

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF EMMET

**WILLIAM T. MCCORMICK, et al.,**

Plaintiffs,

v

**File No: 09-1681-CZ**  
**Honorable Charles W. Johnson**

**CITY OF PETOSKEY, et al.,**

Defendants.

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**OPINION**

Plaintiffs seek a reduction in their property taxes, and damages. They claim to be improperly taxed by Defendant City of Petoskey (herein "City"), pursuant to an agreement between the City and Defendant Resort Township (herein "Township"). Defendants say that the Tax Tribunal has exclusive jurisdiction over Plaintiffs' claims. The Court agrees, and grants summary disposition.

**1. Plaintiffs' Claims.**

Plaintiffs are six property owners in the Bay Harbor development.<sup>1</sup> They bring this case on behalf of themselves and "a class of individuals similarly situated." The Complaint alleges:

"This case involves the systematic efforts by Defendants to extract disproportionate amounts of property taxes from Plaintiffs for improper purposes, without delivering a level of services that is in relationship to the amount of property taxes extracted and comparable to other properties subject to the same tax rate."<sup>2</sup>

It is undisputed that in 1994, the City and the Township entered into an agreement (herein "Transfer Agreement") under Public Act 425 of 1984, being MCL 124.21; MSA 5.4087(21), et seq. Prior to this Transfer Agreement, real and personal property in Bay Harbor was subject to ad valorem taxes levied and collected by the Township.<sup>3</sup> After the Transfer Agreement, such taxation has been levied and collected by the City.<sup>4</sup> Thus, real and personal property in Bay Harbor is subject to an aggregate ad valorem tax rate of 53.7 mills. But for the Transfer Agreement, Plaintiffs note that their tax rate would be 41 mills.<sup>5</sup>

The Complaint pleads three causes of action. In Count I, Plaintiffs seek a declaratory judgment that the Transfer Agreement is void, based on two allegations. First, that the parties did not comply with certain statutory requirements before entering into the Agreement. Second, because the Agreement "created two different classes of property under

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<sup>1</sup> "Bay Harbor offers some of the very best luxury homes available anywhere. . . . Situated on five miles of Lake Michigan shoreline. . . Bay Harbor encompasses a world class hotel, conference center, marina, equestrian facility and golf." <http://www.bayharbor.com/about/>

<sup>2</sup> Complaint, paragraph 13

<sup>3</sup> Complaint, paragraph 32

<sup>4</sup> Complaint, paragraph 33

<sup>5</sup> Complaint, paragraph 45

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a single agreement which is not permitted by the Transfer Act."<sup>6</sup>

In Count II, Plaintiffs allege the denial of their equal protection rights under Article I, Section II of the Michigan Constitution. This claim rests upon the factual allegation that:

"[T]he City intentionally treats owners of real and personal property located in Bay Harbor differently than other similarly situated landowners within the City's jurisdiction by taxing Bay Harbor property owners at the same level as property owners in the City, but not providing the same level of and quality of municipal services, . . ."<sup>7</sup>

Count III alleges a breach of the Transfer Agreement. Plaintiffs say that they are third party beneficiaries of the Transfer Agreement, and that the City has breached the Agreement by failing to provide services to the Bay Harbor residents commensurate with the tax revenue generated from the property in Bay Harbor.

## **2. Exclusive Jurisdiction of the Tax Tribunal.**

The circuit court is Michigan's court of general jurisdiction. As such, it has broad original jurisdiction over all civil matters, including claims of the nature brought by Plaintiffs herein, unless "exclusive jurisdiction is given in the Constitution or by statute to some other court. . ." MCL 600.605; MSA 27.A605. Accordingly, the question presented here is whether exclusive jurisdiction has been given to some other court.

By statute, exclusive jurisdiction of certain matters is given to the Tax Tribunal. The pertinent language of section 31 of the Tax Tribunal Act, MCL 205.731; MSA 7.650(31), is as follows:

"The tribunal has exclusive and original jurisdiction over all of the following:

(a) 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.

(b) A proceeding for a refund or redetermination of a tax levied under the property tax laws of this state."

The Tax Tribunal was created by the Tax Tribunal Act, which took effect July 1, 1974. In *Wikman v City of Novi*, 413 Mich 617, 626; 322 NW2d 103 (1982), the Supreme Court observed that:

"The Tax Tribunal Act is a culmination of numerous attempts by the Legislature to secure the prompt and fair resolution of disputes concerning the collection of government revenues."

