STATE OF MICHIGAN

COURT OF APPEALS

CITY OF DETROIT, Plaintiff-Appellant,	UNPUBLISHED March 15, 2018
v	No. 337705 Wayne Circuit Court
BAYLOR LTD, Defendant-Appellee.	LC No. 16-010881-CZ

Before: MURRAY, P.J., and CAVANAGH and FORT HOOD, JJ.

PER CURIAM.

Plaintiff, City of Detroit, appeals as of right an order denying in part its motion for summary disposition and granting in part summary disposition in favor of defendant, Baylor LTD, in this real property tax collection action filed under MCL 211.47. We affirm.

On August 26, 2016, plaintiff filed a complaint averring that it had assessed and levied taxes on four pieces of real property located in Detroit and defendant's "name appears in the chain of title or on the tax bill for the properties[.]"[1] Plaintiff further averred that its tax roll indicated delinquent property taxes, accrued interest, penalties, and administrative fees for the properties in the amount of $27,933.61, for the years 2010, 2011, and 2012.[2] Accordingly, plaintiff requested a judgment against defendant in the amount of $27,933.61.

Defendant answered plaintiff's complaint, averring that the four properties referenced in plaintiff's complaint had been sold, transferred by deed, years ago. Specifically, one of the properties had been sold in 2003, two of the properties had been sold in 2007, and the fourth one was sold in April 2011. Therefore, defendant was not liable for the delinquent taxes on these properties.

Plaintiff then filed a motion for summary disposition under MCR 2.116(C)(4), (C)(7), (C)(9), and (C)(10), arguing that defendant was responsible for the unpaid taxes on the subject properties for the years 2010, 2011, and 2012, according to plaintiff's tax assessment roll. The

[1] The properties were located on the following streets: Shields, Marx, Seebaldt, and Plainview.

[2] Although plaintiff had also included the year 2013, such claim was subsequently abandoned.

city assessor had mailed assessment notices pertaining to each of the properties to defendant as the taxpayer listed on the city's assessment roll, and such notices indicated how to file an objection to the assessments. Defendant, however, failed to object to the local board of review regarding the assessments and failed to file a petition with the Michigan Tax Tribunal, which has exclusive jurisdiction over any determination relating to assessments under the property tax laws. Plaintiff also argued that the circuit court lacked jurisdiction to consider any defenses proffered by defendant and, further, any such defenses proffered by defendant were barred by the doctrines of waiver and collateral estoppel. Accordingly, plaintiff was entitled to summary disposition for the amount requested in its complaint, $27,933.61.

Defendant responded to plaintiff's motion for summary disposition, arguing that it was entitled to summary disposition under MCR 2.116(I)(2). Defendant argued that it had not owned the real properties at issue for a number of years. In fact, the deeds transferring ownership were recorded and on file with the Wayne County Register of Deeds even at the time plaintiff attempted to assess property taxes against defendant. As set forth in MCL 211.27a(10), the register of deeds must notify the assessor each month of property ownership transfers that occurred so that the assessor can update the city's records and tax rolls to reflect the proper taxpayer. Therefore, the assessor knew or should have known that defendant was not the taxpayer on the subject properties and there is no legal basis to pursue claims for delinquent property taxes against defendant. Moreover, because defendant did not own the properties, it had no standing to challenge the tax assessments with the city's board of review, which is required before a petition with the Tax Tribunal may be filed. Accordingly, defendant was entitled to summary disposition of plaintiff's tax collection action.

Plaintiff filed a reply brief arguing, in part, that ownership is not an element of a property tax collection action and, in any case, defendant waived its right to assert non-ownership of the property by not filing objections to the assessments with the city's board of review or the Tax Tribunal. Moreover, under MCL 211.30(4), defendant did have standing to challenge the tax assessments because its name appeared on plaintiff's assessment roll as the property owner. And any disputes related to the validity of the tax assessments must be adjudicated in the Tax Tribunal which has exclusive jurisdiction over such matters. Accordingly, plaintiff requested that summary disposition be granted in its favor.

