

STATE OF MICHIGAN  
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH  
MICHIGAN TAX TRIBUNAL

Grace & Wild, Inc.,  
Petitioner,

v.

MTT Docket No. 358562

Michigan Department of Treasury,  
Respondent.

Tribunal Judge Presiding  
Kimbal R. Smith, III

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

ORDER OF DISMISSAL

**I. INTRODUCTION**

Petitioner, Grace & Wild, Inc, appeals the property tax classification and subsequent taxation of Parcel No. 22-99-46-236-892. The City of Farmington Hills classified the property under Section 34c of the General Property Tax Act as commercial personal. Petitioner maintains the parcel should be classified as industrial personal. Petitioner timely protested the classification to the March Board of Review and the State Tax Commission (STC) as required by MCL 211.34c(6). On December 1, 2008, Petitioner filed its Petition at the Tribunal requesting “redetermination of the property tax classification . . . .” Petitioner also asks that the Tribunal find Petitioner not liable for the assessed tax, interest, and penalties. Additionally, Petitioner claims the property has been misclassified and that MCL 211.34c(6) circumvents its constitutional rights by denying due process and equal protection under both the Michigan Constitution and the Constitution of the United States of America. On December 15, 2008, Respondent filed a Motion for Summary Disposition under MCR 2.116(C)(4) claiming that the Tribunal lacked subject matter jurisdiction over the matter. On December 26, 2008, Petitioner

filed a timely response to the motion on December 26, 2008. Petitioner has also filed suit in circuit court contesting the constitutionality of MCL 211.34c(6).

## **II. FINDINGS OF FACT**

Petitioner owns personal property located at 23705, 23801, and 23815 Industrial Park Drive in Farmington Hills, Michigan. Petitioner uses the personal property in its business, which consists of providing teleproduction and presentation services through operating divisions such as sound stage rental, studio and remote production, motion picture processing and printing, film transfer, computer graphics, and editorial services. The personal property at issue consists of high definition digital video production equipment, digital imaging equipment, digital editing equipment, replication equipment, digital high definition film transfer equipment, film processing equipment, audio postproduction equipment, and other production related and administrative office equipment. For the 2008 tax year, the City of Farmington Hills classified Petitioner's personal property as "commercial personal." Prior to the 2008 tax year, Petitioner's personal property was classified as industrial personal.

MCL 211.34c(6) provides that the administrative remedy for those contesting property classifications is to first appear before the March Board of Review. Following an adverse ruling from the Board of Review, the statute then requires appeal before the STC. *Id.* Petitioner adhered to these requirements first protesting to the board and then contesting the board's decision with the STC. The STC considered Petitioner's appeal at its October 27, 2008 meeting where it weighed recommendations of the assessor, field staff, and the classification appeals hearings group. In a letter dated October 28, 2008, the STC informed Petitioner that it upheld the property's classification as commercial personal. The letter directed the assessing officer to designate the classification on the aforementioned property as commercial personal and to "cause

the same taxable value to be used to calculate property taxes for these properties as would have been utilized without a classification appeal unless an amended taxable value for the appeal year has been ordered by the Michigan Tax Tribunal.”

### **III. RESPONDENT’S CONTENTIONS**

Respondent contends that summary disposition is appropriate under MCR 2.116(C)(4) because the Tribunal lacks subject matter jurisdiction. Respondent’s Brief, p 2. Respondent states that summary disposition is precluded by MCL 211.34c(6), which vests the power to arbitrate property classification disputes with the STC. Respondent’s Motion, ¶ 2. Respondent argues that the plain language of MCL 211.34c(6) provides no avenue of appeal for property classification decisions by the STC as those decisions are final and binding. Respondent’s Motion, ¶ 4. In further support of its motion, Respondent cites *TES Filer City Station v Twp of Filer*, 13 MTT 493, where the Tribunal held that it is without jurisdiction over assessment classification issues. Respondent’s Motion, ¶ 3.

### **IV. PETITIONER’S CONTENTIONS**

Petitioner acknowledges that MCL 211.34c(6) denies review of property classification appeals beyond the STC. Petitioner’s Answer, p 1. In the absence of MCL 211.34c(6), Petitioner states jurisdiction is warranted under MCL 205.731(a) and MCL 205.735a(6). *Id.* Petitioner interprets MCL 211.34c(6) differently. Rather than viewing MCL 211.34c(6) as a preclusion to Tribunal jurisdiction, Petitioner states that the statute instead denies the right to further review of the STC’s classification decisions only by certain claimants, namely taxpayers such as Petitioner. *Id.*

Petitioner maintains that it will suffer irreparable harm if its ability to appeal property classifications by the STC is denied. Petitioner’s Answer, p 2. Petitioner offers the Michigan

Business Tax as proof stating that under the new law the taxes paid and credits awarded are directly tied to classification of personal property. *Id.* What's more, Petitioner maintains review by the STC represents a denial of adequate due process because the STC as an administrative arm of the Michigan Department of Treasury (DOT) cannot serve as an impartial decision maker over such matters when the DOT bears the responsibility of enforcing and administering the Michigan Business Tax. *Id.* Petitioner states: "In effect, the Department of Treasury serves as judge, jury and prosecutor for all classification decisions. Its decisions as to the classification of property and its interpretation of MCL 211.34c are absolute and inviolate, untouchable by any court or tribunal leaving taxpayers, . . . , no independent forum to present evidence or address their claims." *Id.* Given the STC's location within the DOT and the role DOT plays in administering the Michigan Business Tax, Petitioner argues that risk of unfairness is "intolerably high." *Id.*