Prior to the Tax Tribunal Act, there were several different statutory procedures and court remedies available to address taxation issues. As the *Wikman* court noted:

"The proliferation of these available remedies created problems of forum shopping and increased the possibility of inconsistent decisions. These problems led to the passage of the Tax Tribunal Act with its provisions for exclusive jurisdiction."

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<sup>6</sup> Complaint, paragraphs 69 and 72

<sup>7</sup> Complaint, paragraph 77

*supra* at pp 628-629.

The *Wikman* opinion further observes, at page 629:

"The Tax Tribunal is a 'quasi-judicial agency' designed to provide a forum in which taxpayers may obtain relief from adverse agency decisions. The primary functions of the Tax Tribunal are to find facts and review the decisions of agencies within its jurisdiction."

With the above background, the Court in *Wikman* proceeds to observe that whether the Tax Tribunal has exclusive jurisdiction in a particular situation is an issue of statutory construction. The standard rules of statutory construction apply. The first step is review of the language of the statute, in order to implement the Legislature's intent.

Section 31(a) of the Tax Tribunal Act expressly states that the Tribunal has exclusive jurisdiction over a proceeding that seeks review of a "final decision" or "determination" of an "agency", which relates to "rates" of property tax. In this case, Plaintiffs seek review of the determinations by the City which have established the rates of property tax applicable to their respective properties.

In addition, section 31(b) gives the Tax Tribunal exclusive jurisdiction over proceedings which seek a "refund or redetermination" of a property tax. As will be discussed more fully below, this is precisely the relief that Plaintiffs seek in this case.

Applying the plain statutory language of the Tax Tribunal Act to the claims made by Plaintiffs herein, as directed by *Wikman*, it appears that Plaintiffs' claims are within the exclusive jurisdiction of the Tax Tribunal.

### **3. Analysis of Plaintiffs' Arguments.**

#### **A. Count I.**

With regard to their claims in Count I, Plaintiffs say:

"The Transfer Act claim does not seek a 'review of a final decision' or a 'refund or redetermination' under 'the property tax laws'".<sup>8</sup>

The language of Plaintiffs' Complaint effectively refutes the above argument. Plaintiffs are subject to the final decision of the City, pursuant to the Transfer Agreement, to tax their property at the rates applicable to City residents. Count I seeks a review of this final decision, by means of its challenge to the validity of the Transfer Agreement.

In addition, the relief sought in Count I is "declaratory relief holding that the Transfer Agreement is void, and cannot serve as a basis for further taxation of Plaintiffs."<sup>9</sup> This is plainly a request for a "redetermination" of Plaintiffs' taxes, as Plaintiffs are seeking to be taxed at the lower rates of the Township, instead of the higher rates of the City.

Plaintiffs also argue that Count I requires examination of the Transfer Act, to see if the Transfer Agreement is in compliance. They say that this is not a matter of tax law because

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<sup>8</sup> Plaintiffs' Response, p 4.

<sup>9</sup> Complaint, p 14.

"the 'factual underpinnings' of a tax are not at issue."<sup>10</sup>

The Transfer Act permits the conditional transfer of property between local units of government. The end result of such a transfer is that the affected property becomes subject to ad valorem property taxation by the transferee. Thus the Transfer Act, is not a pure tax law, in that it deals with matters other than taxation. However, the Transfer Act is a law which has a clear and direct involvement with and impact upon property taxation, because it permits property taxation by one unit of government instead of another.

Plaintiffs do not seek a ruling that the Transfer Act is unconstitutional or otherwise invalid. Such a matter would clearly be outside the jurisdiction of the Tax Tribunal. *Meadowbrook Village Associates v Auburn Hills*, 226 Mich App 594, 596; 574 NW2d 924 (1997). Instead, Plaintiffs challenge Defendants' compliance with the statutory procedures and requirements whereby Bay Harbor property is taxed at the City's rates.

In *Romulus Treasurer v Wayne Co Drain Comm'r*, 413 Mich 728, 737; 322 NW2d 152 (1982), the Court held that the expertise of the Tax Tribunal members relates "primarily to the factual underpinnings of taxes". Here, Plaintiffs' claims in Count I require an assessment of whether Defendants properly considered "the probable change in taxes and tax rates. . . in relation to the benefits expected to accrue from the transfer" as required by the Transfer Act. This is an issue going to the factual underpinnings of the taxation of Bay Harbor property at the City's rates.

