STATE OF MICHIGAN

COURT OF APPEALS

WALGREEN COMPANY,

Petitioner-Appellant,

v

MACOMB TOWNSHIP,

Respondent-Appellee.

FOR PUBLICATION
July 31, 2008

No. 276829
Tax Tribunal
LC No. 00-299458
Advance Sheets Version

Before: Owens, P.J., and O'Connell and Davis, JJ.

O'CONNELL, J. (*dissenting*).

I respectfully dissent. In my opinion, the Tax Tribunal improperly found that petitioner had no standing. Additionally, the rules created by respondent's board of review were invalid and denied petitioner its due-process rights. I would reverse.

Whether a party has standing comprises a question of law that is subject to review de novo. *Lee v Macomb Co Bd of Comm'rs*, 464 Mich 726, 734; 629 NW2d 900 (2001).

> "[T]he doctrine of standing [is] a constitutional principle that prevents courts of law from undertaking tasks assigned to the political branches. It is the role of courts to provide relief to claimants, in individual or class actions, who have suffered, or will imminently suffer, actual harm; it is not the role of courts, but that of the political branches, to shape the institutions of government in such fashion as to comply with the laws and the Constitution." [*Lee, supra* at 735-736, quoting *Lewis v Casey*, 518 US 343, 349; 116 S Ct 2174; 135 L Ed 2d 606 (1996) (citations omitted).]

In *Lee*, our Supreme Court adopted the same test to determine standing as that used by federal courts:

> "[T]he irreducible constitutional minimum of standing contains three elements. First, the plaintiff must have suffered an 'injury in fact'—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) 'actual or imminent, not "conjectural" or "hypothetical."' Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be 'fairly . . . trace[able] to the challenged action of the defendant, and not .

> . . th[e] result [of] the independent action of some third party not before the court.' Third, it must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'" [*Lee, supra* at 739, quoting *Lujan v Defenders of Wildlife*, 504 US 555, 560-561; 112 S Ct 2130; 119 L Ed 2d 351 (1992).]

The "injury in fact" must be "both concrete and particularized, as well as actual and imminent, in order to establish standing." *Rohde v Ann Arbor Pub Schools*, 479 Mich 336, 349; 737 NW2d 158 (2007). Under this standard, petitioner clearly has an "injury in fact," as it is the one responsible for paying the taxes at issue.

Although the majority recognizes petitioner's liability to the owner for the payment of the taxes under the terms of the lease, it dismisses petitioner's argument that it is "the real party in interest" under MCR 2.201(B) on the basis of its conclusion that the owner is the "real party in interest" because it ultimately remains liable to the township for payment of the taxes. "A real party in interest is one who is vested with the right of action on a given claim, although the beneficial interest may be in another." *Hoffman v Auto Club Ins Ass'n*, 211 Mich App 55, 95; 535 NW2d 529 (1995). The lease explicitly gave petitioner the right to contest the validity of any tax, making petitioner a real party in interest. That the property owner also has an interest does not prevent petitioner from being a real party in interest. "'Whether additional parties also have an interest, such that their joinder is required or that plaintiff is prohibited from proceeding without them, is not a question of real party in interest, but of necessary joinder under MCR 2.205.'" *Id.* (citations omitted). This Court has previously concluded that a lessee has standing to bring suit on an issue affecting the property. *Central Advertising Co v St Joseph Twp*, 125 Mich App 548, 555; 337 NW2d 15 (1983). The defendant in *Central Advertising Co* had argued that the plaintiff did not have an adequate property interest under which to establish the lawsuit, but this Court held that the plaintiff as a lessee "has a sufficient interest in the outcome of the litigation to assure sincere and vigorous advocacy." *Id.*

Being both the real party in interest, pursuant to MCR 2.201(B), and having met the requirements of standing, the Tax Tribunal erred in concluding that petitioner had no standing.

Separate from the question of standing is whether petitioner was authorized by statute to bring its claim before the board of review. See, *Rhode, supra* at 343-355 (providing separate analyses for the statutory requirements to bring suit and whether the plaintiffs had constitutional standing, and concluding that while the former was met, the latter was not). On March 5, 2002, respondent's board of review adopted the following policy: "A person who is filing a petition to appear before the Board of Review, on behalf of a property owner, must furnish written authorization from the property owner appointing them as the agent/representative." On March 6, 2003, the board of review adopted a more specific policy:

> Resolution adopted requiring a person who is filing a petition to appear before the Board of Review, on behalf of a property owner, must furnish written authorization from the property owner appointing them as the agent/representative. This Resolution was also adopted providing for all *future* petitions submitted by a representative on behalf of the property owner must be submitted with a Letter of Authorization signed by the property owner. The

> Letter of Authorization must contain the parcel number for the parcel or parcels being protested, a valid legible signature, a valid printed signature and must be original signatures. [Emphasis added.]

Petitioner filed its written appeal with respondent's board of review on March 1, 2003, and included a petition. Because the appeal petition predated the adoption of the March 6, 2003, resolution, I disagree with the majority that it is applicable. The text of the policy itself indicates it is applicable to "future petitions," and petitioner's petition was submitted before its adoption.

