

STATE OF MICHIGAN
COURT OF APPEALS

RAJI JOSEPH ZAHER, ZAHER INVESTEMENT
GROUP, L.L.C., and LIONS GATE
DEVELOPMENT, L.L.C.,

UNPUBLISHED
June 23, 2009

Plaintiffs-Appellants,

v

KIM NICKERSON, KURT SOPHER, TERRY
SPEZIA, MARK SCHNEEMILCH, GARY
KELLEY, RANDY STEWART, CHARM
HEALY, and DAVISON TOWNSHIP,

No. 285736
Genesee Circuit Court
LC No. 08-088095-CZ

Defendants-Appellees.

Before: Murphy, P.J., and Sawyer, and Murray, JJ.

PER CURIAM.

Plaintiffs appeal as of right the April 21, 2008, orders granting defendants' motion for summary disposition in this tax assessment case. We affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

Plaintiffs are the owners and developers of real property in Davison Township. According to plaintiffs, defendants – Davison Township and employees of the township – permitted a grossly excessive assessment of plaintiffs' property resulting in "an astronomical property tax bill." Plaintiffs assert that the assessment was discriminatory and based on ethnic prejudice on account of defendant Nickerson's alleged statement to plaintiff Zaher (who is of Arabic descent) that he should "take his tent and go elsewhere" and that she would "get him" in assessing plaintiffs' property. Because of the assessment, plaintiffs claim that development of their property is inhibited and that they are effectively precluded from participating in an advertising website that provides a competitive advantage to developers of other housing developments in Davison Township.

Plaintiffs initially filed suit in circuit court on March 27, 2007, alleging misfeasance, malfeasance, and respondeat superior, but stipulated to dismissal of that complaint after

defendants filed a motion for summary disposition for lack of jurisdiction, governmental immunity, and failure to state a claim on which relief could be granted.¹ Plaintiffs subsequently filed the five-count complaint underlying this appeal, asserting claims of intentional discrimination, gross recklessness and dereliction of duty, intentional failure resulting in discrimination, and trespass and/or threatened abuse of statutory power. At the hearing on defendants' motion for summary disposition, the court dismissed plaintiffs' claims under MCR 2.116(C)(4) (lack of subject-matter jurisdiction) on the ground that all issues raised were within the jurisdiction of the Tax Tribunal. Plaintiffs' motion for reconsideration was also denied, and this appeal followed.

On appeal, plaintiffs argue that tort claims to redress discrimination fall within the jurisdiction of the circuit court rather than the Tax Tribunal. This claim cannot withstand scrutiny. "We review de novo jurisdictional questions under MCR 2.116(C)(4) and, in doing so, we must determine whether the affidavits, together with the pleadings, depositions, admissions, and documentary evidence, demonstrate . . . [a lack of] subject matter jurisdiction." *L & L Wine & Liquor Corp v Liquor Control Comm*, 274 Mich App 354, 356; 733 NW2d 107 (2007) (citations and quotations omitted). As discovery in this case had not yet commenced, our review is limited to the pleadings.

Circuit courts have general and original jurisdiction over all civil claims and remedies, except where the constitution or a statute denies the circuit court jurisdiction or vests exclusive jurisdiction in a different court. MCL 600.605; see also Const 1963, art 6, § 13; MCL 600.601. Pursuant to MCL 205.731(a), the Tax Tribunal has exclusive jurisdiction over "[a] proceeding for direct review of a final decision, finding, ruling, determination, or order of an agency relating to assessment, valuation, rates, [and] special assessments . . . under property tax laws."² As a result, circuit courts have very limited jurisdiction over cases involving tax matters. In the past our courts have only recognized circuit court jurisdiction over constitutional challenges to tax statutes, *Eyde v Lansing Twp*, 420 Mich 287, 292; 363 NW2d 277 (1984), and equitable cases seeking to enforce Tax Tribunal decisions, *Johnston v Livonia*, 177 Mich App 200, 204-205; 441 NW2d 41 (1989), and to rectify an improper disposition of a collected tax. *Romulus Treasurer v Wayne Co*, 413 Mich 728, 746-747; 322 NW2d 152 (1982).

More recently our Supreme Court analyzed whether certain claims fell within the jurisdiction of the circuit court or Tax Tribunal. In *Highland-Howell Dev Co, LLC v Twp of Marion*, 469 Mich 673, 675-678; 677 NW2d 810 (2004), the plaintiff brought a two-count complaint. In the first count, plaintiff alleged that it was damaged when defendant breached a promise to build a sewer system to the plaintiff's development and alleged that defendant

¹ Plaintiffs have also challenged the assessment before the Tax Tribunal. That case, however, is not at issue here.

² On May 9, 2008, MCL 205.731(a) was amended to read that the Tax Tribunal has exclusive 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." 2008 PA 125.

“allocated a disproportionate share of the cost of the sewer improvements to Plaintiff’s property.” *Id.* at 674. The other count challenged the validity of the special assessment. *Id.*

The trial court dismissed both counts, holding that the Tax Tribunal had jurisdiction over both claims. On appeal to this Court plaintiff sought reversal of the dismissal of count I, and this Court reversed. The Supreme Court granted leave to appeal, and affirmed. Specifically, the Court held that the breach of contract claim did not fall within the Tax Tribunal’s jurisdiction because it did not relate to any assessment, valuation, equalization or allocation under property tax laws. *Id.* at 676-678. However, the allegations in the complaint that challenged the special assessment as disproportionate against plaintiff fell within the Tribunal’s exclusive jurisdiction. *Id.* at 676 n 4.

