

STATE OF MICHIGAN
COURT OF APPEALS

ELM INVESTMENT COMPANY,

Plaintiff-Appellant,

v

WAYNE COUNTY TREASURER,

Defendant-Appellee,

and

EUGENE HUNTER,

Defendant.

UNPUBLISHED

June 9, 2009

No. 282584

Wayne Circuit Court

LC No. 07-703671-CZ

Before: Borrello, P.J., and Meter and Stephens, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order denying his motion for a declaratory judgment against defendant Wayne County Treasurer and dismissing the action. We conclude that the circuit court lacked subject-matter jurisdiction over plaintiff's action because the action is within the exclusive jurisdiction of the Tax Tribunal. We therefore affirm the trial court's dismissal of plaintiff's action for that reason.

Plaintiff owns several residential rental properties in the city of Detroit (the "city"). In the 2006-2007 tax year, plaintiff attempted to pay only the property tax due on each property, leaving a \$300 annual solid waste collection fee that the city first imposed in 2006 unpaid. The city treasurer's office disregarded plaintiff's instruction to apply the partial payment entirely toward the property tax, and instead allocated it between the property tax and the solid waste fee. Consequently, the city's records showed both property tax and solid waste fee delinquencies for the properties. Pursuant to MCL 211.55, on March 1, 2007, these delinquent amounts were returned to defendant, the county treasurer, for collection, along with administrative fees, penalties, and interest. Before that date, plaintiff filed this action against defendant, seeking a declaratory judgment that defendant was barred from initiating statutory forfeiture, foreclosure, and sale procedures against its properties because there was no property tax delinquency, only a solid waste fee delinquency.

On June 29, 2007, while plaintiff's action was pending, the Michigan Legislature enacted 2007 PA 31, effective immediately, which was codified at MCL 211.89c. The statute provides:

(1) In any local tax collecting unit in a city with a population of 600,000 or more, the local tax collecting unit may treat as delinquent under sections 87b, 87c, and 87d a solid waste fee that is delinquent under the terms of any ordinance authorizing the solid waste fee, if that solid waste fee was included in the tax statement under section 44.

(2) If a solid waste fee is delinquent on the March 1 immediately preceding the date that the solid waste fee is returned as delinquent to the county treasurer under subsection (1), a county treasurer may include that solid waste fee in the county's delinquent tax revolving fund.

(3) If a solid waste fee is returned to a county treasurer as delinquent under subsection (2), that solid waste fee shall be a fee treated as a delinquent tax for purposes of sections 87b, 87c, and 87d and the property on which the fee is assessed is subject to forfeiture, foreclosure, and sale for delinquent taxes as provided in this act if the local tax collecting unit has also returned to that county treasurer uncollected delinquent taxes levied on the property on which the solid waste fee is assessed.

(4) If an owner redeems property that is his or her principal residence that is returned to the county treasurer for delinquent taxes and a delinquent solid waste fee is assessed to that owner's principal residence, the owner may redeem his or her principal residence without payment of the delinquent solid waste fee. As used in this subsection, principal residence means property exempt under section 7cc.

(5) This section applies to any fee that was delinquent on or after March 1, 2007 and that was included in the delinquent tax roll delivered to a county treasurer at the same time as delinquent taxes for a year in which the fee is assessed.

(6) As used in this section, "solid waste fee" means that term as defined in the ordinance or resolution of the local tax collecting unit authorizing the assessment of the solid waste fee and includes all interest, penalties, and fees imposed on that solid waste fee.

After the enactment of MCL 211.89c, plaintiff moved for a declaratory judgment, arguing that the statutory amendment prohibited defendant from subjecting properties to forfeiture, foreclosure, and sale for delinquent taxes if the city returned uncollected solid waste fees without also returning uncollected delinquent property taxes. Defendant argued in response that the city's allocation of plaintiff's partial payment resulted in both uncollected delinquent property taxes and solid waste fees. Thus, defendant argued, the central issue in the case was whether the city properly allocated plaintiff's payment, which was a matter within the exclusive jurisdiction of the Michigan Tax Tribunal. Plaintiff denied that the circuit court lacked subject-matter jurisdiction over its complaint, and further argued that the city failed to follow proper

procedures in returning the delinquency roll to defendant, and that defendant failed to take appropriate actions to address the city's errors.

The trial court rejected defendant's jurisdictional argument, but granted judgment for defendant on the ground that the solid waste fee was subject to defendant's collection procedures. This appeal followed.

Although the trial court resolved the jurisdictional question in plaintiff's favor, plaintiff preemptively raises the question of the circuit court's jurisdiction on appeal, apparently in anticipation that defendant would raise the issue as an alternative ground for affirmance, which it has. Furthermore, it is well established that questions relating to subject-matter jurisdiction may be raised at any time by the parties, or sua sponte by a court. *Michigan Chiropractic Council v Comm'r of the Office of Financial & Ins Services*, 475 Mich 363, 391 n 3; 716 NW2d 561 (2006). Thus, this issue is properly before this Court. Whether the trial court had subject-matter jurisdiction over an action is a question of law that we review de novo. *Harris v Vernier*, 242 Mich App 306, 309; 617 NW2d 764 (2000).

MCL 205.731(a) provides that the Tax Tribunal has exclusive and original jurisdiction over:

[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.

