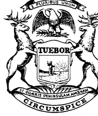

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

GRETCHEN WHITMER
GOVERNOR

MARLON I. BROWN, DPA
DIRECTOR

Thousand Oaks Golf Redwater Restaurant Group LLC,
Petitioner,

v

Plainfield Township,
Respondent.

MICHIGAN TAX TRIBUNAL

MOAHR Docket No. 23-002715

Presiding Judge
Marcus L. Abood

ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(4)

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(5) and (C)(10)

ORDER GRANTING RESPONDENT'S MOTION FOR COSTS AND FEES AGAINST THE LAW OFFICES OF FRED GORDON PC

INTRODUCTION

The issue brought by Plainfield Township (Respondent) in this Motion for Summary Disposition is whether Thousand Oaks Golf Redwater Restaurant Group LLC (Petitioner)[1] properly invoked the Tribunal's jurisdiction over Parcel Nos. 41-10-36-251-008 and 41-10-36-136-013, and whether Petitioner is a party-in-interest in this appeal. Respondent contends Petitioner's attorney (or, more accurately, the attorney for the owner of the property at issue) informed Respondent that the Law Offices of Fred Gordon, PC (Law Offices) filed this appeal without Petitioner's (the property owner's) authorization. Therefore, the Tribunal's jurisdiction was not invoked by a party-in-interest. Further, Petitioner supports Respondent's request to dismiss this appeal. Respondent also requests costs and attorney fees as a sanction for this frivolous appeal.

Neither Petitioner nor the Law Offices filed a response to the Motion.

The Tribunal has reviewed the Motions and the evidence submitted and finds that granting Respondent's Motion for Summary Disposition and dismissing this appeal

[1] This appeal was filed by Thousand Oaks Golf Redwater Restaurant Group LLC. However, as discussed below, there is no proof that such an entity exists.

is appropriate. The Tribunal further finds that granting Respondent's Motion for Costs and Fees is warranted.

RESPONDENT'S CONTENTIONS

In its motion, Respondent asserts that summary disposition should be granted under MCR 2.116(C)(4), (C)(5), and (C)(10). In support of the motion, Respondent contends that to invoke the Tribunal's jurisdiction over property classified as commercial, as is the subject property, a petitioner must file an appeal with the Tribunal by May 31 of the tax year involved.[2] Further, the appeal must be filed by a "party in interest." "Stated another way, an individual or entity that is not a 'party in interest' under MCL 205.735a(6) does not have standing to invoke the Tax Tribunal's jurisdiction."[3]

Respondent argues that the pleadings and documents attached to the motion prove that the Tribunal's jurisdiction was not properly invoked by a party in interest. Specifically, on September 28, 2023, Respondent served the Law Offices with the following Requests for Admission:

1. Admit that the named Petitioner "Thousand Oaks Golf Redwater Restaurant Group LLC" is not a business entity registered in or with the State of Michigan. If your answer is anything other than an admission, explain why the matter cannot be truthfully admitted and produce all documents that support your denial, partial denial, or explanation thereof.
2. Admit that the named Petitioner "Thousand Oaks Golf Redwater Restaurant Group LLC" is not a party in interest and does not have standing to pursue this appeal. If your answer is anything other than an admission, explain why the matter cannot be truthfully admitted and produce all documents that support your denial, partial denial, or explanation thereof.
3. Admit that no party in interest or party with standing to pursue an ad valorem tax appeal for the Subject Property authorized the filing of the Petition in this matter. If your answer is anything other than an admission, identify the person or entity that authorized the filing of the Petition, state when and in what manner the authorization was given, and identify and produce all documents that support your answer.[4]

The Law Offices did not respond, even after Respondent reminded them on November 1, 2023, and November 8, 2023, that the deadline for a response had passed and threatened to file a motion for costs and fees.

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[2] See MCL 205.735a(6).
[3] *Spartan Stores, Inc v City of Grand Rapids*, 307 Mich App 565, 573; 861 NW2d 347 (2014), fn 6.
[4] Exhibit B at 2-3.

