

STATE OF MICHIGAN
COURT OF APPEALS

ACI HOLDINGS, INC., f/k/a ARCTIC
COLISEUM, INC.,

UNPUBLISHED
June 17, 2008

Petitioner-Appellant,

v

TOWNSHIP OF SYLVAN,

Respondent-Appellee.

No. 278263
Tax Tribunal
LC No. 00-321886

Before: Whitbeck, P.J., and O'Connell and Kelly, JJ.

PER CURIAM.

In this property tax dispute involving tax years 2001 through 2004, petitioner ACI Holdings, Inc. appeals as of right from the Tax Tribunal's order granting respondent Sylvan Township's motion for summary disposition. We affirm.

I. Basic Facts And Procedural History

A. Tax Years 2001 and 2002

ACI Holdings owns property used for the operation of an ice arena. In a Tax Tribunal case concerning tax years 2001 and 2002, the Tax Tribunal entered a consent judgment that set property tax values for each year. The assessed and taxable values for 2001 were left at \$3,879,100 and \$3,370,600, respectively, while the assessed and taxable values for 2002 were each reduced to \$2,493,700. The true cash value of the property was set at \$7,758,200 for 2001 and \$4,987,400 for 2002.

B. Tax Year 2003

It appears undisputed that ACI Holdings did not protest the assessment for the property for tax year 2003 to the Township's board of review. The assessed value for 2003 was \$4,525,900 and the taxable value was \$3,421,159.

C. Tax Year 2004

In a case filed in the Tax Tribunal concerning tax year 2004, the Tax Tribunal entered a consent judgment that set the revised and assessed taxable values at \$1,450,000 each. The true cash value of the property was set at \$2,900,000.

D. ACI Holdings' Petition

In April 2006, ACI Holdings filed the instant action in the Tax Tribunal, alleging that the assessed values for tax years 2001 through 2004 were excessive. In Count I, ACI Holdings sought damages and equitable relief based on allegations that the Township engaged in fraud or constructive fraud by only using a cost approach to determine the true cash value of the property. In Count II, ACI Holdings sought damages and other relief under MCL 211.53a based on allegations that there was a mutual mistake of fact with respect to the true cash value of the property "as well as the legality of the inflated tax assessments."

The Township sought summary disposition under MCR 2.116(C)(4), (7), and (10), arguing that the consent judgments for tax years 2001, 2002, and 2004 barred ACI Holdings' challenge to the property values for those years based on collateral estoppel. The Township also argued that Tax Tribunal lacked jurisdiction over the fraud count challenging the tax assessment for 2003 and that the fraud claim was also barred by the statute of limitations. Finally, the Township argued that any claim predicated on MCL 211.53a failed because there was no mutual mistake of fact. On May 3, 2007, the Tax Tribunal entered an opinion and order granting the Township's motion for summary disposition.

ACI Holdings now appeals.

II. Summary Disposition

A. Standard Of Review

ACI Holdings challenges the Tax Tribunal's grant of the Township's motion for summary disposition. ACI Holdings argues that summary disposition was premature because it was granted before the completion of discovery, and that the Tax Tribunal applied wrong legal principles in granting the motion. This Court's review of Tax Tribunal decisions in cases involving property tax disputes is limited.¹ "In the absence of fraud, error of law or the adoption of wrong principles, no appeal may be taken to any court from any final agency provided for the administration of property tax laws from any decision relating to valuation or allocation."² "All

¹ *City of Mt Pleasant v State Tax Comm*, 477 Mich 50, 53; 729 NW2d 833 (2007).

² Const 1963, art 6, § 28.

factual findings are final if supported by competent and substantial evidence.”³ We review de novo issues of statutory construction.⁴

B. Applying The Court Rules

Pursuant to the Tax Tribunal rules, the Michigan Court Rules apply where there is no applicable tribunal rule.⁵ Because there is no applicable tribunal rule governing summary disposition motions, the Tax Tribunal appropriately applied MCR 2.116 when deciding this matter.

