STATE OF MICHIGAN

COURT OF APPEALS

FORD MOTOR COMPANY,

Petitioner-Appellant,

v

CITY OF WOODHAVEN and COUNTY OF WAYNE,

Respondents-Appellees,

and

MICHIGAN CHAMBER OF COMMERCE,

Amicus Curiae.

UNPUBLISHED
October 5, 2004

No. 246378
Tax Tribunal
LC No. 00-294958

Before: Griffin, P.J., and Cavanagh and Fort Hood, JJ.

PER CURIAM.

Petitioner appeals as of right the dismissal of its petition for review by the Michigan Tax Tribunal (MTT) on the ground that it lacked subject matter jurisdiction.[1] We affirm.

On August 28, 2002, petitioner filed its petition for review pursuant to 211.53a for recovery of excess tax payments. Petitioner averred that, due to a mutual mistake of fact, it was assessed and paid taxes in excess of the correct and lawful amount after it had incorrectly classified certain assets and included assets that were not taxable, retired, or idled on its personal property tax statements. Respondents moved to dismiss the petition on the ground that the MTT lacked subject matter jurisdiction in pertinent part because the alleged mistake of fact was not mutual as required by MCL 211.53a. The MTT agreed, holding that the alleged mistake "was

[1] Petitioner asserted the same claims against the Township of Bruce and the City of Sterling Heights, which were similarly dismissed by the MTT. The appeals that followed, docket numbers 246579 and 246379 respectively, were resolved by substantially similar opinions issued the same day as this opinion.

made solely by the taxpayer in its preparation of the personal property statement" and, thus, it lacked subject matter jurisdiction. This appeal followed.

Petitioner argues that the MTT erroneously concluded that it lacked subject matter jurisdiction over its petition which sought a refund of excess taxes paid, pursuant to MCL 205.731(b), as a result of a mutual mistake of fact, as required by MCL 211.53a. We agree with petitioner that the MTT had jurisdiction, but uphold the decision to dismiss on the substantive basis of the MTT's holding—that petitioner failed to state a claim on which relief could be granted, MCR 2.116(C)(8). We review a decision of the MTT to determine whether it committed an error of law or adopted a wrong legal principle; factual findings supported by competent, material, and substantial evidence on the whole record will not be disturbed. *Professional Plaza, LLC v Detroit*, 250 Mich App 473, 474; 647 NW2d 529 (2002); *Michigan Milk Producers Ass'n v Dep't of Treasury*, 242 Mich App 486, 490; 618 NW2d 917 (2000).

The Tax Tribunal Act, MCL 205.703 *et. seq.*, grants the MTT exclusive and original jurisdiction over property tax proceedings as follows:

> The tribunal's exclusive and original jurisdiction shall be:
>
> (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 property tax laws.
>
> (b) A proceeding for refund or redetermination of a tax under the property tax laws. [MCL 205.731.]

Petitioner argues that, pursuant to MCL 205.731(b), the MTT had jurisdiction over its petition for a refund under the property tax laws, namely MCL 211.53a of the General Property Tax Act, which provides:

> Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a clerical error or mutual mistake of fact made by the assessing officer and the taxpayer may recover the excess so paid, without interest, if suit is commenced within 3 years from the date of payment, notwithstanding that the payment was not made under protest.

Relying on *Shell Oil Co v Estate of Kert*, 161 Mich App 409, 421-422; 411 NW2d 770 (1987), a contract case, petitioner claims that the excess payment was the result of a "mutual mistake of fact" within the contemplation of the statute since "Ford mistakenly identified this property twice on its personal property statement, and the assessor mistakenly based the assessment on that non-existent property's putative value." Because the MTT is vested with the power and authority to adjudicate tax refund cases, it had subject matter jurisdiction over petitioner's petition. See *In re AMB*, 248 Mich App 144, 166-167; 640 NW2d 262 (2001). Accordingly, we turn to the substantive basis for the MTT's holding—that petitioner failed to state a claim on which relief could be granted. See MCR 2.116(C)(8).