Respondent argues that because the Law Offices did not respond, these Requests for Admission must be deemed admitted. Respondent cites MCR 2.312(B)(1), which states:

> Each matter as to which a request is made is deemed admitted unless, within 28 days after service of the request, or within a shorter or longer time as the court may allow, the party to whom the request is directed serves on the party requesting the admission a written answer or objection addressed to the matter.

Thus, Petitioner is deemed to have admitted that it is not a business entity registered in the State of Michigan, it is not a party in interest, it has no standing in this appeal, and that no party in interest authorized the filing of the Petition in this case. Given this, Respondent argues that the Tribunal's jurisdiction was not properly invoked under MCL 205.735a(6), and this case must be dismissed.[5] Finally, Respondent cites *Medbury v Walsh*,[6] wherein the Court held that "the admissions resulting from a failure to answer a request for admissions may form the basis for summary disposition."[7]

According to Respondent, the actual party in interest has demanded that the Law Offices dismiss this appeal.

> In fact, the attorney representing the sole member of golf course real estate entities having control over golf courses including the subject property requested on multiple occasions that the petition (in this appeal and others) be dismissed as the petition was filed without authorization or consent, and because there was no desire to initiate or pursue the appeal.[8]

In support of this statement, Respondent submitted emails from the property owner's attorney containing these statements.[9] Respondent contends that these emails corroborate the deemed admissions.

Respondent argues that Tax Tribunal Rule (TTR) 209 authorizes the Tribunal to award costs and attorney fees. Under the circumstances of this case, Respondent requests all costs and attorney fees incurred as a result of this "frivolous" appeal. Respondent seeks these costs and fees against the Law Offices only, and not Petitioner (the property owners). Respondent contends that there is support for finding that this appeal was frivolous, citing *Pontiac Country Club v Waterford Township*,[10] and MCL 600.2591. MCL 600.2591(3)(a) defines "frivolous" as meeting one of the following:

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[5] In support of this argument, Respondent relies on *Electronic Data Systems Corp v Township of Flint*, 253 Mich App 538; 656 NW2d 215 (2002).
[6] *Medbury v Walsh*, 190 Mich App 554; 476 NW2d 470 (1991).
[7] *Id*. at 556.
[8] Motion at 5.
[9] See Exhibit D.
[10] *Pontiac Country Club v Waterford Township,* 299 Mich App 427; 830 NW2d 785 (2013).

(i) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.
(ii) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.
(iii) The party's legal position was devoid of arguable legal merit.

To that end, Respondent argues that:

> [I]t appears that the Petition was filed by [the Law Offices] for purposes of obtaining a reduction in the tax assessment and a significant tax refund check, which can easily be construed as an intent to injure Respondent— the taxing collecting agency— by seeking to reduce tax liability and force a refund of tax revenue that was lawfully collected by Respondent for distribution to the Township and other taxing jurisdictions.[11]

Respondent further argues that the Law Offices had no reasonable basis to believe that the facts underlying the legal position set forth in the Petition were true. For example, Paragraph 17 of the Petition states that "Petitioner contends" that the subject property is over-assessed. However, as proven by the emails, the Law Offices was not authorized to file this appeal or to make any assertions on Petitioner's behalf.

Respondent also argues that MRC 1.109(E)(2) requires every document of a party represented by an attorney to be signed by an attorney of record. MCR 1.109(E)(5) provides that the purpose of the signature is to certify that:

> (a) he or she has read the document;
> (b) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and
> (c) the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

MCR 1.109(E)(6) provides sanctions for violations of MRC 1.109(E)(5). Respondent requests costs and attorney fees under MCR 1.109(E)(6), asserting that Mr. Gordon signed the Petition in violation of MCR 1.109(E)(5). In support of this request, Respondent cites *FMB–First Michigan Bank v Bailey*,[12] wherein the Court held that the purpose of imposing sanctions under this rule is to "deter parties and attorneys from filing documents or asserting claims and defenses that have not been sufficiently investigated and researched or that are intended to serve an improper purpose."[13]

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[11] Motion at 7.
[12] *FMB–First Michigan Bank v Bailey*, 232 Mich App 711; 591 NW2d 676 (1998).
[13] *Id.* at 723.

