STATE OF MICHIGAN

COURT OF APPEALS

CHRYSLER FINANCIAL SERVICES AMERICAS, L.L.C., f/k/a DAIMLERCHRYSLER SERVICES NORTH AMERICA, L.L.C.,	UNPUBLISHED March 20, 2012
Plaintiff-Appellant,	
V	No. 302299 Court of Claims
DEPARTMENT OF TREASURY,	LC No. 10-000017-MT
Defendant-Appellee.	

Before: RONAYNE KRAUSE, P.J., and DONOFRIO and FORT HOOD, JJ.

PER CURIAM.

Plaintiff appeals as of right the Court of Claims's order granting summary disposition for defendant under MCR 2.116(C)(4) on the basis that it lacked subject-matter jurisdiction to decide the case. Because the notices regarding the offsets constituted "decisions" or "assessments" within the meaning of MCL 205.22(1), and plaintiff failed to appeal the offsets within 90 days as required under the statute, we affirm.

On July 10, 2006, defendant notified DaimlerChrysler Financial Services Americas, L.L.C. ("DaimlerChrysler Financial"), plaintiff's predecessor in interest, that it seized $1,466,041.94 owed to DaimlerChrysler Financial and applied the amount to an accounts receivable of DaimlerChrysler Corporation. Similarly, on July 21, 2006, defendant notified DaimlerChrysler Financial that it seized $400,791.10 due to DaimlerChrysler Financial and applied that amount to an accounts receivable of DaimlerChrysler Corporation. On March 2, 2010, plaintiff filed this action seeking a refund of the amounts, which it alleged defendant had improperly seized.

Thereafter, both parties moved for summary disposition. Defendant moved for summary disposition under MCR 2.116(C)(4), arguing that the trial court lacked subject-matter jurisdiction because neither plaintiff nor its predecessor filed its complaint within the 90-day time limit set forth in MCL 205.22(1). Plaintiff moved for summary disposition under MCR 2.119(C)(9) and (10), arguing that defendant intercepted the funds improperly and without authority and failed to assert a valid defense to plaintiff's claim for a refund. In response to defendant's motion, plaintiff argued that the notices that defendant sent informing DaimlerChrysler Financial of the

offsets did not constitute "assessments," "decisions," or "orders" within the meaning of MCL 205.22(1) such that the 90-day time period was applicable. The trial court determined that the notices were "assessments" or "decisions" under MCL 205.22(1) and that, as such, the 90-day time period was applicable. The trial court therefore granted defendant's motion for summary disposition based on lack of subject-matter jurisdiction.

"We review a trial court's decision on a motion for summary disposition based on MCR 2.116(C)(4) de novo to determine if the moving party was entitled to judgment as a matter of law, or if affidavits or other proofs demonstrate there is an issue of material fact." *Harris v Vernier*, 242 Mich App 306, 309; 617 NW2d 764 (2000). Whether a court has subject-matter jurisdiction to decide a case is a question of law that this Court also reviews de novo. *Trostel, Ltd v Dep't of Treasury*, 269 Mich App 433, 440; 713 NW2d 279 (2006). Further, we review de novo as a question of law issues involving the interpretation and application of statutes. *PIC Maintenance, Inc v Dep't of Treasury*, ___ Mich App ___; ___ NW2d ___ (Docket No. 298358, issued June 16, 2011), slip op at 2.

MCL 205.22 provides, in relevant part:

> (1) A taxpayer aggrieved by an assessment, decision, or order of the department may appeal the contested portion of the assessment, decision, or order to the tax tribunal within 35 days, *or to the court of claims within 90 days* after the assessment, decision, or order.
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> (4) The assessment, decision, or order of the department, if not appealed in accordance with this section, is final and is not reviewable in any court by mandamus, appeal, or other method of direct or collateral attack.
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> (5) An assessment is final, conclusive, and not subject to further challenge after 90 days after the issuance of the assessment, decision, or order of the department, and a person is not entitled to a refund of any tax, interest, or penalty paid pursuant to an assessment unless the aggrieved person has appealed the assessment in the manner provided by this section. [Emphasis added.]

"The plain language of the statute states that taxpayers aggrieved by 'an assessment, decision, or order' of the Department of Treasury may appeal. MCL 205.22(1). Thus, only assessments, decisions, or orders are appealable." *PIC Maintenance, Inc*, slip op at 5.

Plaintiff argues that MCL 205.22(1) is inapplicable because the notices that defendant sent regarding the offsets did not constitute "assessments," "decisions," or "orders" within the meaning of the statute. When interpreting statutory language, we must ascertain and give effect to the Legislature's intent by enforcing the plain language as it is written. *PIC Maintenance, Inc*, slip op at 3. When the language of a statute is clear and unambiguous, judicial construction is neither necessary nor permitted, and "[we] will simply apply the terms of the statute to the circumstances of the particular case." *Id.* Undefined statutory terms must be accorded their plain and ordinary meanings, and courts may consult a dictionary when interpreting such terms. *Superior Hotels, LLC v Mackinaw Twp*, 282 Mich App 621, 633; 765 NW2d 31 (2009). While

courts may consult a lay dictionary "to define a common word or phrase that lacks a unique legal meaning[,]" MCL 8.3a requires that a legal term of art "be construed in accordance with its peculiar and appropriate legal meaning." *Brackett v Focus Hope, Inc*, 482 Mich 269, 276; 753 NW2d 207 (2008). When interpreting such terms, courts should consult a legal dictionary. See *id.* at 276-277; *People v Steele*, 283 Mich App 472, 488; 769 NW2d 256 (2009).

