No. 292745 (March 4, 2004), the Tribunal stated “[a] motion for 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 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. *Smith v Globe Life Insurance*, 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 subsection (C)(10) will be denied. *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. *Quinto v Cross & Peters Co*, 451 Mich 358, 362-63; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)). The moving party bears the initial burden of supporting his position by presenting his documentary evidence for the court to consider. *Neubacher v Globe Furniture Rentals*, 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 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. *McCart v J Walter Thompson*, 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. *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1992).

V. CONCLUSIONS OF LAW

The Tribunal, having carefully considered the case file and Respondent's Motions, finds that granting Respondent's Motion for Summary Disposition under MCR 2.116(C)(10) is warranted as is granting Respondent's Motion for Leave to File Amended Answer. Respondent

has sufficiently proven that no genuine issue of material fact is disputed and that Respondent is entitled to summary judgment as a matter of law. Respondent has agreed to accept Petitioner's contention that the true cash value is \$2,916,440 and the state equalized value is \$1,458,220. As this was the only issue that Petitioner was appealing there is no longer a dispute for the Tribunal to consider. Moreover, with regards to the Motion for Leave, TTR 225 provides that "A party may amend or supplement its pleading...by leave of the tribunal." Granting the Motion for Leave to File Amended Answer supports Respondent's Motion for Summary Disposition. Therefore, the Tribunal finds the true cash value, state equalized value, and taxable value of the subject property as listed below:

Parcel Number: 76-24-18-226-050

Year	TCV	SEV	TV
2011	\$2,916,440	\$1,458,220	\$1,458,220

VI. JUDGMENT

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

IT IS FURTHER ORDERED that Respondent's Motion for Leave to File Amended Answer is GRANTED.

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 provided in this Final Opinion and Judgment within 20 days of entry of this 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 as required by this Final Opinion and Judgment 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 of 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, 2007, at the rate of 5.81% for calendar year 2008, (ii) after December 31, 2008, at the rate of 3.31% for calendar year 2009, (iii) after December 31, 2009, at the rate of 1.23% for calendar year 2010, and (iv) after December 31, 2010, at the rate of 1.12% for calendar year 2011.

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

MICHIGAN TAX TRIBUNAL

Entered: November 22, 2011
ktr

By: Steven H. Lasher