

STATE OF MICHIGAN
COURT OF APPEALS

TENNINE CORPORATION,

Petitioner-Appellant,

v

CITY OF GRAND RAPIDS,

Respondent-Appellee.

UNPUBLISHED

April 12, 2012

No. 301124

Michigan Tax Tribunal

LC No. 00-357776

Before: WILDER, P.J., and TALBOT and SERVITTO, JJ.

PER CURIAM.

Petitioner appeals as of right from an order of the Michigan Tax Tribunal, finding that respondent properly assessed certain property as petitioner's omitted personal property for the 2005, 2006, and 2007 tax years. We affirm.

Petitioner and Proto-CAM are both Michigan corporations that share the same president and general manager. In 1993, Proto-CAM purchased the real estate located at 1009 Ottawa Avenue NW in Grand Rapids, Michigan. At the time of the sale, the property included overhead industrial cranes, which ran along a "crane-way" attached to the ceiling, and a related compressor system. Shortly after the sale, Proto-CAM quitclaimed the property, including the cranes and the compressor, to petitioner. Petitioner then leased the property back to Proto-CAM, and Proto-CAM began conducting its manufacturing business there. Subsequently, security cameras were installed on the property.

In 2007, respondent hired Tax Management Associates, Inc. ("TMA") to audit the property. Following its audit, TMA reported that Proto-CAM failed to report the cranes, the compressor, and the cameras on its personal property statements for the 2005, 2006, and 2007 tax years. According to TMA, Proto-CAM maintained that these assets were owned by petitioner and had already been valued as part of the real property. However, TMA found that petitioner did not value these assets as part of the real property or report them on its personal

property statements. Pursuant to TMA's recommendation, respondent filed an L-4154 form,¹ claiming that the cranes, the compressor, and the cameras all constituted omitted personal property of petitioner. Respondent sought to increase the taxable value of petitioner's personal property for the 2005, 2006, and 2007 tax years to reflect these omitted assets. On October 21, 2010, the tribunal entered an order finding that respondent properly assessed the cranes, the compressor, and the cameras as omitted personal property of petitioner. The final taxable value for the omitted property was \$9,300 for 2005; \$8,700 for 2006; and \$6,900 for 2007.

Petitioner argues that respondent improperly assessed personal property tax on petitioner for the value of the cranes, the compressor, and the cameras, which resulted in unlawful double taxation. Specifically, petitioner argues (1) that the cranes and the compressor were fixtures and were already properly taxed as petitioner's real property and (2) that Proto-CAM owned the cameras and already paid the personal property tax for the cameras. We disagree.

Petitioner does not allege fraud on the part of the tribunal, so our review of the tribunal's decision is "limited to determining whether the tribunal committed an error of law or adopted a wrong legal principle." *Mich Milk Producers, Ass'n v Dep't of Treasury*, 242 Mich App 486, 490-491; 618 NW2d 917 (2000). "The tribunal's factual findings will not be disturbed as long as they are supported by competent, material, and substantial evidence on the whole record." *Id.* "'Substantial evidence' is evidence that a reasonable person would accept as sufficient to support a conclusion. While this requires more than a scintilla of evidence, it may be substantially less than a preponderance." *Dowork v Oxford Charter Twp*, 233 Mich App 62, 72; 592 NW2d 724 (1998).

"A fixture is not personal property, but rather is part of real property." *People v Fox*, 232 Mich App 541, 553; 591 NW2d 384 (1998), quoting Black's Law Dictionary (6th ed). "Property is a fixture if the following three criteria exist:" (1) it is annexed to the realty, either actually or constructively; (2) it is adapted or applied to the use or purpose of that part of the realty to which it is annexed; and (3) the property owner intended to make it a permanent accession to the realty. *Wayne Co v Britton Trust*, 454 Mich 608, 615; 563 NW2d 674 (1997).

The tribunal did not err in concluding that the cranes and the compressor were not fixtures because there was substantial evidence that petitioner did not intend these items to be fixtures. A 1995 appraisal conducted pursuant to the information given by petitioner's general manager characterized the cranes and the compressor as personal property. Proto-CAM's 2007 equipment list included the cranes and the compressor as "non-real property," which is how they were labeled for TMA's 2007 audit of the property. A reasonable person could find that this evidence was sufficient to support the tribunal's conclusion that petitioner did not intend these items to be fixtures. *Dowork*, 233 Mich App at 72. Because the tribunal did not commit an error of law in finding that the cranes and the compressor did not meet all the criteria for a fixture, we

¹ This form is called "Assessor or Equalization Director's Notice of Property Incorrectly Reported or Omitted From Assessment Roll." See <http://www.michigan.gov/documents/627f_2684_7.pdf> (last accessed March 12, 2012).

will not disturb the tribunal's finding that petitioner had not already included the cranes and compressor in its valuation of its real property for the relevant tax years.

The tribunal also did not err in concluding that the cameras were not Proto-CAM's personal property and had not already been valued on Proto-CAM's personal property tax roll for the 2005, 2006, and 2007 tax years. Respondent offered into evidence TMA's 2007 audit, which found that Proto-CAM did not report the cameras on its personal property statements for the relevant tax years and that Proto-CAM claimed that the cameras were petitioner's property. This evidence is sufficient to support the tribunal's findings. See *Dowerk*, 233 Mich App at 72. We will not disturb the tribunal's factual findings "merely because alternative findings could also have been supported by evidence on the record." *Dep't of Cmty Health v Risch*, 274 Mich App 365, 376; 733 NW2d 403 (2007). Therefore, the tribunal furthermore did not err when it concluded that respondent properly assessed personal property tax on petitioner for the value of the cameras.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Michael J. Talbot
/s/ Deborah A. Servitto