MCL 205.22 does not define the terms "assessment," "decision," or "order." The trial court opined that the notices constituted either "assessments" or "decisions,"[1] and defendant argues that the notices were "decisions." Because those terms are not legal terms of art, consulting a lay dictionary is appropriate.[2] The *Random House Webster's College Dictionary* (1997) offers several definitions of "decision," the more pertinent being: (1) "the act or process of deciding," (2) "the act of making up one's mind," and (3) "something that is decided; resolution." In accordance with these definitions, the notices constituted "decisions" of defendant within the meaning of MCL 205.22(1). The notices informed DaimlerChrysler Financial that defendant decided to seize its funds and apply the funds to the tax liability of DaimlerChrysler Corporation. Therefore, the notices may properly be characterized as "something that [was] decided" or a "resolution."

Even if we were to consult Black's Law Dictionary, as plaintiff advocates, the definition of "decision" contained therein would not require a different result. Black's Law Dictionary (9th ed) defines "decision," in part, as "[an] agency determination after consideration of the facts and the law[.]" Here, defendant made a determination, based on the facts and the law, to seize funds owed to DaimlerChrysler Financial and apply those funds to an accounts receivable of

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[1] The court initially stated that the notices appeared to be "assessments":

> [W]ould that constitute an assessment, a decision or an order? I'm going to rule that I think it does, based on the fact that when you get a notice that they're taking 1.4 million dollars of your money, and there is no dispute that the Plaintiffs [sic] received the notice, that would, in my opinion, be considered an assessment[.]

Thereafter, the court characterized the notices as "decisions":

> So I think I'm treating the notice, which the parties don't dispute was received by the predecessor of the current Plaintiff, was a decision, they took the action. They took the money, they applied it to the debt of Daimler Chrysler. And I feel that constitutes a decision.

[2] Cf. *Craig v Oakwood Hosp*, 471 Mich 67, 86; 684 NW2d 296 (2004) ("'Proximate cause' is a legal term of art[.]"; *In re Estate of Karmey*, 468 Mich 68, 74; 658 NW2d 796 (2003) ("'Fiduciary relationship' is a legal term of art[.]"; *People v Mesik (On Recon)*, 285 Mich App 535, 546; 775 NW2d 857 (2009) ("'malice aforethought' is a term of art[.]"; *Steele*, 283 Mich App at 488 ("'collateral matter' is a legal term of art[.]"

DaimlerChrysler Corporation. As such, the notices constituted "decisions" under MCL 205.22(1).

Alternatively, the notices constituted "assessments."

> The *Random House Webster's College Dictionary* (1992) provides three definitions for the word "assessment." It may mean (1) "the act of assessing; appraisal; evaluation," (2) "an official valuation of property, used as a basis for levying a tax," or (3) "an amount assessed as payable." [*Superior Hotels, LLC*, 282 Mich App at 633-634.][3]

The definitions of the term "assess" include "to impose a tax or other charge on[.]" *Random House Webster's College Dictionary* (1997). Here, the notices informed plaintiff's predecessor of the amounts imposed, or assessed, against it and payable to defendant. Thus, the notices may properly be characterized as "assessments" under MCL 205.22(1).

Further, the definitions of the term "assessment" in Black's Law Dictionary (9th ed) include, "[i]mposition of something, such as a tax or fine, according to an established rate; the tax or fine so imposed[.]" In this case, defendant imposed on plaintiff's predecessor the financial obligation to pay the outstanding tax liability of DaimlerChrysler Corporation. Accordingly, the notices constitute "assessments" under the legal dictionary definition of that term. Moreover, although the notices were titled "State of Michigan Remittance Advice," it was not necessary for the title to include the word "decision" or "assessment" in order for the notices to fall within the dictionary definitions of those terms.

Because MCL 205.22(1) was applicable, plaintiff's predecessor had 90 days within which to appeal the assessments or decisions to the Court of Claims. Plaintiff did not file its complaint until March 2, 2010, more than three years after the notices were sent. The failure to timely appeal the offsets divested the Court of Claims of subject-matter jurisdiction to decide plaintiff's challenge to the offsets. "When a court lacks subject matter jurisdiction to hear and determine a claim, any action it takes, other than to dismiss the action, is void." *Bowie v Arder*, 441 Mich 23, 56; 490 NW2d 568 (1992). Accordingly, the trial court properly granted summary disposition for defendant pursuant to MCR 2.116(C)(4) on the basis that it lacked subject-matter jurisdiction. Given our resolution of this issue, we need not address plaintiff's remaining

[3] Although the 1992 version of the *Random House Webster's College Dictionary* is cited in *Superior Hotels, LLC*, the definition of "assessment" in the *Random House Webster's College Dictionary* (1997) is identical to the 1992 version.

argument that defendant lacked authority to seize the funds due to DaimlerChrysler Financial to satisfy the tax liability of DaimlerChrysler Corporation.

Affirmed. Defendant, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Amy Ronayne Krause
/s/ Pat M. Donofrio
/s/ Karen M. Fort Hood