C. Discovery

Generally, summary disposition is premature if it is granted before discovery on a disputed issue is complete.⁶ However, the mere fact that the discovery period remains open does not automatically mean that the court’s decision to grant summary disposition was untimely or otherwise inappropriate. “If a party opposes a motion for summary disposition on the ground that discovery is incomplete, the party must at least assert that a dispute does indeed exist and support that allegation by some independent evidence.”⁷ The relevant question is whether further discovery stands a fair chance of uncovering factual support for the opposing party’s position.⁸

Here, ACI Holdings failed to show that summary disposition was premature with respect to either the fraud or mutual mistake counts in its petition. The Township presented no affidavit or other evidence showing a need for discovery to resolve the issues raised in the Township’s motion for summary disposition to the Tax Tribunal. Further, the pleadings and documentary evidence submitted to the tribunal in connection with the Township’s motion for summary disposition reveal that summary disposition was properly granted.

³ *City of Mt Pleasant*, *supra* at 53, quoting *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 482; 473 NW2d 636 (1991).

⁴ *Id.*

⁵ TTR 205.1111(4); see also *Signature Villas, LLC v Ann Arbor*, 269 Mich App 694, 705-706; 714 NW2d 392 (2006).

⁶ *Village of Dimondale v Grable*, 240 Mich App 553, 566; 618 NW2d 23 (2000).

⁷ *Bellows v Delaware McDonald’s Corp*, 206 Mich App 555, 561; 522 NW2d 707 (1994); see also MCR 2.116(H)(1) (“A party may show by affidavit that the facts necessary to support the party’s position cannot be presented because the facts are known only to persons whose affidavits the party cannot procure.”); *Coblentz v Novi*, 475 Mich 558, 570; 719 NW2d 73 (2006) (concluding that the plaintiffs could not complain that summary disposition was premature because they did not offer the required MCR 2.116(H) affidavits, with the probable testimony to support their contentions).

⁸ *Village of Dimondale*, *supra* at 566.

D. The Fraud Claim

(1) Legal Standards

With respect to ACI Holdings' fraud claim involving tax years 2001, 2002, and 2004, we agree with the Tax Tribunal that the prior consent judgments entitled the Township to summary disposition under MCR 2.116(C)(7). Summary disposition is appropriate under this rule if a "claim is barred because of release, payment, prior judgment, immunity granted by law, [or] statute of limitations[.]"⁹ All documentary evidence submitted by the parties is considered, to the extent that the substance or content would be admissible as evidence, to determine if there is a genuine issue of material fact.¹⁰ The contents of the petition are accepted as true unless contradicted by affidavits or other documentary evidence.¹¹ If there is no material factual dispute, the question whether a claim is barred may be decided as a question of law.¹²

(2) The Tax Tribunal's Treatment Of ACI Holdings' Petition

A threshold issue in this case is whether the Tax Tribunal appropriately treated ACI Holdings' claim, in substance, as an appeal of the property assessments for tax years 2001, 2002, and 2004. This is so because the Tax Tribunal is a quasi-judicial agency of limited jurisdiction, whose primary function is to find facts and review decisions of agencies within its jurisdiction.¹³ Former law permitted a taxpayer to seek relief from a tax assessment in a judicial forum based on fraud.¹⁴ Examples of fraud include intentional overassessments and the use of a valuation method that does not determine true cash values.¹⁵

"A valuation is necessarily fraudulent where it is so unreasonable that the assessor must have known that it was wrong. If the valuation is purposely made too high through prejudice or a reckless disregard of duty in opposition to what must necessarily be the judgment of all competent persons, or through the adoption of a rule which is designed to operate unequally upon a class and to violate the constitutional rule of uniformity, the case is a plain one for the equitable remedy by injunction."^{16]}

⁹ MCR 2.116(C)(7).

¹⁰ *Watts v Polaczyk*, 242 Mich App 600, 603; 619 NW2d 714 (2000); see also MCR 2.116(G)(5) and (6).

¹¹ *Bryant v Oakpointe Villa Nursing Centre, Inc*, 471 Mich 411, 419; 684 NW2d 864 (2004).

¹² *Huron Tool & Engineering Co v Precision Consulting Services, Inc*, 209 Mich App 365, 377; 532 NW2d 541 (1995).

¹³ *Wikman v Novi*, 413 Mich 617, 629; 322 NW2d 103 (1982); *Perry v Vernon Twp*, 158 Mich App 388, 390; 404 NW2d 755 (1987); see also MCL 205.721 and MCL 205.731.