Count I also challenges the legality under the Transfer Act of the alleged creation of two different classes of property by the Transfer Agreement. This issue requires a conclusion of law, bearing on the proper taxation of Plaintiffs' properties. In *Romulus* at p 738, the Court recognized that "the tribunal, in making its determinations, will make conclusions of law."

In *Eyde v Charter Twp of Lansing*, 420 Mich 287; 289; 363 NW2d 277 (1983), the Supreme Court considered this claim:

"In Count II of their complaint, the Eydes alleged that the special assessment imposed on their property by Lansing Township, . . . was invalid because of various defects in the imposition of the assessment and because their property was not benefitted by the drain."

The Circuit Court held that all of the Eydes' claims in Count II, except for a constitutional challenge to section 529 of the Drain Code, fell within the exclusive jurisdiction of the Tax Tribunal. At p 292, the Supreme Court agreed, stating:

"Because Count II of the Eydes' complaint challenges the assessment levied by the township against the Eydes' property, the circuit court correctly granted defendants' motion for accelerated judgment on all but that portion of Count II which challenges the constitutionality of section 539 of the Drain Code."

Here Plaintiffs likewise allege defects in the imposition of City taxes on their properties under the Transfer Act. They do not, however, challenge the constitutionality of the Transfer Act.

In both *Sessa v State Tax Commission*, 134 Mich App 767; 351 NW2d 863 (1984) and *Johnston v City of Livonia*, 177 Mich App 200; 441 NW2d 41 (1989) the courts were presented with taxpayer arguments that statutory procedures for taxation had not been followed. In each case, the plaintiff alleged constitutional violations, but the courts in each

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<sup>10</sup> Plaintiffs' Response, p 4.

case said that the claims made fell within the exclusive jurisdiction of the Tax Tribunal. In *Johnston*, at pp 207-208, the opinion states:

"any claim alleged by plaintiff that defendants failed to follow a statutory procedure for assessment falls within the scope of the tribunal's jurisdiction. . . The mere fact that plaintiff chose to frame her claims in terms of a deprivation of a constitutional right. . .does not alter this conclusion."

In *Parker v City of Detroit*, unpublished opinion, per curiam, issued April 23, 2009, (Docket No. 282427), the Court held that a challenge to a garbage tax fell within the exclusive jurisdiction of the Tax Tribunal. At issue was a levy made under MCL 123.261; MSA 5.2681, which is found in the Local Government Affairs chapter of the Michigan Compiled Laws Service.

Like the Transfer Act, the statute at issue in *Parker* is not a pure tax law. It addresses taxation and other matters. It authorizes a city or village "to establish and maintain garbage systems or plants for the collection and disposal of garbage." It also allows for the levy of an ad valorem tax, and the issuance of bonds, to finance such garbage systems.

Mr. Parker argued that "the garbage tax is a special tax levied under the state's police power, and as such, it does not fall under the general property tax laws." Therefore, he asserted that his claim did not fall within the exclusive jurisdiction of the Tax Tribunal.

This claim was rejected on two grounds. First, the Court found that the garbage tax at issue was a "special assessment" within the express scope of section 31(a) of the Tax Tribunal Act. In addition, the Court held that "even if the garbage tax were considered a general property tax rather than a special assessment", jurisdiction was proper under section 31(b) of the Act, because Parker requested a refund of his taxes.

In this case, Plaintiffs plainly seek a redetermination of their taxes in Count I. They request a declaration that "the Transfer Agreement is void, and cannot serve as a basis for further taxation of Plaintiffs." The clear, unambiguous language in section 31(b) of the Tax Tribunal Act gives exclusive jurisdiction to the Tribunal over "[a] proceeding for a . . .redetermination of a tax."

For the above reasons, the claims in Count I are within the exclusive jurisdiction of the Tax Tribunal.

## **B. Count II.**

Plaintiffs allege a denial of their equal protection rights as guaranteed by the Michigan Constitution. They argue that the Tax Tribunal lacks jurisdiction over constitutional questions, citing *Meadowbrook, supra*. The pertinent statement of law from *Meadowbrook*, at pp 596-597, is as follows:

"The tribunal does not have jurisdiction over constitutional questions and does not possess authority to hold statutes invalid. . . The Tax Tribunal may, however, consider claims that an assessment is arbitrary or without foundation even if couched in constitutional terms."

In *Colonial Village Townhouse Coop v Riverview*, 142 Mich App 474,478; 370 NW2d 25 (1985), the Court held:

"[T]he jurisdictional claim in this case should be determined not by how the plaintiff phrases its complaint, but by the relief sought and the underlying basis of the action.

