

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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WILLIAM T. MCCORMICK, JR. and ALL  
OTHERS SIMILARLY SITUATED, WILLIAM  
L. HICKLEN, THOMAS C. GALE, and JOE E.  
STRAWN, JR.,

UNPUBLISHED  
December 21, 2010

Plaintiffs-Appellants,

v

CITY OF PETOSKEY and TOWNSHIP OF  
RESORT,

No. 293278  
Emmet Circuit Court  
LC No. 09-001681-CZ

Defendants-Appellees.

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Before: BECKERING, P.J., and TALBOT and OWENS, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's grant of summary disposition in favor of defendants pursuant to MCR 2.116(C)(4). We affirm.

**I. FACTS**

Plaintiffs are residents of the Bay Harbor condominium development. This area was developed following an intergovernmental transfer of property from appellee Resort Township (hereinafter "Resort") to appellee City of Petoskey in 1994 pursuant to MCL 124.22. The transfer agreement covered two areas: Project area #1, now Bay Harbor,<sup>1</sup> and Project area #2. Under the terms of the transfer agreement, Petoskey was to provide Bay Harbor with all municipal services except utility and planning/zoning services. In addition, Bay Harbor became subject to ad valorem taxes levied by Petoskey, rather than the lower ad valorem taxes levied by Resort. The agreement provided that Project Area #2 would be subject to a different amount of ad valorem taxes.

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<sup>1</sup> At the time the agreement was entered into, none of the current plaintiffs were residents of the area.

## II. PROCEDURAL HISTORY

Plaintiffs filed a three-count suit<sup>2</sup>, alleging: that the transfer of land between defendants violated MCL 124.22; that their equal protection rights had been violated; and, that if the transfer were to be deemed valid, they were entitled to damages for breach of the transfer agreement. Plaintiffs requested a declaration that the transfer agreement was void and that plaintiffs were subject to the governmental jurisdiction and ad valorem taxation of Resort. Plaintiffs alternatively requested a declaration that the agreement had been breached and that their taxes should be reduced accordingly. Plaintiffs also sought several million dollars in damages.

Defendants moved for summary disposition pursuant to MCR 2.116(C)(4), (7), and (8).<sup>3</sup> Ultimately, the trial court granted summary disposition pursuant to MCR 2.116(C)(4) after concluding that plaintiffs' claims fell within the exclusive jurisdiction of the Michigan Tax Tribunal because the nature of the claims constituted an attempt to obtain a reduction in their property taxes, despite plaintiffs having couched their complaint in terms of a different legal theory.

## III. JURISDICTION

We review the decision of a trial court pertaining to a motion for summary disposition de novo. *Associated Builders & Contractors v Consumer & Indus Servs Dir*, 472 Mich 117, 123; 693 NW2d 374 (2005). In addition, whether a lower court or a tribunal has subject matter jurisdiction is also a question of law we review de novo. *Calabrese v Tendercare of Michigan, Inc*, 262 Mich App 256, 259; 685 NW2d 313 (2004).

Subject matter jurisdiction is an absolute requirement to the hearing of a claim. *In re AMB*, 248 Mich App 144, 166; 640 NW2d 262 (2001). Thus, summary disposition is proper when a court lacks subject matter jurisdiction to hear the claim brought before it. MCR 2.116(C)(4). 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).

“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 jurisdiction of the Michigan Tax Tribunal is specified by statute in MCL 205.731, which provides in relevant part:

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<sup>2</sup> Summary disposition was granted before the trial court could consider plaintiffs' request for class action certification.

<sup>3</sup> The trial court limited argument on the motion for summary disposition to the issues raised in defendant Petoskey's motion because defendant Resort had not timely filed its own motion.

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, decision, 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.

Here, plaintiffs argue that the trial court erred in concluding that it lacked jurisdiction to hear their claims because their complaint raises issues of statutory interpretation, constitutional issues, and contractual issues independent of property tax law. We acknowledge that the Tax Tribunal “is not qualified resolve common-law tort or contract claims.” *Highland-Howell Dev Co, LLC v Marion Twp*, 469 Mich 673, 678; 677 NW2d 810 (2004). However, 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).

Our decision in *Colonial Village* is instructive in the instant case. In that case, the plaintiff filed suit related to a garbage tax the defendant imposed on every property owner even though it did not provide garbage service to every property owner, including the plaintiff. *Colonial Village*, 142 Mich App at 475-476. The plaintiff argued that the circuit court had subject matter jurisdiction because its claim was quasi-contractual in nature. *Id.* at 476. This Court rejected the plaintiff’s argument and concluded that the plaintiff’s challenge to the defendant’s conduct of charging for a service, then refusing to provide that service, constituted a “challenge to the validity of an assessment under the property tax laws.” *Id.* at 478. The instant case is analogous to *Colonial Village* in that plaintiffs are challenging the level of services they are receiving in contrast to the amount of taxes being assessed. As in *Colonial Village*, this essentially constitutes a challenge to the validity of the assessment. Accordingly, the trial court correctly determined that the Tax Tribunal had exclusive subject matter jurisdiction over the case.

Affirmed.

/s/ Jane M. Beckering  
/s/ Michael J. Talbot  
/s/ Donald S. Owens