¹⁴ See *City of Birmingham v Oakland Co Supervisors*, 276 Mich 1; 268 NW 409 (1936).

¹⁵ *Helin v Grosse Pointe Twp*, 329 Mich 396, 407; 45 NW2d 338 (1951).

¹⁶ *Id.* at 406-407, quoting 4 Cooley on Taxation (4th ed), § 1645.

However, the Tax Tribunal Act¹⁷ provides for the Tax Tribunal to make an independent determination of the true cash value of property.¹⁸ “The Tax Tribunal is not bound to accept the parties’ theories of valuation. It may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination of true cash value.”¹⁹ Regardless of the approach used, the value must represent the usual price for which the property would sell.²⁰

The Tax Tribunal’s jurisdiction is set forth in MCL 205.731, which provides, in pertinent part, as follows:

The tribunal has exclusive and original jurisdiction over all of the following:

(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.

(b) A proceeding for a refund or redetermination of a tax levied under the property tax laws of this state.

The Tax Tribunal’s jurisdiction depends on whether the petitioner is contesting the legality of the tax bills received, as determined by a consideration of the relief sought and the underlying basis of the action.²¹ The Tax Tribunal’s powers include, but are not limited to:

(a) Affirming, reversing, modifying, or remanding a final decision, finding, ruling, determination, or order of an agency.

(b) Ordering the payment or refund of taxes in a matter of which it may acquire jurisdiction.

¹⁷ MCL 205.701 *et seq.*

¹⁸ MCL 205.735(2). See also *Great Lakes Div of Nat’l Steel Corp v Ecorse*, 227 Mich App 379, 389; 576 NW2d 667 (1998). We note that Tax Tribunal proceedings commenced after December 31, 2006, are now governed by MCL 205.735a. But because ACI Holdings commenced this matter in April 2006, MCL 205.735 applies. In any event, both statutes provide that a proceeding before the Tax Tribunal is original and independent and is to be considered de novo.

¹⁹ *Great Lakes Div of Nat’l Steel Corp*, *supra* at 389-390.

²⁰ *Id.* at 390; see MCL 211.27.

²¹ See *Colonial Village Townhouse Coop v Riverview*, 142 Mich App 474, 478; 370 NW2d 25 (1985).

(c) Granting other relief or issuing writs, orders, or directives which it deems necessary or appropriate in the process of disposition of a matter of which it may acquire jurisdiction.^[22]

Although the Tax Tribunal is empowered to grant “other relief” in a matter where it may acquire jurisdiction pursuant to MCL 205.732(c), it does not have judicial power, such as the power to hear class actions,²³ the power to order an injunction,²⁴ or other equitable powers.²⁵ Here, the essence of ACI Holdings’ fraud count is that the true cash value of the subject property for each tax year was set too high. But ACI Holdings couched its claim in terms of the test for fraud applicable in judicial proceedings before the Tax Tribunal Act was enacted and sought damages beyond a mere refund of overpaid taxes. ACI Holdings alleged that the excessive tax assessment caused it to default on covenants in loan documents, which led to the foreclosure of the property and its business to fold. To the extent that ACI Holdings’ fraud claim seeks damages for tortious conduct, the Tax Tribunal lacked subject-matter jurisdiction to consider the claim, because common-law tort claims fall outside the Tax Tribunal’s exclusive jurisdiction.²⁶

However, to the extent that ACI Holdings’ claim, though couched as fraud, constituted a challenge to the legality of the property tax assessment for the applicable tax years, we conclude that the Tax Tribunal correctly treated the claim as an appeal. Pursuant to MCL 205.731, the Tax Tribunal has subject-matter jurisdiction to review tax assessments.

Examined in this context, we conclude that the Tax Tribunal’s application of MCL 205.745 to the prior consent judgments entered in the Tax Tribunal for tax years 2001, 2002, and 2004 was not erroneous. Although the Township relied on the doctrine of collateral estoppel in its motion for summary disposition, the Township asserted the prior consent judgments as an affirmative defense in its answer to the petition, and its motion for summary disposition was predicated on the existence of the prior consent judgments. An adjudicative tribunal, like a court, is empowered to go beyond issues raised and address any issue that, in its opinion, justice requires be considered and resolved.²⁷ We note that if ACI Holdings believed that the Tax Tribunal misapplied MCL 205.745, it could have moved for rehearing or reconsideration, as permitted by the Tax Tribunal’s rule TTR 205.1288.

Further, we conclude that the Tax tribunal did not err in its application of MCL 205.745 to this case. In general, the doctrine of *res judicata* applies to consent judgments in civil

²² MCL 205.732.

²³ *Perry*, *supra* at 391.

²⁴ *Wikman*, *supra* at 647.

²⁵ *Federal-Mogul Corp v Dep’t of Treasury*, 161 Mich App 346, 359; 411 NW2d 169 (1987).

²⁶ *Highland-Howell Dev Co, LLC v Marion Twp*, 469 Mich 673, 678; 677 NW2d 810 (2004).

²⁷ *Paschke v Retool Industries (On Rehearing)*, 198 Mich App 702, 705-706; 499 NW2d 453 (1993), *rev’d on other grounds* 445 Mich 502 (1994).

actions.²⁸ Res judicata also applies to controversies adjudicated by the Tax Tribunal.²⁹ MCL 205.745 provides:

An order or decision may be entered by a member of the tribunal upon written consent of the parties filed in the proceeding or stated in the record. The order or decision is not appealable and has like effect as an order or decision in a contested hearing.

We enforce unambiguous statutory language as written.³⁰ It is clear from MCL 205.745 that a consent judgment is to be given the same effect as an order following a contested hearing and, therefore, is subject to the doctrine of res judicata. It follows that ACI Holdings' "fraud" claim was barred because, in substance, the only matter properly within the Tax Tribunal's jurisdiction was a challenge to the amount of the tax assessments and the valuations on which they were based. ACI Holdings cannot avoid the preclusive effect of res judicata by couching its claim as sounding in fraud under standards applicable to judicial actions before the Tax Tribunal Act was enacted. Therefore, the Tax Tribunal properly granted the Township's motion for summary disposition with respect to petitioner's fraud claims for tax years 2001, 2002, and 2004, pursuant to MCR 2.116(C)(7). In light of this decision, it is unnecessary to address the merits of the Tax Tribunal's determination that there was no evidence of constructive fraud.

With respect to the fraud count related to tax year 2003, we conclude that the Tax Tribunal lacked subject-matter jurisdiction over this claim. As the Tax Tribunal indicated in its decision, MCR 2.116(C)(4) applies to a claim that subject-matter jurisdiction is lacking. Although the Tax Tribunal did not specifically state that it was dismissing the fraud claim with respect to tax year 2003 under MCR 2.116(C)(4), this Court may review a summary disposition ruling under the correct subrule.³¹

Whether the Tax Tribunal has subject-matter jurisdiction over a claim is reviewed de novo as a question of law.³² When reviewing a motion under MCR 2.116(C)(4), we must determine whether the pleadings demonstrate that the moving party was entitled to judgment as a matter of law or whether any affidavits or other proofs submitted by the parties show that there is no genuine issue of material fact.³³

ACI Holdings does not argue that it properly invoked the Tax Tribunal's jurisdiction under MCL 205.735 by protesting the tax assessment to the board of review or by filing a

²⁸ *Ditmore v Michalik*, 244 Mich App 569, 576; 625 NW2d 462 (2001).

²⁹ *Wayne Co v Detroit*, 233 Mich App 275, 277-278; 590 NW2d 619 (1998).

³⁰ *Signature Villas, LLC, supra* at 699.

³¹ *Spiek v Dep't of Transportation*, 456 Mich 331, 338; 572 NW2d 201 (1998).

³² See *Trostel, Ltd v Treas Dep't*, 269 Mich App 433, 440; 713 NW2d 279 (2006); *Calabrese v Tendercare of Michigan, Inc*, 262 Mich App 256, 259; 685 NW2d 313 (2004).