Defendant filed a brief in response to plaintiff's reply, arguing that because defendant did not own the properties at issue, it was not legally obligated to raise the issue of non-ownership. The register of deeds was required to provide notice to the assessor of the transfers of ownership, not defendant, who was not a party in interest and had no right to challenge the tax assessments. Moreover, plaintiff failed to cite a single case in support of its claim that non-ownership is not a defense to a property tax collection action or that such defense was required to be raised to the city's board of review or the Tax Tribunal otherwise a non-owner is liable for delinquent property taxes. Accordingly, defendant was entitled to summary disposition in its favor.

On March 24, 2017, following oral arguments, the trial court granted plaintiff's motion for summary disposition as to the property located on Shields, and granted defendant's motion for summary disposition as to the properties located on Marx, Seebaldt, and Plainview. The trial court noted that defendant had presented uncontroverted evidence in the form of three deeds that show those three properties were conveyed away years before 2010, yet plaintiff was attempting

to recover taxes that were not paid from 2010 to 2012. Further, the fourth property was conveyed away in 2011, yet plaintiff was attempting to recover taxes that were not paid after the transfer of ownership. And, the court noted, if the city assessor would have checked the register of deeds records, the assessor would have seen that defendant did not own the properties at issue. Nevertheless, plaintiff was arguing that it was incumbent on defendant to challenge the assessments made on properties it did not own. Plaintiff argued that the burden of persuasion was "on the taxpayer to show that the assessments are incorrect." The trial court disagreed with plaintiff's argument, but noted that defendant was in fact the owner of the property located on Shields for a period of time that plaintiff was seeking property taxes and defendant agreed that it did owe about $3,000 in taxes on that property.

In summary, the trial court held that the city assessor was required by MCL 211.24(e) to determine the date of the last transfer of ownership of every parcel of property in completing an assessment roll and failed to comply with this statute before assessing property taxes against defendant for three properties that defendant did not own. Further, the trial court had jurisdiction because this case did not present an "assessment" issue; rather, this case involved the simple issue of whether defendant was the owner of the properties and it was undisputed that defendant was not the owner of three of those properties at the time they were assessed.[3] Because defendant was not the "property owner" of those properties, defendant could not protest the assessments before the board of review, MCL 211.30(4), and property assessments must first be appealed to the board of review before filing an action in the Tax Tribunal, MCL 211.735. But in any case, the trial court held, this matter was not an "assessment" issue so defendant was not required to contest, and could not have contested, the assessments before the board of review or the Tax Tribunal. Accordingly, plaintiff's motion for summary disposition was partially granted as to the property on Shields that defendant owned until April 2011, and defendant's motion for summary disposition was partially granted as to the other three properties that it conveyed away prior to 2010. This appeal filed by plaintiff followed.

Plaintiff argues that the trial court did not have subject-matter jurisdiction to determine whether the taxes were properly assessed because the Tax Tribunal has exclusive jurisdiction over any matter relating to tax assessments. We disagree.

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Sylvan Twp v City of Chelsea*, 313 Mich App 305, 315; 882 NW2d 545 (2015). Because the trial court considered supporting documents submitted by the parties, we treat the decision as though made under MCR 2.116(C)(10), which tests the factual support of a claim and should be granted if the evidence shows that no genuine issue regarding any material fact exists. See *id.*; *Lakeview Commons v Empower Yourself, LLC*, 290 Mich App 503, 506; 802 NW2d 712 (2010). The trial court may also grant summary disposition to the opposing party under MCR 2.116(I)(2) when it appears that party is entitled to judgment as a matter of law. *Rossow v Brentwood Farms Dev, Inc*, 251 Mich App 652, 658; 651 NW2d 458 (2002). We also review de novo whether a trial

[3] See *Joy Mgt Co v Detroit*, 176 Mich App 722, 728; 440 NW2d 654 (1989), overruled in part on other grounds by *Detroit v Walker*, 445 Mich 682, 697 n 20 (1994).

court had subject-matter jurisdiction over a claim, *Harris v Vernier*, 242 Mich App 306, 309; 617 NW2d 764 (2000), as well as issues of statutory construction, *Demski v Petlick*, 309 Mich App 404, 426; 873 NW2d 596 (2015).