Respondent contends that it is the victim of a similar frivolous appeal filed by the Law Offices in *Blythefield Country Club v Plainfield Township*[14] and that it appears there may have been other such cases filed with the Tribunal. Therefore, to deter the Law Offices from filing frivolous appeals and wasting governmental entities' valuable resources, the Tribunal, and "actual parties in interest who have essentially been forced into litigation without their consent,"[15] Respondent requests that it be awarded costs and attorney fees.

Respondent submitted the following documents in support of its Motion:

1. Exhibit B: Respondent's First Request for Admission to Petitioner.
2. Exhibit C: Respondent's November 1, 2023, and November 8, 2023 letters to Fred Gordon.
3. Exhibit D:
    a. An email between James Doezema, an attorney with Foster Swift Collins & Smith PC, and Fred Gordon, wherein Mr. Doezema demanded that Mr. Gordon dismiss several golf course assessment appeals that Mr. Gordon filed without authorization by the golf courses, and an email from Mr. Doezema to Jeff Miller, Respondent's assessor, regarding Mr. Gordon's unauthorized appeal of the Thousand Oaks Golf Club.
    b. An email between James Doezema and Mr. Miller.
    c. An email between James Doezema and Respondent's attorney, indicating that on multiple occasions Fred Gordan was asked to dismiss this appeal.

STANDARD OF REVIEW

There is no specific Tribunal rule governing motions for summary disposition. Therefore, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions.[16] In this case, Respondent moves for summary disposition under MCR 2.116(C)(4), MCR 2.116(C)(5), and MCR 2.116(C)(10).

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.[17] 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."[18] A motion under MCR

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[14] *Blythefield Country Club v Plainfield Township,* MOAHR 23-002637.
[15] Motion at 9.
[16] See TTR 215.
[17] *Id.*
[18] MCR 2.116(G)(6).

2.116(C)(4) is appropriate where the plaintiff has failed to exhaust its administrative remedies.[19]

MCR 2.116(C)(5)

MCR 2.116(C)(5) states that a motion for summary disposition may be granted if "[t]he party asserting the claim lacks the legal capacity to sue." In reviewing the motion for summary disposition, a court considers the pleadings, depositions, admissions, affidavits, and other documentary evidence submitted by the parties.[20]

MCR 2.116(C)(10)

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."[21] The Michigan Supreme Court, in *Quinto v Cross and Peters Co*,[22] 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,

[19] See *Citizens for Common Sense in Gov't v Attorney Gen*, 243 Mich App 43; 620 NW2d 546 (2000).
[20] See MCR 2.116(G)(5); see also *Flint Cold Storage v Dep't of Treasury*, 285 Mich App 483, 492; 776 NW2d 387 (2009).
[21] *Id.*
[22] *Quinto v Cross and Peters Co*, 451 Mich 358 (1996) (citations omitted).

> 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.[23]

"A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ."[24] In evaluating whether a factual dispute exists to warrant trial, "the court is not permitted to assess credibility or to determine facts on a motion for summary judgment."[25] "Instead, the court's task is to review the record evidence, and all reasonable inferences therefrom, and decide whether a genuine issue of any material fact exists to warrant a trial."[26]

CONCLUSIONS OF LAW

The Tribunal has considered Respondent's Motion for Summary Disposition under MCR 2.116(C)(4), (C)(5), and (C)(10). For the reasons set forth below, the Tribunal finds that Respondent's MCR 2.116(C)(4) Motion must be denied, while Respondent's (C)(5) and (C)(10) Motions shall be granted.