³³ *Jones v Slick*, 242 Mich App 715, 718; 619 NW2d 733 (2000).

petition on or before June 30 in the Tax Tribunal.³⁴ Rather, ACI Holdings argues that the Tax Tribunal acquired jurisdiction over its “constructive fraud” claim under the “other relief” powers in MCL 205.732(c). For the reasons previously discussed with respect to tax years 2001, 2002, and 2004, we conclude that the Tax Tribunal lacked subject-matter jurisdiction to consider a tort claim for damages with respect to tax year 2003. Treating ACI Holdings’ claim as an appeal from the tax assessment for tax year 2003, the Tax Tribunal correctly relied on *Electronic Data Systems Corp* to reject petitioner’s argument. As this Court stated in *Electronic Data Systems Corp*, the Tax Tribunal does not have equitable powers to grant a delayed appeal from a tax assessment.³⁵

E. Mutual Mistake

The Tax Tribunal dismissed ACI Holdings’ mutual mistake claim under MCR 2.116(C)(10). Summary disposition is proper under this subrule when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.³⁶ “‘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.’”³⁷

MCL 211.53a, which is the basis for ACI Holdings’ “mutual mistake of fact” claim, 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.

The dispositive question is whether there is factual support for ACI Holdings’ claim of a “mutual mistake of fact” for each tax year. For purposes of MCL 211.53a, the Michigan Supreme Court has defined a “mutual mistake of fact” as “an erroneous belief, which is shared and relied on by both parties, about a material fact that affects the substance of the transaction.”³⁸

In *Ford Motor Co*, the Supreme Court found that a mutual mistake of fact existed because, although an assessor is required to exercise judgment under the General Property Tax Act, the assessor chose to rely on factual information provided by the taxpayer, which was later determined to be inaccurate, to determine the tax assessment.

³⁴ See generally *Electronic Data Systems Corp v Flint Twp*, 253 Mich App 538, 543; 656 NW2d 215 (2002) (stating that the time limits in MCL 205.735 are jurisdictional).

³⁵ *Id.* at 548.

³⁶ *Signature Villas, LLC, supra* at 698-699.

³⁷ *Id.* at 699, quoting *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

³⁸ *Ford Motor Co v Woodhaven*, 475 Mich 425, 442; 716 NW2d 247 (2006).

Here, ACI Holdings filed documentary evidence with its petition and, in particular, relied on a June 21, 2004, letter written by the Township's assessor to the city of Chelsea as support for its claim that MCL 211.53a affords a basis for relief based on a mutual mistake of fact. The letter indicates that the taxable value of the property for tax year 2004, which was ultimately included in the consent judgment, was arrived at following a consideration of cost and market approaches to valuation, with the assistance of market information provided by the Washtenaw County Equalization Office. The assessor's letter indicates that the amount of an earlier stipulation "under a 2003 Michigan Tax Tribunal Protest" was "based primarily on the cost approach to value since we were lacking in market comparables." Additional evidence that the Township filed in support of its motion for summary disposition indicates that the consent judgment for tax years 2001 and 2002 was entered in June 2003, and that the consent judgment for tax year 2004 was entered in March 2005.

In opposition to the Township's motion, ACI Holdings filed a brief in which it alleged, without providing a supporting affidavit or other admissible evidence as required by MCR 2.116(G)(6), that it believed that the Township's assessor had followed three valuation methods (cost, market, and income) but subsequently discovered that the assessor did not do so, as indicated by the June 21, 2004 letter. The Tax Tribunal rejected this theory as supportive of a mutual mistake of fact. It determined that an assessor is not required to apply all three valuation methods and there was no evidence that both parties shared an erroneous belief regarding the assessor's approach to valuation. Because the Township does not address this basis of the Tax Tribunal's decision, we deem this issue abandoned.³⁹

But with regard to ACI Holdings' claim that it could pursue a mutual mistake theory on the ground that the parties shared a belief that there were no comparable properties to conduct a market valuation of the property, we agree with the Tax Tribunal that this claim is linked to ACI Holdings' erroneous claim that the assessor was required to use all three valuation approaches. MCL 211.53a does not apply unless there is a shared erroneous belief about a material fact that the parties relied upon and that affected the substance of the transaction. In this case, the pertinent transaction is the tax assessments, as originally determined or modified for purposes of the consent judgments.

The cost and market approaches to valuation are among the three traditional approaches used to determine the true cash value of property for a tax assessment.⁴⁰ Under the traditional cost approach, true cash value is generally derived by adding the estimated land value to the estimated current cost of reproducing or replacing improvements, and deducting the loss in value from depreciation of structures on the property.⁴¹ Under a traditional market or sales-comparison

³⁹ *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999) ("It is axiomatic that where a party fails to brief the merits of an allegation of error, the issue is deemed abandoned by this Court.").

