

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

RMMART, LLC,
Petitioner,

v

MTT Docket No. 16-002752-R

Department of Treasury,
Respondent.

Tribunal Judge Presiding
David B. Marmon

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

INTRODUCTION

On February 9, 2017, Respondent filed a motion requesting that the Tribunal enter summary disposition in its favor in the above-captioned case. More specifically, Respondent contends that the assessments at issue are valid. Petitioner did not file a response to the Motion.

The Tribunal has reviewed the Motion and the evidence submitted and finds that granting Respondent's Motion for Summary Disposition is warranted at this time.

RESPONDENT'S CONTENTIONS

In support of its Motion, Respondent contends that Petitioner is a purchaser under MCL 205.27a(1) and that it did not comply with the escrow requirements. Respondent contends that the Tribunal must determine whether the settlement charges, including a sales commission, are secured interest superior to the tax lien under MCL 205.29(1). Respondent further contends that the settlement charges are not secured interests but, even if they were, they did not arise until March of 2015, after the tax periods at issue which are June through October 2014. Thus, Respondent claims that it cannot be disputed that the settlement charges are not senior liens.

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.¹ In this case, Respondent moves for summary disposition under MCR 2.116(C)(10).

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.² In the event, however, it is determined that an asserted claim can be supported by evidence at trial, a motion under (C)(10) will be denied.³

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.⁴ The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider.⁵ The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.⁶ Where the burden of proof at trial on a dispositive issue rests on a non-moving party, the non-moving 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.⁷ If the opposing party

¹ See TTR 215.

² See *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999).

³ See *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).

⁴ See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)).

⁵ See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).

⁶ *Id.*

⁷ See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).

fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.⁸

CONCLUSIONS OF LAW

The Tribunal has carefully considered Respondent's Motion under MCR 2.116 (C)(10) and finds that granting the Motion is warranted. The Tribunal finds the issue presented in this case is whether or not Petitioner, as a purchaser, has any personal liability for taxes owed.

There is no dispute that Petitioner is the purchaser under MCL 205.27a(1).⁹ Petitioner also does not dispute that it failed to comply with the escrow requirements.¹⁰ Respondent correctly identifies that the only disputed issue in the Petition is the amount, if any, of liability under the last sentence of MCL 205.27a(1) which states:

For a purchaser or succeeding purchaser that has not complied with the escrow requirements of this section, the purchaser's or succeeding purchaser's personal liability is limited to the fair market value of the business less the amount of any proceeds that are applied to balances due on secured interests that are superior to the lien provided for in section 29(1).

In the Petition, Petitioner contends that all sale proceeds were utilized to pay settlement charges and mortgages and no funds were remaining to escrow and that no tax liability attaches.

However, the Tribunal finds that Petitioner has failed to demonstrate that the "settlement charges" are a "secured interest" which is superior to the tax lien.

There is no dispute that the tax periods at issue in the disputed assessments are June, August, September, and October 2014.¹¹ MCL 205.29(1) states, in part, that the tax lien attaches to the property "from and after the date that any report or return on which the tax is levied is

⁸ See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

⁹ Petition at 2.

¹⁰ *Id.* at 3 wherein Petitioner contends there were no funds remaining to be placed into escrow.

¹¹ See Petition and Final Bill for Taxes Due (Respondent's Exhibit 2).

required to be filed with the department.” Here, the tax lien for the tax periods at issue attached the 20th of each month at issue based upon the return due date under MCL 205.56.

The Tribunal finds that Respondent has met its burden of supporting its position by presenting its documentary evidence for the court to consider, specifically, the Settlement Statement attached as Exhibit 1.¹² The burden then shifted to Petitioner to establish that a genuine issue of disputed fact exists.¹³ Here, Petitioner has not filed a response to the Motion and has not demonstrated that a genuine issue of fact is remaining. The Tribunal finds that Respondent has properly contended the “settlement charges” which include real estate commission did not attach until the settlement date of March 8, 2015. This is far after the attachment of the lien for taxes, here, which was the 20th of June, August, September, and October 2014. Moreover, there is no support that the real estate commission of \$32,250 was a “secured interest” as contemplated by MCL 205.27a(1).

Given the above, the Tribunal finds that no genuine issues of material fact remain and granting Respondent’s Motion for Summary Disposition under MCR 2.116(C)(10) is appropriate.

JUDGMENT

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

IT IS FURTHER ORDERED that Assessment Nos. UE96120, UG62985, UH19444, and UI64432 are AFFIRMED.

This Final Opinion and Judgment resolves the last pending claim and closes the case.

¹² See *Neubacher, supra*.

¹³ *Id.*

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.¹⁴ Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is \$50.00 in the Entire Tribunal and \$25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.¹⁵ A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.¹⁶ Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.¹⁷

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave."¹⁸ A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.¹⁹ The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.²⁰

By David B. Marmon

Entered: March 14, 2017
krb

¹⁴ See TTR 261 and 257.

¹⁵ See TTR 217 and 267.

¹⁶ See TTR 261 and 225.

¹⁷ See TTR 261 and 257.

¹⁸ See MCL 205.753 and MCR 7.204.

¹⁹ See TTR 213.

²⁰ See TTR 217 and 267.