"The tribunal's jurisdiction is based either on the subject matter of the proceeding (e.g., a direct review of a final decision of an agency relating to special assessments under property tax laws) or the type of relief requested (i.e., a refund or redetermination of a tax under the property tax laws)." *Wikman v City of Novi*, 413 Mich 617, 631; 322 NW2d 103 (1982). If a claim implicates whether the taxing authority followed statutory procedures, and requires factual determinations concerning the bases for the assessment, the Tax Tribunal is the appropriate forum. *Meadowbrook Village Assoc v City of Auburn Hills*, 226 Mich App 594, 597; 574 NW2d 924 (1997).

Plaintiff argues that this case involves the interpretation and application of MCL 211.89c, and, therefore, is outside the Tax Tribunal's jurisdiction. However, the actual controversy in this case does not involve defendant's initiation of collection procedures for delinquent solid waste fees, but rather defendant's determination that plaintiff also has delinquent property taxes triggered by the city's allocation of plaintiff's partial payment between the property tax assessment and the solid waste fee. Regardless of how plaintiff attempts to characterize its action, there is no genuine issue of material fact that the city did not allocate plaintiff's payment fully to real estate taxes, leaving only the solid waste fee unpaid. The actual question presented by the allegations in plaintiff's complaint is whether the city and defendant were obligated to allocate plaintiff's payment toward property taxes alone, leaving only the solid waste fee unpaid. Accordingly, plaintiff's action does not involve a question of statutory interpretation.

MCL 205.731(a) clearly and unambiguously confers upon the Tax Tribunal exclusive and original jurisdiction over "a final decision, finding, ruling, determination, or order of an agency relating to . . . allocation . . . under the property tax laws of this state." "Agency" is defined as "a

board, official, or administrative agency who is empowered to make a decision, finding, ruling, assessment, determination, or order that is subject to review under the jurisdiction of the tribunal or who has collected a tax for which refund is claimed.” MCL 205.703(a). Both defendant and the city’s tax authorities are “agencies” within the meaning of MCL 205.703(a). Although the statute does not define “allocation,” *Random House Webster’s College Dictionary* (2d ed), p 36, provides these definitions:

Allocate to set apart for a particular purpose; assign or allot

Allocation 1. the act of allocating; apportionment. 2. the state of being allocated. 3. the share or portion allocated.

The city’s determination that plaintiff’s payment should be partially applied, assigned, or allotted toward the solid waste fee, instead of applied entirely toward the assessed property tax, constitutes an act of allocation within these definitions. In addition, a taxing authority’s determination of how a property owner’s tax payment should be applied to the different items listed in a property tax statement is a decision or determination regarding an “allocation . . . under the property tax laws of this state.” MCL 205.731(a). Thus, the question raised by plaintiff’s complaint, namely, whether defendant properly accepted the city’s determination that plaintiff’s tax payment should be partially applied to the solid waste fee, is within the original and exclusive jurisdiction of the Tax Tribunal.

Relying on *City of South Haven v Van Buren Co Bd of Comm’rs*, 270 Mich App 233; 715 NW2d 81 (2006), rev’d in part on other grounds 478 Mich 518 (2007), plaintiff argues that allocation disputes are within the circuit court’s jurisdiction. In that case, the plaintiff alleged that the defendant breached its statutory fiduciary duty to properly distribute funds raised in a county millage for the construction, maintenance, and repair of county roads. *Id.* at 235-236. Although the circuit court held that the case was within the exclusive jurisdiction of the Tax Tribunal, this Court disagreed, stating:

Plaintiff is not challenging the validity of the road millage levy. Plaintiff’s allegation is that the county misallocated the funds generated from the road millage. Plaintiff’s contention is that the board of county commissioners and the treasurer improperly gave the funds resulting from the millage vote to the county road commission, contrary to what plaintiff contends are the dictates of MCL 224.20b. Plaintiff does not challenge the “factual underpinnings” of the road millage levied. [*Id.* at 241.]

In this case, plaintiff seizes upon the terms “misallocated” and “factual underpinnings” used in *City of South Haven* in an attempt to draw an analogy between its action challenging the city of Detroit’s allocation of plaintiff’s payment and the city of South Haven’s action challenging the county’s distribution of millage funds. Plaintiff argues that its action for a declaratory judgment challenges the city of Detroit’s decision to allocate plaintiff’s payment between the property tax and solid waste collection fee, and defendant’s decision to act in accordance with the city’s allocation decision. Plaintiff denies challenging the “factual underpinnings” of the solid waste collection fee. Plaintiff’s argument is one of semantics rather than substance. When this Court used the terms “allocation” and “misallocation” in *City of South Haven*, it was referring to the defendant county’s distribution and use of monies it had

received through the road millage. The challenge in *City of South Haven* essentially charged the taxing authority with misusing dedicated funds for other purposes. It was not referring to the taxing authorities' method of crediting taxpayers' payments against the assessments the taxpayers owed. The terms "allocation" and "misallocation" were used in the context of a governing body's expenditure of revenues received through tax assessments, which is different than the context in which "allocation" is used in MCL 205.731(a). Similarly, although plaintiff denies that its claim involves a challenge to the "factual underpinnings" of the solid waste collection fee, its claim involves a challenge to the factual underpinnings of the city's determination that part of the property tax remained unpaid, and of defendant's determination that it must abide by the city's allocation of the payment.

Thus, the trial court erred in finding that plaintiff's action was not within the exclusive jurisdiction of the Tax Tribunal. Accordingly, we affirm the trial court's dismissal of plaintiff's action on the alternative ground that it lacked subject-jurisdiction over the action.

Affirmed.

/s/ Stephen L. Borrello

/s/ Patrick M. Meter

/s/ Cynthia Diane Stephens