"In general, subject-matter jurisdiction has been defined as a court's power to hear and determine a cause or matter." *In re Wayne Co Treasurer Petition for Foreclosure of Certain Lands for Unpaid Prop Taxes*, 265 Mich App 285, 291; 698 NW2d 879 (2005). With regard to circuit courts, MCL 600.605 provides:

> Circuit courts have original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state.

Plaintiff argues that the Tax Tribunal had exclusive jurisdiction over this matter because it was a tax collection case arising from defendants' failure to pay property tax assessments. We cannot agree. As we stated in *In re Wayne Co Treasurer Petition for Foreclosure*, 286 Mich App 108; 777 NW2d 507 (2009):

> The Tax Tribunal Act, MCL 205.701 *et seq*., grants the Tax Tribunal exclusive jurisdiction to decide various property tax matters based on 'either 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).' [*Id*. at 110-111 (citation omitted).]

As we held in that case, when there are disputed factual issues requiring the Tax Tribunal's expertise, such as when there is a challenge to the validity, amount, or correctness of the property tax assessment per se, the Tax Tribunal has exclusive jurisdiction. *Id*. at 112. However, when the dispute requires a construction of law, such as when the case involves an issue pertaining to the enforcement of a tax assessment, the circuit court has jurisdiction. *Id*. at 112-113; *Joy Mgt Co v Detroit*, 176 Mich App 722, 728; 440 NW2d 654 (1989), overruled in part on other grounds by *Detroit v Walker*, 445 Mich 682, 697 n 20 (1994); see also MCL 211.47(4). And here, as the trial court held, this case did not present an "assessment" issue. Rather, the issue presented in this case was whether plaintiff had the legal right to seek enforcement of tax assessments against defendant although defendant did not own the properties at the time they were assessed. This matter is clearly within the scope of the circuit court's jurisdiction. Accordingly, the circuit court properly concluded that it had subject-matter jurisdiction to resolve this case.

Plaintiff also argues that the tax assessments could be enforced against defendant because defendant was listed on the tax assessment roll as the owner of the real properties at issue and did not timely dispute the matter. We disagree.

MCL 211.24(1)(a) of the General Property Tax Act provides, in relevant part, that "the assessor shall make and complete an assessment roll" which includes the name and address of "every person liable to be taxed in the local tax collecting unit[.]" To be "liable" means to be "legally responsible[.]" *Community Resource Consultants, Inc v Progressive Mich Ins Co*, 480

Mich 1097, 1098; 745 NW2d 123 (2008), quoting *Random House Webster's College Dictionary* (1991). And MCL 211.3 states, in relevant part:

> Real property shall be assessed in the township or place where situated, to the owner if known, and also to the occupant, if any; if the owner be not known, and there be an occupant, then to such occupant, and either or both shall be liable for the taxes on said property, and if there be no owner or occupant known then as unknown.

Thus, either the owner and/or occupant of real property "shall be liable," or legally responsible, for the tax assessments. *Id.* Further, MCL 211.24(1)(e) mandates that the assessor verify who the owner is for each piece of real property by determining "the date of the last transfer of ownership of every parcel of real property occurring after December 31, 1994 and set that date down opposite the parcel." The meaning of a "transfer of ownership" includes the conveyance of title to the real property by deed. MCL 211.27a(6)(a). Although the assessor is responsible for ensuring that the tax assessment roll accurately states every person liable to be taxed, including through consideration of all transfers of ownership, the register of deeds is also charged with a duty to notify the assessing officer "of any recorded transaction involving the ownership of property[.]" MCL 211.27a(10). The statute uses the word "shall," indicating a mandate with respect to this notice requirement. And, generally, "the buyer, grantee, or other transferee of the property" is required to notify the appropriate assessing office of the transfer of ownership of the property. *Id.*; see also MCL 211.27c. However, plaintiff fails to cite to any legal authority charging a seller, grantor, or other transferor of real property with a corresponding duty of notification to the assessing office and we could find no such authority.