The meaning of the phrase "mutual mistake of fact" as provided in MCL 211.53a presents an issue of statutory construction. Our goal is to ascertain and give effect to the intent of the Legislature; thus, we first consider the statute's language. *In re MCI Telecommunications Complaint*, 460 Mich 396, 411; 596 NW2d 164 (1999). If the plain and ordinary meaning of the language is clear, judicial construction is neither necessary nor permitted. *Sun Valley Foods Co v Ward*, 460 Mich 230, 236-237; 596 NW2d 119 (1999). The fair and natural import of its terms, in view of the subject matter of the law, governs. *In re Wirsing*, 456 Mich 467, 474; 573 NW2d 51 (1998). Here, on March 8, 2000, the MTT issued an "order designating definition of 'mutual mistake of fact' as precedent" as that phrase is used in MCL 211.53a. *General Products Delaware Corp v Leoni Twp*, 2001 WL 432245 (MTT Docket No. 249550, March 8, 2001). We accord deference to the MTT's interpretation of a statute it is legislatively charged with enforcing, although we are not bound by that interpretation. See *Judges of the 74th Judicial Dist v Bay Co*, 385 Mich 710, 727-729; 190 NW2d 219 (1971); *Bechtel Power Corp v Dep't of Treasury, Revenue Division*, 128 Mich App 324, 329; 340 NW2d 297 (1983).

MCL 211.53a was enacted following our Supreme Court's decision in *Consumers Power Co v Muskegon*, 346 Mich 243; 78 NW2d 223 (1956)[2], which held that equitable principles did not apply to cases seeking recovery of excess taxes paid by mistake because taxation powers are controlled by constitutional and statutory provisions. *Id.* at 247-251. In that case, the respondent's assessor calculated and levied the excess tax and the petitioner, which failed to discover that the amount was excessive, paid the tax. *Id*. at 246. The excess tax was the result of the assessor misplacing the decimal point when entering the tax data into the tax and assessment rolls so that instead of, for example, the proper tax of $32.94 being entered, the erroneous tax of $329.40 was entered. *Id*. at 251-252. In other words, the error was not based on misinformation, it was because of an obvious clerical or arithmetical mistake. The Court concluded that "[t]o grant the relief requested by the plaintiff would require this Court to exercise legislative prerogatives—namely, to write into the statute the right to recover taxes paid under mutual mistake." *Id*. at 251.

Subsequently, in 1958 the Legislature exercised its authority and provided a limited remedy in cases of excess taxation, i.e., "Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a clerical error or mutual mistake of fact made by the assessing officer and the taxpayer may recover the excess so paid . . . ." MCL 211.53a. In 1967, the Legislature more directly addressed the issue raised in *Consumers Power Co*, *supra*, by enacting MCL 211.53b(1) which provides: "If there has been a clerical error or a mutual mistake of fact relative to the correct assessment figures, the rate of taxation, or the mathematical computation relating to the assessing of taxes . . . ." MCL 211.53b(2) granted the right to recovery to both the taxpayer and the assessing officer.

There are, however, clear limits to a taxpayer's right to recover excess tax payments under MCL 211.53a. A mistake of law rather than of fact does not accord relief. *Noll*

---

[2] *Consumers Power Co*, *supra*, was overruled in part by *Spoon-Shacket Co, Inc v Oakland Co*, 356 Mich 151, 171; 97 NW2d 25 (1959).

Equipment Co v Detroit, 49 Mich App 37, 41-43; 211 NW2d 257 (1973). An error that is not clerical in nature—the result of typing, transposing, or calculating assessment figures incorrectly—is not correctable under the statute. *International Place Apartments-IV, supra* at 109. Similarly, the statute does not permit recovery of excess taxes paid because of a unilateral mistake of fact, i.e., a mistake of fact that is not made by both the assessing officer and the taxpayer. It is this mutuality requirement with regard to the mistake of fact that is at issue here; precisely, what is a "mutual mistake of fact made by the assessing officer and the taxpayer?" MCL 211.53a.

This is an issue of first impression. The phrase "mutual mistake" has "acquired a peculiar and appropriate meaning in the law," MCL. § 8.3a, so we may first turn to a legal dictionary in an attempt to ascertain its meaning. See *People v Jones*, 467 Mich 301, 304-305; 651 NW2d 906 (2002). Black's Law Dictionary defines "mutual mistake" as "[a] mistake in which each party misunderstands the other's intent" and as "[a] mistake that is shared and relied on by both parties to a contract." Black's Law Dictionary (7th ed, 1999), p 1017. A "mistake" is defined as "[a]n error, misconception, or misunderstanding; an erroneous belief." *Id*. In the context of property tax law, neither definition of "mutual mistake" is very helpful except that we may derive that implicit in the concept of mutuality is a temporal or "at the same time" component. That is, for something to be mutual, it must be shared by or common to both parties. So, a "mutual mistake of fact" is a shared or common error, misconception, misunderstanding, or erroneous belief as to a material fact. MCL 211.53a, then, requires that both the assessing officer and the taxpayer have the same erroneous belief regarding the same material fact which directly caused both the excess assessment and excess payment of taxes.

Here, the assessing officer and the taxpayer, petitioner, were not operating under the same mistake of fact. The direct cause of the excess assessment was the assessing officer's reliance on petitioner's personal property statements which were represented as full and true statements of all tangible personal property owned or held by petitioner.[3] It is undisputed that the assessing officer did not conduct any independent inventory as to petitioner's assets; accordingly, the assessor's "mistake of fact" was his erroneous belief that petitioner's disclosure of property was accurate. The direct cause of petitioner's excess payment of the taxes was its own mistake as to the nature of its personal property. In other words, its "mistake of fact" was its erroneous belief that it owned specific personal property that was taxable. Because the assessing officer and petitioner were not operating under the same mistake of fact, a refund under MCL 211.53a was not available and petitioner failed to state a cognizable claim under MCL 205.735.

The key to the "mistake of fact" analysis under MCL 211.53a, then, is to determine what mistake of fact directly caused the assessor's excess assessment and compare it to the mistake of fact that directly caused the taxpayer's excess payment; if they are the same, the mutuality

---

[3] In its *General Products Delaware Corp* opinion, as discussed above, the MTT held that such consideration of the petitioner's personal property tax statement was irrelevant to the "mistake of fact" determination. *Id*. at 37-39. We disagree since reliance on the statement directly caused the excess tax assessment.

requirement of MCL 211.53a is met. When an assessor assesses a tax in excess of the correct and lawful amount and the taxpayer pays it, there is always a mistake that is mutual in the sense that both parties made a mistake; but, there is not always a "mutual mistake of fact." If the assessor's over-assessment resulted from an error in professional judgment with regard to the subject property and the taxpayer's over-payment was the consequence of oversight, there would be no "mutual mistake of fact" giving rise to a remedy under MCL 211.53a; albeit there may be a remedy available under MCL 211.154.[4] However, for example, if the assessor's error was because of his reliance on an incorrect survey representation by a third party of a boundary line and the taxpayer paid the taxes relying on that same misrepresentation, there would be a mutual mistake of fact for which relief would be available under MCL 211.53a.

The Tax Tribunal attempted to explain this nebulous concept of "mutual mistake" as it applies to property tax law as follows:

> Mutuality occurs at an intersection of the parties' respective specific focus upon a singular fact or set of facts, and the resulting mistaken belief. That is, the statute's phrase "mutual mistake of fact" necessitates mutuality as to both the referenced fact being materially the same information, specifically contemplated by both parties, and the mistaken belief concerning that fact be formed by both parties.
>
> * * *
>
> The concept of mutual mistake in property tax law, in its application, is that mutuality must be present at both the level of referenced fact and the mistaken belief. The test criteria is simple. If each party references the same factual data, but draws different mistaken beliefs, or references different factual data, but draws the same mistaken belief, there is no "mutual mistake of fact." [*General Products Delaware Corp, supra* at 21-22.]