⁴⁰ *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 484-485; 473 NW2d 636 (1991).

⁴¹ *Id.* at 484 n 18.

approach, true cash value is derived by analyzing recent sales of similar properties, comparing the sales to the subject property, and adjusting the sales prices of the comparable properties for differences with the subject property.⁴² The sale price of another piece of property is not conclusive evidence of value because the price might reflect factors, personal to the parties or otherwise, that are not part of the usual price.⁴³ The existence of a number of comparable properties, if sufficiently similar, can cure this deficiency, but if the sale price of each property is flawed, the result of this approach will also be flawed.⁴⁴

Thus, merely identifying another ice arena that might be comparable to the property at issue here does not require application of the market approach. Nor does it render the cost approach, as a sole or primary method of valuation, an inaccurate indicator of value. Further, the evaluation of what valuation approach to follow is not made with the benefit of hindsight, but must consider the circumstances as they existed when the assessment was made or, as in this case, when the assessment was modified for certain tax years as part of a consent judgment.

There is no single correct means for determining the true cash value of property.⁴⁵ Therefore, we conclude that the assessor's decision to rely on a cost approach (or at least to primarily rely on a cost approach to valuation before tax year 2004, as indicated in the June 21, 2004, letter) was not a mutual mistake of fact affecting the substance of the transaction. This is so regardless of whether the assessor conducted an adequate investigation of recent sales data in reaching this decision.

Moreover, examining the evidence in a light most favorable to ACI Holdings, the evidence does not support an inference that the requisite shared belief to recover overpaid taxes under MCL 211.53a existed for any of the four tax years. This case is unlike *Ford Motor Co*, in which a quantifiable factual mistake was linked to the taxpayer. There, the assessor effectively adopted the petitioner's overstatement of the quantity of taxable personal property to determine a tax assessment.⁴⁶ By contrast, here the assessor's omission was not linked to any factual information provided by ACI Holdings.

Accordingly, we affirm the Tax Tribunal's decision to grant the Township's motion for summary disposition. ACI Holdings failed to show either a genuine issue of material fact or that summary disposition was premature because of a need for discovery with respect to its theory that the assessor should have found sufficient information to use a market approach for each tax year's valuation.

⁴² *Id.* at 485 n 19.

⁴³ *Antisdale v Galesburg*, 420 Mich 265, 278; 362 NW2d 632 (1984).

⁴⁴ *Id.* at 278-279.

⁴⁵ *Meadowlanes Ltd Dividend Housing Assn*, *supra* at 485; *Great Lakes Div of Nat'l Steel Corp*, *supra* at 390.

⁴⁶ *Ford Motor Co*, *supra* at 446-447.

Finally, ACI Holdings' claim that a mutual mistake of fact existed with respect to the assessor's familiarity with ice arena properties is not properly before us because it was not presented to the Tax Tribunal. The time to set forth facts showing a genuine issue of material fact was in the proceedings before the Tax Tribunal.⁴⁷ In any event, regardless of the assessor's experience, the "general rule is that knowledge of an agent on a material matter, acquired within the scope of the agency, is imputed to the principal."⁴⁸ A government agency, like other entities, can only act through its agents and employees.⁴⁹ And in *Ford Motor Co.*,⁵⁰ the Michigan Supreme Court considered the assessor's erroneous belief regarding the accuracy of a taxpayer's personal property statement in concluding that there was a mutual mistake of fact. Since MCL 211.53a itself requires that the "assessing officer" make the mistake, we find no merit to ACI Holdings' suggestion that the Township be separated from its assessor for purposes of determining if there was a mutual mistake of fact.

Affirmed.

/s/ William C. Whitbeck
/s/ Kirsten Frank Kelly

⁴⁷ *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999).

⁴⁸ *Turner v Mut Benefit Health & Accident Ass'n*, 316 Mich 6, 21; 24 NW2d 534 (1946).

⁴⁹ *Ross v Consumers Power Co (On Rehearing)*, 420 Mich 567, 621 n 35; 363 NW2d 641 (1984).

⁵⁰ *Ford Motor Co*, *supra* at 442-443.