

STATE OF MICHIGAN  
COURT OF APPEALS

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ELM INVESTMENT CO.,

Plaintiff-Appellant,

v

CITY OF DETROIT,

Defendant-Appellee.

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UNPUBLISHED

August 6, 2009

No. 285835

Wayne Circuit Court

LC No. 07-708573-CZ

Before: Saad, C.J., and Sawyer and Borrello, JJ.

PER CURIAM.

Plaintiff appeals as of right a trial court order granting defendant's motion for summary disposition under MCR 2.116(C)(4) based on lack of subject matter jurisdiction. The trial court dismissed plaintiff's action because it determined that the Michigan Tax Tribunal (MTT) had exclusive jurisdiction over the matter. For the reasons set forth in this opinion, we affirm.<sup>1</sup>

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<sup>1</sup> Defendant argues in its brief on appeal that this Court lacks jurisdiction because the trial court dismissed plaintiff's motion for reconsideration, rather than denying it. According to defendant, the trial court's order dismissing plaintiff's motion for reconsideration does not qualify as an "order denying a motion for reconsideration" under the version of MCR 7.204(A)(1)(b) that existed at the time the trial court dismissed plaintiff's motion. In 2008, however, MCR 7.204(A)(1)(b) was amended to replace the word "denying" with the word "deciding." Although the trial court dismissed plaintiff's timely motion for reconsideration on May 21, 2008, and this amendment was not effective until September 1, 2008, "the norm is to apply the newly adopted court rules to pending actions unless there is reason to continue applying the old rules." *Reitmeyer v Schultz Equipment & Parts Co, Inc*, 237 Mich App 332, 337; 602 NW2d 596 (1999), quoting *Davis v O'Brien*, 152 Mich App 495, 500; 393 NW2d 914 (1986). This Court will not apply an amended court rule to a pending action if it would be unjust to a party. See *id.* Applying a new court rule would be unjust "where a party acts, or fails to act, in reliance on the prior rules and the party's action or inaction has consequences under the new rules that were not present under the old rules." *Id.*, quoting *Sullivan Industries, Inc v Double Seal Glass Co, Inc*, 192 Mich App 333, 355; 480 NW2d 623 (1991). We find that it would not be unjust to apply the amended MCR 7.204(A)(1)(b) in this case. To the contrary, application of the amended rule to this action would "secure the just, speedy, and economical determination" of this action. MCR 1.105. We further find that the trial court's order dismissing plaintiff's motion for

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## I. Facts and Procedural History

Plaintiff filed a putative class action against defendant. The complaint alleged that on June 30, 2006, defendant's city council passed an ordinance imposing a \$300 charge for solid waste collection at each residential property in Detroit. According to the complaint, the \$300 charge for solid waste collection was a fee, not a tax, and defendant therefore acted illegally in assessing a one percent property tax administration fee under MCL 211.44(3)<sup>2</sup> on the \$300 solid

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reconsideration is an order "deciding" the motion. Because plaintiff filed its claim of appeal within 21 days after entry of the trial court's order dismissing, and thereby deciding, plaintiff's motion for reconsideration, this Court has jurisdiction over this appeal. MCR 7.204(A)(1)(b).

<sup>2</sup> MCL 211.44(3) provides:

Except as provided by subsection (7), on a sum voluntarily paid before February 15 of the succeeding year, the local property tax collecting unit shall add a property tax administration fee of not more than 1% of the total tax bill per parcel. However, unless otherwise provided for by an agreement between the assessing unit and the collecting unit, if a local property tax collecting unit other than a village does not also serve as the local assessing unit, the excess of the amount of property tax administration fees over the expense to the local property tax collecting unit in collecting the taxes, but not less than 80% of the fee imposed, shall be returned to the local assessing unit. A property tax administration fee is defined as a fee to offset costs incurred by a collecting unit in assessing property values, in collecting the property tax levies, and in the review and appeal processes. The costs of any appeals, in excess of funds available from the property tax administration fee, may be shared by any taxing unit only if approved by the governing body of the taxing unit. Except as provided by subsection (7), all taxes paid after February 14 and before taxes are returned as delinquent under section 78a(2) the governing body of a city or township may authorize the treasurer to add to the tax a property tax administration fee to the extent imposed on taxes paid before February 15 and the day that taxes are returned as delinquent under section 78a(2) a late penalty charge equal to 3% of the tax. The governing body of a city or township may waive interest from February 15 to the last day of February on a summer property tax that has been deferred under section 51 or any late penalty charge for the homestead property of a senior citizen, paraplegic, quadriplegic, hemiplegic, eligible serviceperson, eligible veteran, eligible widow or widower, totally and permanently disabled person, or blind person . . . if the person makes a claim before February 15 for a credit for that property provided by chapter 9 of the income tax act of 1967, . . . if the person presents a copy of the form filed for that credit to the local treasurer, and if the person has not received the credit before February 15. The governing body of a city or township may waive interest from February 15 to the day taxes are returned as delinquent under section 78a(2) on a summer property tax deferred under section 51 or any late penalty charge for a person's property that is subject to a farmland development rights agreement recorded with the register of deeds of the county in which the property is situated