Using the 2002 rule, I conclude that petitioner provided sufficient documentation to proceed with its appeal before the board of review. Petitioner had a signed lease expressly permitting it to contest the validity of the property taxes. That document is sufficient to constitute written authorization from the property owner, appointing petitioner as the agent or representative before the board of review. Therefore, I conclude that the board of review erred in concluding that petitioner had no "standing" to protest the taxes.

Indeed, "[t]he right to a hearing by the assessor, sitting as a board of review, is one of which a tax-payer cannot be lawfully deprived." *Village of Three Rivers Common Council v Smith*, 99 Mich 507, 509; 58 NW 481 (1894). A taxpayer is "a person who pays tax or is subject to taxation." *Random House Webster's College Dictionary* (2001). Petitioner, as a person obligated to pay the property taxes in question, was a taxpayer, and the board of review was required to provide petitioner with a hearing.

Additionally, even if the March 6, 2003, policy did apply, I would conclude that it was both invalid, as it was not authorized by the General Property Tax Act (GPTA), MCL 211.1 *et seq.*, and unconstitutional because it violated petitioner's due-process rights.

A rule is invalid when it conflicts with the provisions of the governing statute. *Michigan Sportservice, Inc v Dep't of Revenue Comm'r*, 319 Mich 561, 566; 30 NW2d 281 (1948) ("The provisions of the rule must, of course, be construed in connection with the statute itself. In case of conflict, the latter governs."). In this case, the rule adopted by respondent's board of review places an additional burden on the taxpayer that is not required by the statute. There is no express authority in the GPTA permitting respondent's board of review to exclude those who pay the property taxes from being able to contest them. MCL 211.30(4) provides:

> At the request of a person whose property is assessed on the assessment roll or of his or her agent, and if sufficient cause is shown, the board of review shall correct the assessed value or tentative taxable value of the property in a manner that will make the valuation of the property relatively just and proper under this act.

Leases provide a real-property interest. *Adams Outdoor Advertising v East Lansing* (*After Remand*), 463 Mich 17, 33; 614 NW2d 634 (2000). See also *Forge v Smith*, 458 Mich 198, 206-207; 580 NW2d 876 (1998) (noting that lease contract granted property interest in certain lots); *Thomas v Rex A Wilcox Trust*, 185 Mich App 733, 738; 463 NW2d 190 (1990) ("Oil and gas leases are considered real property interests."); *Central Advertising Co, supra* (lessee had an adequate property interest to give it standing to maintain a lawsuit involving a county ordinance

affecting the property). Accordingly, under the plain language of MCL 211.30(4), petitioner had the right to protest the assessed value of the property, as petitioner had a property interest in the taxed property as the lessee, making petitioner a "person whose property is assessed." Respondent's board of review created a rule that prevented individuals who were otherwise permitted under the statute to protest the validity of the property tax from being able to do so. Because the statute does not provide them such authority, the rule is invalid and the statute must prevail. *Michigan Sportservice, Inc, supra.*

In addition to being invalid, the rule adopted by respondent's board of review is also unconstitutional. Both the United States and Michigan constitutions prevent the taking of property without due process of law. US Const, Am V; Const 1963, art 1, § 17. "The 'property' protected by the constitutions includes not only title, but all character of vested rights, including possession, dominion, control, and the right to make any legitimate use of the premises." *Ligon v Detroit*, 276 Mich App 120, 124-125; 739 NW2d 900 (2007), citing *Rassner v Fed Collateral Society, Inc*, 299 Mich 206, 213-214; 300 NW 45 (1941). Under the majority's reasoning, individuals with property interests in the taxed property (such as lessees) could be obligated to pay property taxes and yet, so long as the property owner listed on the assessment roll refuses to sign the required "Letter of Authorization" to the standards required by the board of review, would never be permitted to contest their tax obligation before the board of review.[1] When coupled with the requirement that an assessment dispute concerning the valuation of property be protested before the local board of review before the Tax Tribunal can acquire jurisdiction, MCL 205.735(1); *Covert Twp v Consumers Power Co*, 217 Mich App 352, 355; 551 NW2d 464 (1996), the rule adopted by respondent's board of review and assented to by the majority opinion denies access to the courts to an entire group of individuals with property interests, thereby denying them of property without due process of law.

Because I conclude that petitioner had standing and was permitted to challenge the tax assessment before the board of review, and that the rule implemented by the board of review was both invalid and unconstitutional, I would reverse the decision of the Tax Tribunal.

/s/ Peter D. O'Connell

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[1] That petitioner's lease required the property owner to execute any written documents required to contest the validity of taxes is irrelevant. The property owner could refuse to perform its obligation under the lease, preventing petitioner from ever being able to dispute its tax liability before the board of review. In that event, although petitioner would have a contract claim against the property owner, damages would be difficult or impossible to calculate, because there is no way to determine what the board of review would have decided had petitioner been permitted to appeal the taxes and what effect that would have had on future tax years.