No matter how skillfully plaintiff camouflages it, the underlying basis of plaintiff's claim is that a city may not collect a tax to provide a service and then refuse to provide that service to certain individuals. As such, the claim seeks to challenge the validity of an assessment under the property tax laws, . . . an area over which the Tax Tribunal is given exclusive jurisdiction."

Count II of Plaintiffs' Complaint alleges:

"[T]he City intentionally treats owners of real and personal property located in Bay Harbor differently than other similarly situated landowners within the City's jurisdiction by taxing Bay Harbor property owners at the same level as property owners in the City, but not providing the same level of and quality of municipal services, . . ."11

The essence of the allegations in Count II is a claim that the taxation of Plaintiffs' property is arbitrary or without foundation. Count II further alleges that:

"Plaintiffs were damaged by Defendants' actions through excess and disproportionate taxes in an amount in excess of at least \$3 million in each of years 2007 and 2008, and at least an additional \$10 million in the previous four years, 2002-2006. . ."12

The relief sought by Plaintiffs in Count II is a reduction in the tax rate for Bay Harbor property owners "to a rate proportionate to the services provided to Plaintiffs." This is essentially the same type of claim as that presented in *Colonial Village*.

In *Johnston, supra*, the plaintiff included a claim that she "was deprived of the use and enjoyment of her property without due process of law. . ." The Court found that the Tax Tribunal had jurisdiction, stating:

"The tribunal may decide claims framed in constitutional terms alleging that a tax assessment was arbitrary and capricious and without foundation. . . a review of plaintiff's complaint shows that this is the essence of her claims."

*supra at p 44.*

Likewise, a review of the Complaint in this case reveals that the essence of Plaintiffs' claims is that the taxation of their properties is unreasonable and not proportionate to the services they receive from the City. These are claims that fall squarely within the jurisdiction of the Tax Tribunal.

### **C. Count III.**

Plaintiffs claim in Count III that they are "intended third-party beneficiaries of the Transfer Agreement", and that under the Agreement, certain promises were made by the City which have been breached.

The relief sought by Plaintiffs in Count III is telling. There is no request for specific performance of the alleged promises. Nor do Plaintiffs seek damages measured by the value

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<sup>11</sup> Complaint, paragraph 77.

<sup>12</sup> Complaint, paragraph 82.

of the benefits they would have received if the alleged promises were kept.<sup>13</sup> Instead, they seek a reduction in their taxes and "damages of at least \$16 million with interest to Plaintiffs." From other allegations in the Complaint, as set forth above, the \$16 million figure is the amount of "excess" taxes which Plaintiffs claim they have paid by virtue of being subject to taxation by the City of Petoskey.

Per *Colonial Village*, this Court must examine the relief sought, and the underlying basis for Plaintiffs' action, not just how their complaint phrases it. Here, the underlying basis for the action is a challenge to the validity of the taxation of Plaintiffs' properties under the property tax laws. The relief sought is a reduction in taxes, and damages measured by the amount allegedly overpaid in the past. In other words, a "redetermination" and a "refund".

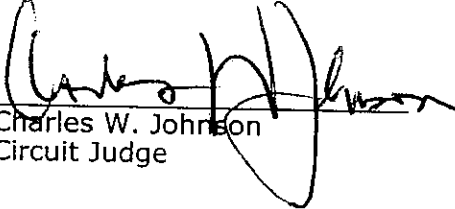
The claims in Count III are within the jurisdiction of the Tax Tribunal.

#### 4. Conclusion.

Notwithstanding the three legal theories pled by Plaintiffs, the nature of all of their claims is a challenge to the rates of tax they have been charged in the past. The relief they seek is a "refund or redetermination". Both the claims brought and the relief sought falls within the exclusive jurisdiction of the Tax Tribunal, based upon the clear and unambiguous language of the Tax Tribunal Act.

The Court grants summary disposition pursuant to MCR 2. 116 (C)(4). Based on the determination that this Court lacks jurisdiction, the remaining claims made in Defendants' motions are not considered. Counsel for the City shall prepare an order consistent with this Opinion.

June 26, 2009

  
Charles W. Johnson  
Circuit Judge

xc: Lori McAllister  
Scott W. Howard  
Thomas L. Cooper

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<sup>13</sup> "The object of the measure of damages in a breach of contract suit is to place the injured party in as good a position as he would have been in if the promised performance had been rendered. *Allen v Michigan Bell*, 61 Mich App 62, 68; 232 NW2d 302 (1975).