We generally agree with the MTT's characterization of the "mutuality" test but we find it more complicated than necessary. It, as well as the MTT's thirty-plus page opinion on the matter, are not "user friendly." Comparing the "mistake of fact" that directly caused the assessor's excess assessment to the "mistake of fact" that directly caused the taxpayer's excess payment will provide the necessary information to determine whether the requisite mutuality exists for which MCL 211.53a affords recovery.

Petitioner relies on contract law principles to support its interpretation of the phrase "mutual mistake of fact" as "a belief by one or both of the parties not in accord with the facts," that "relate[s] to a basic assumption of the parties upon which the contract is made and which materially affects the agreed performances of the parties." See *Shell Oil Co, supra* at 421-422. In its opinion, the MTT rejected the proposition that the "mutual mistake" terminology used in

---

[4] Accordingly, the dissent's apparent concern that no remedy is available in the event of such unilateral mistakes is not persuasive.

contract law is equally applicable to property tax law. See *General Products Delaware Corp, supra* at 29. We agree. Contract law principles are not necessarily analogous to tax law principles. The relationship between the parties to a contract is vastly different from the association between the taxpayer and tax assessor. A contractual relationship arises by contract—a bargained-for exchange of obligations entered into by choice and requiring mutual assent or a "meeting of the minds" on all essential terms—and the relationship is governed by those terms. *Quality Products & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 372-373; 666 NW2d 251 (2003). The taxpayer's and tax assessor's association arises by operation of law and is governed by the law. Equitable principles may relieve contracting parties of obligations induced by mistake—particularly since a mutual mistake of fact destroys the necessary meeting of the minds requirement for formation—but such principles are not equally necessary, or applicable, in the area of tax law. See *Consumers Power Co*, *supra* at 246-251. Contrary to the dissenting opinion, it should be apparent that we are not relying on "equitable considerations," as might be applicable in contract law cases, in construing the term "mutual mistake."

However, even if such equitable principles did apply to property taxation disputes, as petitioner promotes, these principles would not intercede to provide relief unless there was a "mistake" of fact. The traditional mistake of fact doctrine found in contract law is an equitable doctrine that defines "mistake" as follows:

> A mistake within the meaning of equity is a non-negligent but erroneous mental condition, conception, or conviction induced by ignorance, misapprehension, or misunderstanding, resulting in some act or omission done or suffered by one or both parties, without its erroneous character being intended or known at the time. [27A Am Jur 2d Equity § 7, pp 525-526.]

In other words, "mistakes" that are the result of the mistaken party's own negligence, and which are to their detriment, are not relieved by equity. See e.g., *Bateson v Detroit*, 143 Mich 582, 584; 106 NW 1104 (1906); *Dombrowski v Omer*, 199 Mich App 705, 709-710; 502 NW2d 707 (1993); *Villadsen v Villadsen*, 123 Mich App 472, 477; 333 NW2d 311 (1983).