In further opposition to Respondent's Motion, Petitioner argues its constitutional rights to equal protection and due process are denied because MCL 211.36c(6) effectively precludes judicial review of a decision by an administrative agency. Petitioner has filed suit in the circuit court to determine whether the DOT/STC's "conflation of prosecutorial and adjudicative functions is a violation of Petitioner's due process rights." *Id.*, p 4. Petitioner maintains that awarding summary disposition while its constitutional claims are pending before the circuit court is premature and could cause an irreversible deprivation of Petitioner's liberty interest. *Id.*

In sum, Petitioner opposes summary disposition on three grounds: (i) Petitioner's constitutional and jurisdictional claims to the circuit court present serious legal questions, (ii) assuming that the circuit court rules in Petitioner's favor, the underlying classification issue will be remanded to this Tribunal, and (iii) granting summary disposition at this juncture would

foreclose any forum within which Petitioner could address its substantive claims and would result in irreparable injury to Petitioner. *Id.*, p 5.

## V. APPLICABLE LAW

Respondent moves for summary disposition pursuant to MCR 2.116(C)(4). This statute states that a Motion for Summary Disposition is appropriate where the “...court lacks jurisdiction of the subject matter.” MCR 2.116(C)(4). When presented with a motion for summary disposition 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 for summary disposition pursuant 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). Furthermore:

A motion under MCR 2.116(C)(4), alleging that the court lacks subject matter jurisdiction, raises an issue of law. The issue of subject matter jurisdiction may be raised at any time, even for the first time on appeal. *McCleese v Todd*, 232 Mich App 623, 627; 591 NW2d 375 (1998) (“Lack of subject matter jurisdiction may be raised at any time.”); *Phinney v Perlmutter*, 222 Mich App 513, 521; 564 NW2d 532 (1997) (“Although the jurisdictional issue here was never resolved by the trial court, a challenge to subject-matter jurisdiction may be raised at any time, even for the first time on appeal.”). When a court lacks jurisdiction over the subject matter, any action it takes, other than to dismiss the case, is absolutely void. *McCleese*, 232 Mich App at 628; 591 NW2d at 377. The trial court’s determination will be reviewed de novo by the appellate court to determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law, or whether affidavits and other proofs show that there was no genuine issue of material fact. *See Cork v Applebee’s of Michigan, Inc*, 239 Mich App 311; 608 NW2d 62 (2000) (“When reviewing a motion for summary disposition under MCR 2.116(C)(4), we must determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law or whether the affidavits and other proofs show that there was no genuine issue of

material fact.”); *Walker v Johnson & Johnson Vision Products, Inc*, 217 Mich App 705; 552 NW2d 679 (1996); *Faulkner v Flowers*, 206 Mich App 562; 522 NW2d 700 (1994); *Department of Natural Resources v Holloway Construction Co*, 191 Mich App 704, 478 NW2d 677 (1991).

1 Longhofer, Michigan Court Rules Practice § 2116.12, p 246A.

MCL 211.34c(6) provides the administrative remedies for appealing property classification.

The land owner must first appeal property classification to the March Board of Review. *Id.*

Following an adverse decision from the Board of Review, the land owner must then appeal the decision with the STC by filing a protest no later than June 30 of that tax year. In a decision rendered five years ago the Tribunal upheld the authority of the STC to determine classification issues in *TES Filer City Station v Twp of Filer*, 13 MTT 493. As with this case, the petitioner in *TES Filer* argued that the Tribunal should reclassify the subject property. *TES Filer*, pp 3-4.

The Tribunal declined to do so stating “that reclassification appeals are not within its jurisdiction.” *TES Filer*, p 69.

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).

## VI. CONCLUSIONS OF LAW

This Tribunal has carefully considered Respondent's Motion for Summary Disposition under the criteria for MCR 2.116(C)(4) and, based on the pleadings and other documentary evidence filed with the Tribunal, determines that granting Respondent's Motion is appropriate. In *TES Filer*, the Tribunal held that it did not have jurisdiction to decide matters concerning reclassification. *TES Filer*, p 69. MCL 211.34c(6) plainly confers the power to decide classification appeals with the STC. As noted in *TES Filer*, the Tribunal cannot circumvent the plain language of the statute and assume jurisdiction over a matter when state law expressly confers that power on another entity. To be sure, when a court is without subject matter jurisdiction, "any action with respect to such a cause, other than to dismiss it, is absolutely void." *Fox v Board of Regents of University of Mich*, 375 Mich 238, 242; 134 NW2d 146, 148 (1965). Because jurisdiction does not exist here, the Tribunal finds that Respondent's Motion for Summary Disposition should be granted and the case dismissed.

## VII. JUDGMENT

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

IT IS FURTHER ORDERED that this case is DISMISSED.

This Order resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: March 26, 2009  
aye

By: Kimbal R. Smith III