Beginning with MCR 2.116(C)(4), the Tribunal finds that it has exclusive and original jurisdiction over:

> (a) A proceeding for direct review of a final decision, finding, ruling, determination, or order of an agency relating to assessment, valuation, rates, special assessments, allocation, or equalization, under the property tax laws of this state.[27]

In this case, the true cash and taxable values of Parcel Nos. 41-10-36-251-008 and 41-10-36-136-013 (the subject property) are under appeal. Therefore, pursuant to MCL 205.731, the Tribunal has jurisdiction over the subject matter and Respondent's (C)(4) Motion must be denied.

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[23] *Id.* at 361-363. (Citations omitted.)
[24] *West v General Motors Corp*, 469 Mich 177 (2003).
[25] *Cline v Allstate Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued June 21, 2018 (Docket No. 336299) citing *Skinner v Square D Co*, 445 Mich 153 (1994).
[26] *Id.*
[27] MCL 205.731.

As for Respondent's (C)(5) Motion, the Court explained in *Hastings Dog Park Companions v City of Hastings*[28] that "[s]ummary disposition is appropriate under MCR 2.116(C)(5) where '[t]he party asserting the claim lacks the legal capacity to sue.'"[29] "Our Supreme Court has previously held that 'the real-party-in-interest [defense] is not the same as the legal-capacity-to-sue defense.' This Court has likewise stated that 'standing to sue and capacity to sue are two distinct concepts' that should not be improperly conflated."[30]

The Court further explained that "[t]he 'lack of legal capacity to sue,' . . . refers to a party's inherent inability to initiate *any* lawsuit. This Court has stated, for example, that a lack of capacity to sue "refers to some legal disability, such as infancy or mental incompetency ...."[31] "Common sense would dictate that a person or entity's very lack of existence would qualify as a legal disability that would deprive it of the ability to sue."[32]

Pursuant to MCR 2.116(D)(2), a challenge based upon MCR 2.116(C)(5) must be raised in a party's first responsive pleading to avoid being waived. In this case, Respondent raised this defense in its Answer filed on August 14, 2023.[33] Further, because Respondent's Requests for Admission are deemed to have been admitted, Petitioner is not a business entity registered in the State of Michigan. Therefore, because Petitioner does not exist, Petitioner lacked the legal capacity to sue. For this reason, Respondent's (C)(5) Motion shall be granted.

Turning to Respondent's MCR 2.116(C)(10) motion, it must first be determined whether Petitioner is a party in interest. In that regard, Respondent submitted emails between the owners of the subject property's attorney James Doezema, Respondent's attorney, and Respondent's assessor wherein Mr. Doezema stated in no uncertain terms that the Law Offices was not authorized to file the instant appeal. In fact, in the emails Mr. Doezema stated: "That guy filed those tax bills without any permission from my client. They're disgusted."[34]

In *Spartan Stores v City of Grand Rapids*,[35] the Court held that "as used in MCL 205.735a(6), 'party in interest' refers to a person or entity with a property interest in the property being assessed."[36] In this case, there is no evidence that Petitioner exists or that it owns the subject property. Absent the necessary proof, Petitioner cannot be deemed a party in interest.

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[28] *Hastings Dog Park Companions v City of Hastings,* unpublished per curiam opinion of the Court of Appeals (Docket No. 348915), issued September 3, 2020.
[29] *Id.* at *1.
[30] *Id.* at *2. (Citations omitted.)
[31] *Id.*
[32] *Id.*
[33] See Respondent's Answer at 2, Paragraph 12.
[34] Exhibit D.
[35] *Spartan Stores v City of Grand Rapids,* 307 Mich App 565; 861 NW2d 347 (2014).
[36] *Id.* at 575.

An additional question is whether Petitioner is a party in this case. In determining who is a party in interest, the *Spartan Stores* Court defined each word in the phrase. In doing so, the Court referred to *Black's Law Dictionary* to define "party," finding that "'[p]arty' is defined as '[s]omeone who takes part in a transaction.'"[37] In this case, Petitioner is not an actual entity and, as such, cannot participate in this appeal. Moreover, the owners of the subject property did not authorize this appeal.