In this case, defendant presented unrefuted evidence showing that three of the properties were conveyed by deeds several years before the taxes at issue were assessed, i.e., there were "transfers of ownership," and that a fourth property was conveyed by deed in April 2011. Nevertheless, defendant's name erroneously appeared on the tax assessment roll as the owner of these properties. Clearly, the assessor who was charged with the duty to ensure that the tax assessment roll was accurate—including by determining the dates of the last transfers of ownership—failed in that duty with regard to these assessments. Whether the register of deeds and the buyers of the properties also failed in their respective notification duties is unclear.

In any case, the trial court properly concluded that plaintiff could not enforce the tax debt related to three of the properties against defendant for the simple reason that defendant was not the owner of the properties at the time they were assessed. See MCL 211.3. In other words, because defendant was not the owner of those properties, plaintiff had no legal right to assess taxes against defendant. See *id.* And defendant had no legal duty to notify the city assessor that there was a transfer of ownership with respect to the subject properties. Accordingly, as the trial court held, defendant was not required to protest the tax assessments before the local board of review before contesting this enforcement action. Further, although defendant is liable for tax assessments that were outstanding at the time defendant sold the fourth property in April 2011, MCL 211.2(4) provides for the proration of property taxes upon sale of real property as follows:

> In a real estate transaction between private parties in the absence of an agreement to the contrary, the seller is responsible for that portion of the annual taxes levied during the 12 months immediately preceding, but not including, the day title

> passes, from the levy date or dates to, but not including, the day title passes and the buyer is responsible for the remainder of the annual taxes. As used in this subsection, "levy date" means the day on which a general property tax becomes due and payable.

Moreover, shortly after the trial court rendered its decision, the Legislature amended MCL 211.47, including by adding subsections 4 and 5. See 2017 PA 189. The amendment "is retroactive and is effective for any unpaid property taxes or special assessments subject to collection on and after November 21, 2017[.]" Because the statutory amendment occurred while this matter was pending on appeal, it is applicable.

MCL 211.47(4) provides:

> Notwithstanding any other provision in this act or charter to the contrary, a person is not subject to personal liability for any unpaid property tax levied on real property unless that person owned the real property on the tax day for the year in which the unpaid tax was levied. A person contesting personal liability under this subsection may raise the issue in an enforcement action in the trial court regardless of whether the person previously raised the issue with the local board of review. As used in this subsection, "trial court" means any district court, probate court, municipal court, small claims court, appellate court, or other tribunal in which the issue of personal liability is litigated.

And the statute defines a "person" to include "an individual, partnership, corporation, association, limited liability company, or any other legal entity." MCL 211.47(5).

The rules of statutory construction are well-established. The primary goal of interpreting statutory language is to discern and give effect to the Legislature's intent. *Lafarge Midwest, Inc v Detroit*, 290 Mich App 240, 246; 801 NW2d 629 (2010). Thus, if the statutory language is clear, the Legislature is presumed to have intended the meaning plainly expressed, and the statute must be enforced as written. *Id*. at 246-247.

The statutory language of MCL 211.47(4) is clear: a "person" who does not own the real property "on the tax day for the year in which the unpaid tax was levied" is not liable for the unpaid property tax. And if that "person" is sued in an enforcement action, as in this case, the issue of ownership is a defense that is not deemed waived by the failure to have contested the assessment before the local board of review. Thus, although the trial court considered the issue of standing, we need not consider whether defendant had standing to contest the tax assessments before the local board of review or the Tax Tribunal.

In this case, plaintiff was seeking to collect assessments for the years 2010, 2011, and 2012 on four properties. It is undisputed that defendant sold one of the properties in 2003, two of the properties in 2007, and the fourth property in April 2011. Clearly, then, defendant was not subject to personal liability for any unpaid property tax levied on the three properties that were sold in 2003 and 2007, as held by the trial court. Thus, we affirm the trial court's order granting summary disposition in favor of defendant as to those properties. Further, as the trial court also held, defendant was liable for taxes owed on the property that was sold in April 2011, but only

for its prorated share of that assessment as set forth in MCL 211.2(4). Accordingly, we affirm the trial court's order granting summary disposition in favor of plaintiff as to that property.

Affirmed.

/s/ Christopher M. Murray
/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood