

STATE OF MICHIGAN
COURT OF APPEALS

ROY CRACCHIOLO,

UNPUBLISHED

Plaintiff-Appellant,

v

No. 183955

LC No. 215668

DEPARTMENT OF TREASURY,

Defendant-Appellee.

Before: Michael J. Kelly, P.J., and Reilly and J.L. Martlew,* JJ.

REILLY, J. (dissenting)

I respectfully dissent.

The defendant advised plaintiff on February 9, 1993, of its position that plaintiff was to be held responsible as an officer of the corporation. Plaintiff's attorney wrote defendant on February 26, 1993, that plaintiff should not be held responsible, and that he had taken the same position with the I.R.S. A copy of the I.R.S. interview notes was enclosed. The attorney offered to meet with a representative of the treasury department. On March 22, 1993, defendant sent a final assessment, reiterating the responsibility of plaintiff as an officer, and advising plaintiff of the appeal process. On April 28, 1993, the treasury department wrote plaintiff stating "The assessment will stand as issued." By then, the thirty-five day appeal period had lapsed. I do not believe these documents show that defendant was willing to reconsider its position, or that a settlement was being negotiated. *Curis Big Boy v Dept of Treasury*, 206 Mich App 139; 520 NW2d 369 (1994). Plaintiff was not led to believe that he should continue to negotiate rather than appeal. I would affirm.

/s/ Maureen Pulte Reilly

* Circuit judge, sitting on the Court of Appeals by assignment.