We must also keep in mind that a jurisdictional claim “should be determined not by how the plaintiff phrases its complaint, but by the relief sought and the underlying basis of the action.” *Colonial Village Townhouse Cooperative v Riverview*, 142 Mich App 474, 477-478; 370 NW2d 25 (1985). Several decisions from our Court have rejected arguments similar to that made by plaintiffs. In *Johnson v Michigan*, 113 Mich App 447, 450; 317 NW2d 652 (1982), the plaintiffs argued that the Tax Tribunal lacked jurisdiction over their class action suit brought to redress “past and continuing unconstitutional, unlawful, arbitrary, discriminatory, fraudulent and willful practices and policies which have resulted in unequal and inequitable assessments and collection of property taxes.” In finding that the Tax Tribunal had exclusive jurisdiction over the plaintiffs’ claims, the Court explained that phrasing the allegations as discrimination claims did not change the nature of the claims as a challenge to property tax assessments. *Id.* at 461. The Court held:

The remainder of the complaint basically alleges that all of the defendants were engaged in a conspiracy to fraudulently circumvent proper equalization.

Phrasing this claim in constitutional terms of discrimination under the Civil Rights Act and violation of due process does not change the nature of the claim as a challenge to property tax assessments. The constitutionally expressed terms are merely a claim that the property was invalidly assessed, whether by use of a wrong factor, failure of duties or otherwise. If the tax was discriminatory or if the local officials committed fraud, the Tax Tribunal can redetermine the assessments and grant appropriate relief. The remedy requested of declaratory judgments and other equitable relief is within the power of the Tax Tribunal to grant. The relief of a refund clearly is within the exclusive jurisdiction of the Tax Tribunal. [*Id.* (citations omitted).]

Similarly, in *Turner v Lansing Twp*, 108 Mich App 103, 113-114; 310 NW2d 287 (1981), this Court affirmed the Tax Tribunal’s decision to dismiss the petition challenging an excessive property tax assessment after it denied the petitioner’s motion to amend his complaint to include allegations of constructive fraud. Notably, the Court highlighted the hearing referee’s observation that: “Apparently, petitioner believes that by inserting the words, ‘fraud, misfeasance, and malfeasance’ within his petition [by amendment] he has somehow nullified the statutory procedural requirements established by the Legislature for the appeal of a property assessment.” *Id.* at 113.

Here, while plaintiffs assert that they seek relief for discrimination only and do not challenge the tax assessment, this argument ignores that the basis of the complaint is that the alleged discrimination permitted a grossly excessive assessment. Thus, plaintiffs' allegations "are merely a claim that the property was invalidly assessed." *Id.* at 461. Indeed, as noted in *Johnson*, "a claim that the improprieties were the result of discriminatory conspiratorial action should not divest the Tax Tribunal of jurisdiction to review the assessments." *Id.* at 459-460. Consequently, a plain reading of MCL 205.731(a), coupled with the allegations in plaintiffs' complaint, results in the conclusion that jurisdiction over most of plaintiffs' claims rests exclusively in the Tax Tribunal. That plaintiffs camouflage these claims in language of discrimination and conspiracy cannot alter this fact. *Colonial Village Townhouse Cooperative, supra* at 477-478.

Contrary to plaintiffs' argument, *Highland* does not require a different conclusion. In fact, it supports our holding. As noted, in that case the Court held that issues relating to assessment of the plaintiff's property (which included the anticipated sewer line) were within the exclusive jurisdiction of the Tax Tribunal, whereas the breach of contract claim (regarding the failed construction of the sewer line) was within the circuit court's jurisdiction because the alleged breach of contract claim was not related to the assessment. In contrast, here, plaintiffs' discrimination claims relate *directly* to how their property was assessed. Claims involving the methodology employed to determine a party's tax liability are within the exclusive jurisdiction of the Tax Tribunal. *Kostyu v Dep't of Treasury*, 170 Mich App 123, 130; 427 NW2d 566 (1988). Even if plaintiffs' case would not include a challenge to the actual assessment amount, surely defendants' position would include all of the steps and factors involved in coming to assessments generally, and the assessment reached in this particular case. Thus, the claims (except as discussed below) relate to the assessment of plaintiffs' property and were within the exclusive jurisdiction of the Tax Tribunal.

However, count V of plaintiffs' complaint alleges a trespass against Defendant Nickerson. In particular, plaintiff alleges that Nickerson entered their property without permission, thereby committing a trespass. This common law claim has no relation to the assessment or valuation "under property tax laws" MCL 205.731, as it generally involves the question of Nickerson's presence and intent, and whether Nickerson was authorized to be on the property. See *Terlecki v Stewart*, 278 Mich App 644, 653-654; 754 NW2d 899 (2008). Accordingly, it falls outside the jurisdiction of the Tribunal, and should not have been dismissed by the circuit court for lack of subject matter jurisdiction.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. No costs, neither party having prevailed in full.

s/ William B. Murphy
/s/ David H. Sawyer
/s/ Christopher M. Murray