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waste collection charge. Plaintiff also alleged that defendant illegally charged property tax penalties and interest on delinquent solid waste collection charges under sections 18-9-89 and 18-9-94 of the Detroit City Code.<sup>3</sup> Plaintiff sought relief in the form of a refund of all property tax administration fees and any interest and penalties paid. Plaintiff further sought a declaration that defendant's actions were illegal and an injunction preventing defendant from charging the one percent property tax administration fee and imposing property tax interest and penalties on the solid waste collection charge. Finally, plaintiff sought an order compelling defendant to delete all such charges from any 2006 tax bills that had not been paid.

Defendant moved for summary disposition under MCR 2.116(C)(4), arguing that the MTT had exclusive jurisdiction of the action under MCL 205.731 and that the circuit court therefore lacked subject matter jurisdiction. Defendant argued that plaintiff's claims challenge the validity of defendant's assessment of the property tax administration fee and seek a refund of the property tax administration fee and penalties and interest, and the MTT has exclusive jurisdiction over all property tax assessment and refund matters under MCL 205.731. Citing *Wikman v Novi*, 413 Mich 617; 322 NW2d 103 (1982), defendant further argued that the facts that plaintiff's complaint was a class action and contained requests for equitable relief did not divest the MTT of exclusive jurisdiction.

Plaintiff filed a cross-motion for summary disposition under MCR 2.116(C)(10), arguing that the \$300 solid waste collection charge is a fee, not a tax, and the property tax administration fee under MCL 211.44(3) can only be levied on property taxes. Plaintiff further argued that

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as provided in section 36104 of the natural resources and environmental protection act . . . if the person presents a copy of the development rights agreement or verification that the property is subject to a development rights agreement before February 15. A 4% county property tax administration fee, a property tax administration fee to the extent imposed on and if authorized under section (7) for taxes paid before taxes are returned as delinquent under section 78a(2), and interest on the tax at the rate of 1% per month shall be added to taxes collected by the township or city treasurer after the last day taxes are payable before being returned as delinquent under section 78a(2) and before settlement with the county treasurer, and the payment shall be treated as though collected by the county treasurer. If the statements required to be mailed by this section are not mailed before December 31, the treasurer shall not impose a late penalty charge on taxes collected after February 14.

<sup>3</sup> Section 18-9-89 of the Detroit City code provides: "All delinquent property taxes or special assessments shall have added thereto interest computed at the rate of one-half of one per cent per month, to be added the first day of each month from the time that such tax or special assessment became due and payable."

Section 18-9-94 of the Detroit City Code provides: "All delinquent general city taxes levied upon real property and against persons with respect to personal property shall have added thereto a penalty computed at the rate of one per cent per month, to be added the first day of each month from the time that such tax became due and payable."

there was no city ordinance or resolution authorizing a property tax administration fee or penalty and interest charges on delinquent solid waste collection charges.

The trial court granted summary disposition in favor of defendant based on lack of subject matter jurisdiction. According to the trial court, the case concerned the validity of an assessment under the property tax laws and was therefore a matter for the MTT to decide. Plaintiff filed a motion for reconsideration, which the trial court dismissed. This appeal ensued.

## II. Standard of Review

This Court reviews the grant or denial of a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). In considering a motion challenging jurisdiction under MCR 2.116(C)(4), a court must determine whether the affidavits, together with the pleadings, depositions, admissions, and documentary evidence, demonstrate that the court lacks subject matter jurisdiction. MCR 2.116(G)(5).

Subject matter jurisdiction is an absolute requirement in every case. *In re AMB*, 248 Mich App 144, 166; 640 NW2d 262 (2001). The plaintiff has the burden to establish subject matter jurisdiction. *Phinney v Perlmutter*, 222 Mich App 513, 521; 564 NW2d 532 (1997). Whether a court has subject matter jurisdiction is also a question of law that this Court reviews de novo on appeal. *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 472; 628 NW2d 577 (2001).

## III. Analysis

Plaintiff argues that the circuit court erred in dismissing its complaint based on lack of subject matter jurisdiction. We find that the circuit court properly determined that jurisdiction of this matter rested exclusively with the MTT.

“Circuit courts are courts of general jurisdiction with original jurisdiction over all civil claims and remedies, except when the Michigan Constitution or a statute confers exclusive jurisdiction on another court.” *Ammex, Inc v Treasury Dep’t*, 272 Mich App 486, 494; 726 NW2d 755 (2006), citing MCL 600.601 and MCL 600.605. The question, therefore, is whether jurisdiction of plaintiff’s complaint falls within the exclusive jurisdiction of the MTT. MCL 205.731 describes the exclusive jurisdiction of the MTT and provides, in relevant part:

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.

Under MCL 205.731, “[t]he tribunal’s jurisdiction is based either on the subject matter of the proceeding . . . or the type of relief requested (*i.e.*, a refund or redetermination of a tax under the

property tax laws).” *Wikman, supra* at 631. Jurisdiction is determined “not by how the plaintiff phrases its complaint, but by the relief sought and the underlying basis of the action.” *Colonial Village Townhouse Coop v City of Riverview*, 142 Mich App 474, 478; 370 NW2d 25 (1985).

The underlying basis of plaintiff’s action was defendant’s alleged improper assessment of the one percent property tax administration fee under MCL 211.44(3). The relief sought by plaintiff’s complaint included a refund of all property tax administration fees, interest and penalties, as well as declarative and injunctive relief to prevent defendant from charging such fees. Because the core of plaintiff’s action was the improper assessment of the property tax administration fee under § 44(3) of the General Property Tax Act, MCL 211.1 *et seq.*, and plaintiff sought a refund of that fee, the circuit court properly ruled that it could not exercise jurisdiction over plaintiff’s action. The MTT has exclusive jurisdiction over assessments and refunds under the property tax laws. MCL 205.731(a) and (b).

Contrary to plaintiff’s argument on appeal, the fact that the circuit court may be required to make conclusions of law, including whether the one percent property tax administration fee is a fee or a tax, does not divest the MTT of jurisdiction. MCL 205.751(1) specifically *requires* the MTT to include conclusions of law in its decisions and opinions. The MTT’s exclusive jurisdiction is not destroyed simply because it might be required to make a conclusion of law.

In addition, plaintiff’s argument that the MTT lacked jurisdiction because plaintiff’s complaint sought declarative and injunctive relief is also without merit. While it is true that the MTT lacks the power to issue an injunction, the Supreme Court has recognized that the fact that a party requests injunctive relief does “not take them out of the exclusive jurisdiction of the tribunal pursuant to MCL 205.731[.]” *Wikman, supra* at 649.

Citing *Perry v Vernon Twp*, 158 Mich App 388; 404 NW2d 755 (1987), plaintiff argues that the MTT lacks jurisdiction because the MTT does not have the power to hear class actions. In *Perry*, a panel of this Court ruled that the MTT did not have jurisdiction to hear class actions, stating: “since the tribunal has not expressly been given the power to hear class actions, that power being exclusively within the jurisdiction of the judiciary, such a power cannot be extended by implication.” *Perry, supra* at 391. However, in *Wikman*, our Supreme Court affirmed this Court’s order remanding a class action to the MTT, stating:

While plaintiffs further argue that the circuit court is the proper forum for this proceeding because the Tax Tribunal lacks jurisdiction to resolve class actions, defendants state that, in effect, the tribunal has jurisdiction to decide suits affecting an entire class. This suit is a proper example. The further resolution of the issue is not necessary to the determination of this case. The tribunal’s exclusive jurisdiction includes all proceedings for review of an agency’s decision under the property tax laws. Allowing such class actions to be brought in the circuit court while prohibiting suits by a single taxpayer would elevate form over substance. . . . [P]laintiffs can obtain in the Tax Tribunal the same relief sought by another name in the circuit court. [*Wikman, supra* at 649.]

Relying on *Wikman*, this Court held in *Sessa v State Tax Comm*, 134 Mich App 767, 771; 351 NW2d 863 (1984), that “[t]he fact that plaintiffs have entitled this action a ‘class action’ does not divest the Tax Tribunal of exclusive jurisdiction.” Citing *Wikman, supra* at 649.

In concluding that the MTT does not have the power to hear class actions, the *Perry* panel failed to cite or acknowledge this Court's opinion in *Sessa* and, even more significantly, the Supreme Court's opinion in *Wikman*. Because *Perry* was decided before November 1, 1990, we are not obligated to follow it. MCR 7.215(J)(1). However, we are bound by the doctrine of stare decisis to follow decisions of our Supreme Court. *Shember v Univ of Mich Med Ctr*, 280 Mich App 309, 327; 760 NW2d 699 (2008). In light of *Wikman*, we conclude that the fact that plaintiff has entitled this action a class action does not divest the MTT of exclusive jurisdiction.

#### IV. Plaintiff's Remaining Arguments

On appeal, plaintiff raises several arguments that the circuit court did not address based on its conclusion that the MTT had exclusive jurisdiction over the matter. The circuit court properly did not address certain arguments raised by plaintiff below because when a court is without subject matter jurisdiction, any action with respect to such case, other than to dismiss it, is absolutely void. *Todd v Dep't of Corrections*, 232 Mich App 623, 628; 591 NW2d 375 (1998). We likewise decline to address these arguments. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999).

#### V. Holding

For the reasons stated above, the circuit court properly dismissed plaintiff's complaint based on lack of subject matter jurisdiction.

Affirmed.

/s/ Henry William Saad  
/s/ David H. Sawyer  
/s/ Stephen L. Borrello