The Law Offices had two opportunities to rebut Respondent's arguments and provide evidence of its authorization to file this appeal. Specifically, the Law Offices could have responded to Respondent's Requests for Admission, but chose not to do so. Pursuant to MCR 2.312(B)(1), the Law Offices is deemed to have admitted that it was not authorized to file this appeal. Additionally, the Law Offices could have filed a response to Respondent's Motion for Summary Disposition but chose not to do so. Having no evidence that Petitioner exists or that the property owners authorized this appeal, the Tribunal finds that there are no genuine issues of fact and that granting Respondent's (C)(10) motion is warranted.[38]

As for Respondent's request for costs and attorney fees, the Tribunal finds that it "may, upon motion or its own initiative, award costs in a contested case . . . ."[39] The Michigan Court Rules and Administrative Procedures Act provide the Tribunal with some criteria in determining whether an award of costs is appropriate, but the Court of Appeals has held that costs are entirely within the Tribunal's discretion, and it is not limited to circumstances where the requesting party shows good cause or the action or defense was frivolous.[40] The Tribunal is nevertheless generally hesitant to award costs, and usually reserves such action for cases in which frivolity or other good cause exists.

Given that Petitioner does not exist and that the Law Offices did not obtain approval from the property owners to file this appeal, there is no doubt that this appeal was frivolous. However, a finding in this regard is not necessary as good cause exists to award costs and attorney fees on these facts alone. Further, Mr. Gordon's signature as "Petitioner's Authorized Representative" not only does not comply with the requirements of MCR 1.109(5), it defies this Court Rule. Additionally, Paragraph 19 states that "Petitioner requests the following relief . . . ." Clearly, this statement could not be further from the truth as neither "Petitioner" nor the property owners requested that the Petition be filed in the first place. In fact, there is no evidence that the Law Offices even contacted the property owners before filing this appeal.

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[37] *Id.*

[38] In the alternative, having found that Petitioner did not authorize this appeal, this appeal could also be dismissed under MCR 2.116(C)(1), which is appropriate when the "court lacks jurisdiction over the person or property."

[39] TTR 209.

[40] See *Aberdeen of Brighton, LLC v Brighton*, unpublished per curiam opinion of the Court of Appeals, issued October 16, 2012 (Docket No. 301826), which noted that "[t]he term 'may' is permissive and is indicative of discretion." *Id.* citing *In re Forfeiture of Bail Bond*, 276 Mich App 482, 492 (2007).

In essence, the Law Offices stepped into the property owners' shoes, acting as if it owns the subject property by determining what legal actions are taken in their name and depriving them of this right. What if the property owners had chosen to file an appeal through a different representative? It is possible the case sanctioned by the property owners may have been dismissed as duplicative. Moreover, if this case went forward and the Law Offices were to have prevailed, how would the property owners even know that it was entitled to a tax refund? Or be guaranteed receipt of the refund absent an agreement with the Law Offices? Unless held accountable, the Law Offices would have forced the property owners to participate in this appeal against their will.

Given the specific facts and circumstances presented, as discussed above, the Tribunal finds that Respondent is entitled to an award of costs and attorney fees. The Tribunal will dismiss this appeal once the award of costs and attorney fees has been finalized.

Therefore,

IT IS ORDERED that Respondent's Motion for Summary Disposition under MCR 2.116(C)(4) is DENIED.

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition under MCR 2.116(C)(5) and (C)(10) is GRANTED.

IT IS FURTHER ORDERED that Respondent's Motion for Costs and Fees against the Law Offices is GRANTED.

IT IS FURTHER ORDERED that Respondent shall submit a bill of costs and attorney fees to the Tribunal and the Law Offices within 14 days of entry of this Order.

IT IS FURTHER ORDERED that the Law Offices may file a response to the Bill of Costs within 14 days of date of service on the Law Offices.

Entered: March 22, 2024 By ______________________________

plh

PROOF OF SERVICE

I certify that a copy of the foregoing was sent on the entry date indicated above to the parties or their attorneys or authorized representatives, if any, utilizing either the mailing or email addresses on file, as provide by those parties, attorneys, or authorized representatives.

By: Tribunal Clerk