This concept of "negligent" mistakes is not novel; rather, in contract law a party to a contract will not be relieved of his obligation to perform unless (1) both parties were mistaken regarding a material fact, *Gortney v Norfolk & Western R Co*, 216 Mich App 535, 542; 549 NW2d 612 (1996), or (2) one party's negligence led the other party to erroneously believe there was a meeting of the minds regarding a material fact, *Warren v Maccabees Mut Life Ins Co*, 83 Mich App 310, 315; 268 NW2d 390 (1978). "[T]he parties are mutually mistaken, though their mental errors are not quite identical. In spite of this 'mutuality,' there is a contract, due to the negligence of the one and the reasonableness of the other." *Id.*, quoting 3 Corbin on Contracts, § 608, p 671. Further, as explained by our Supreme Court in *Spoon-Shacket Co, Inc v Oakland Co*, 356 Mich 151, 156; 97 NW2d 25 (1959), citing the dissenting opinion in *Consumers Power Co, supra* at 251, "equity can and should intervene whenever it is made to appear that one party, public or private, seeks unjustly to enrich himself at the expense of another on account of his own mistake and the other's want of immediate vigilance—litigatory or otherwise." So, neither equitable principles nor the dissenting position espoused in *Consumers Power Co, supra*, support an equitable recovery under MCL 211.53a when the purported "mistake of fact" that led to the excess tax was the direct result of the taxpayer's negligence.

We also note and disagree with the interpretation of MCL 211.53a set forth as dicta in *Wolverine Steel Co, supra* at 674: "We believe s 53a alludes to questions of whether or not the taxpayer had listed all of its property, or listed property that it had already sold or not yet received, etc." This interpretation does not incorporate the "mutuality" component of the analysis and, thus, is rejected. MCR 7.215(J)(1). The *Wolverine Steel Co* Court also implied that MCL 211.53a and 211.53b were to be read in pari materia so as to limit the type of "mutual mistakes of fact" referenced in MCL 211.53a to those explicitly stated in 211.53b, i.e., "mutual mistake[s] of fact relative to the correct assessment figures, the rate of taxation, or the mathematical computation relating to the assessing of taxes." *Id*. at 674-675. The MTT also adopted that very narrow interpretation of MCL 211.53a through the use of the in pari materia rule of statutory interpretation, declaring that MCL 211.53a is specifically limited in application to those special circumstances relieved under MCL 211.53b. *General Products Delaware Corp, supra* at 24. However, as argued by amicus curiae, the Michigan Chamber of Commerce, such a restrictive interpretation of MCL 211.53a ignores the clear legislative intent not to so limit the types of "mutual mistakes of fact" as evidenced by the omission of such provision. See *Farrington v Total Petroleum, Inc*, 442 Mich 201, 210; 501 NW2d 76 (1993). Neither we nor the MTT may engraft such a limitation. See *id*.

In sum, the MTT properly concluded that petitioner was not entitled to relief under MCL 211.53a. Petitioner was not assessed and did not pay taxes in excess of the correct and lawful amount due because of a mutual mistake of fact made by itself and the assessing officer. MCL 211.53a. But, did the MTT have the right to dismiss the petition sua sponte? The tax tribunal rules, R 205.1101 *et seq*., do not address sua sponte dismissals; therefore, we turn to the Michigan Rules of Court. R 205.1111(4). MCR 2.116(I)(1) provides: "If the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits or other proofs show that there is no genuine issue of material fact, the court shall render judgment without delay." Here, the dispositive issue was one of law; specifically, the construction of MCL 211.53a. There were no disputed issues of fact. The pleadings showed that respondent was entitled to judgment as a matter of law since the averred over-assessment and excess payment were not the result "of a clerical error or mutual mistake of fact made by the assessing officer and the taxpayer." MCL 211.53a. Accordingly, the MTT had the right, and duty, to dismiss the action. MCR 2.116(I)(1). For this reason, the MTT properly denied petitioner's motion to amend its petition because such amendment would be futile—recovery is not afforded on the grounds asserted. See MCL 205.731, 211.53a; *Lane v KinderCare Learning Centers, Inc*, 231 Mich App 689, 697; 588 NW2d 715 (1998).

Petitioner also contends that the MTT inappropriately relied on MCL 205.735. However, the MTT's reference to MCL 205.735(2) (which confers jurisdiction on the MTT over assessment disputes) was likely an effort to illustrate the thorough nature of its consideration of petitioner's petition alleging overpayment by means of double payment and need not be considered further here since petitioner disavows an assessment dispute.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood