

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

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BRIGGS TAX SERVICE, L.L.C., KAY BEE  
KAY PROPERTIES, L.L.C., and 15651  
WARREN AVE CO., L.L.C.,

UNPUBLISHED  
March 13, 2007

Plaintiffs-Appellants,

v

No. 271631  
Wayne Circuit Court  
LC No. 05-523201-CZ

DETROIT PUBLIC SCHOOLS, DETROIT  
BOARD OF EDUCATION, CITY OF DETROIT,  
WAYNE COUNTY TREASURER, KENNETH  
BURNLEY, KEN A. FORREST, DORI  
FREELAIN, PAMELA ANSTEY, MICHAEL  
BRIDGES, MARY ELLIS, ROBERT MOORE,  
NELIDA BRAVO, MAVIS COFIELD, W.  
FRANK FOUNTAIN, GERALD K. SMITH,  
REGINALD TURNER, TOM WATKINS,  
WILLIAM C. BROOKS, BELDA GARZA,  
MICHAEL TENBUSCH, GENEVA WILLIAMS,  
MARK A. DOUGLAS, ALLAN SPOONER, and  
ALMA STALWORTH,

Defendants-Appellees.

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Before: Markey, P.J., and Murphy and Kelly, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order denying plaintiffs' motion for reconsideration and granting defendants'<sup>1</sup> motion for reconsideration of an earlier summary disposition order. Plaintiffs argue on appeal that the trial court erred in granting summary disposition in defendants' favor on the basis that the Michigan Tax Tribunal (MTT) had exclusive subject-matter jurisdiction over all of plaintiffs' claims, except the Headlee

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<sup>1</sup> Unless otherwise noted, Detroit Public Schools, Detroit Board of Education, city of Detroit and Wayne County Treasurer will be collectively referred to in this opinion as "defendants." The individually named defendants are employees and/or executive officers of defendants.

Amendment claims. Further, plaintiffs contend that the trial court erred dismissing plaintiffs' remaining Headlee Amendment claims. We affirm.

This case involves a dispute over the imposition of a school operating tax on all non-homestead property located in Detroit in tax years 2002, 2003, 2004 and 2005. Plaintiffs own and operate various commercial properties in and around Detroit. The school operating budget for defendants Detroit Public Schools and the Detroit Board of Education (collectively "DPS") is primarily funded by revenue received from property taxes in the district. The property taxes are collected and received by defendant city of Detroit ("City") and any delinquent taxes are collected by defendant Wayne County Treasurer ("Treasurer").

In 1978, the same year the Headlee Amendment was ratified by the Legislature, DPS levied a total of 25.51 mills<sup>2</sup> of school operating taxes against all property taxpayers, of which 8.01 mills were allocated by law and 17.5 mills were approved by voters in the district. From 1978 to 1993, DPS continued to levy taxes in increasing amounts on all property taxpayers in the district based on annual millage renewals approved by a majority of district electors. On September 14, 1993, district electors approved an increase in the limitation on the total amount of taxes that may be imposed on the assessed valuation, as finally equalized, on all property in the district ("1993 Proposal"). The 1993 Proposal attempted to: (1) stabilize the school operating tax at 32.25 mills; and (2) allocate the millage on all district property taxpayers for a period of eight years from July 1, 1994, to June 30, 2002.

However, in a special election held on March 15, 1994, Michigan electors approved "Proposal A," which reduced reliance on local property taxes for Detroit school operating purposes. Proposal A essentially limited the school operating tax to 18 mills for all non-homestead property owners in the district and exempted all homestead property owners. Thus, from July 1, 1994, to 2005, defendants levied, imposed, collected and received the 18 mill tax on all non-homestead property in the Detroit school district, including each of plaintiffs' properties. However, on July 28, 2005, DPS officials became aware that the 1993 Proposal had expired on June 30, 2002, and that DPS was not authorized by a majority vote of district electors to impose the 18 mill tax in the 2002, 2003 and 2004 tax years. Shortly thereafter, a ballot proposal re-authorizing the 18 mill tax on all non-homestead property was placed on the November 8, 2005, general election ballot and was subsequently approved by district voters.

Plaintiffs originally filed this action in Wayne Circuit Court on August 8, 2005, seeking class certification on behalf of all non-homestead owners in the district and requesting a refund of the school operating tax collected in 2002, 2003 and 2004. On May 22, 2006, the trial court granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(4), reasoning that the MTT had exclusive jurisdiction over all of plaintiffs' claims, except the Headlee Amendment claims. The parties each filed a motion for reconsideration of the trial court's order. On June 20, 2006, the trial court entered a written opinion and order granting defendants' motion

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<sup>2</sup> A "mill" is a "monetary unit equal to 1/1000 of a U.S. dollar or one-tenth of a cent. *The American Heritage Dictionary* (2000).

for reconsideration, denying plaintiffs' motion for reconsideration and dismissing plaintiffs' Headlee Amendment claims. This appeal followed.

Plaintiffs first argue on appeal that the trial court erred in concluding that the MTT had exclusive subject-matter jurisdiction over all of plaintiffs' claims, except the Headlee Amendment claims. We disagree.

A jurisdictional question is "always within the scope of this Court's review." *Walsh v Taylor*, 263 Mich App 618, 622; 689 NW2d 506 (2004). "The existence of jurisdiction is a question of law that this Court reviews de novo." *Trostel, Ltd v Dep't of Treasury*, 269 Mich App 433, 440; 713 NW2d 279 (2006). Further, this Court reviews de novo a trial court's decision on a motion for summary disposition pursuant to MCR 2.116(C)(4). "[T]his Court must determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law or whether the affidavits and other proofs show there was no genuine issue of material fact." *Bock v Gen Motors Corp*, 247 Mich App 705, 710; 637 NW2d 825 (2001). A decision concerning the meaning and scope of a pleading is within the sound discretion of the trial court, and reversal is appropriate only if the trial court abuses its discretion. *Weymers v Khera*, 454 Mich 639, 654; 563 NW2d 647 (1997).

"Jurisdiction is a court's power to act and its authority to hear and decide a case." *City of Riverview v Sibley Limestone*, 270 Mich App 627, 636; 716 NW2d 615 (2006).

Jurisdiction over the subject matter is the right of the court to exercise judicial power over that class of cases; not the particular case before it, but rather the abstract power to try a case of the kind or character of the one pending; and not whether the particular case is one that presents a cause of action, or under the particular facts is triable before the court in which it is pending, because of some inherent facts which exist and may be developed during the trial. [*Derderian v Genesys Health Care Sys*, 263 Mich App 364, 375; 689 NW2d 145 (2004) (citation omitted).]

The exclusive and original jurisdiction of the Tax Tribunal is provided for in the Tax Tribunal Act, MCL 205.701 *et seq.*, which provides, in relevant part, that the MTT has jurisdiction over:

(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 property tax laws.

(b) A proceeding for refund or redetermination of a tax under the property tax laws. [MCL 205.731.]

The term "agency" is defined as a "board, official, or administrative agency who is empowered to make a decision, finding, ruling, assessment, determination, or order that is subject to review under the jurisdiction of the tribunal or who has collected a tax for which refund is claimed." MCL 205.703(a); *South Haven v Van Buren Co Comm'rs*, 270 Mich App 233, 238; 715 NW2d 81 (2006). Pursuant to MCL 205.774,

The right to sue any agency for refund of any taxes other than by proceedings before the tribunal is abolished as of September 30, 1974. If a tax paid to an agency is erroneous or unlawful, it shall not be requisite that the payment be made under protest in order to invoke a right to refund by proceedings before the tribunal.

Thus, “[t]he tribunal’s jurisdiction is based either on the subject matter of the proceeding ( e.g., a direct review of a final decision of an agency relating to special assessments under property tax laws) or the type of relief requested ( i.e., a refund or redetermination of a tax under the property tax laws).” *Wikman v City of Novi*, 413 Mich 617, 631; 322 NW2d 103 (1982).

“The circuit court possesses ‘broad original jurisdiction over all matters, particularly civil, so long as jurisdiction is not expressly prohibited by law.’” *Derderian, supra* at 375, quoting *Campbell v St John Hosp*, 434 Mich 608, 613; 455 NW2d 695 (1990). Const 1963, art 6, § 13 provides as follows:

The circuit court shall have original jurisdiction in all matters not prohibited by law; appellate jurisdiction from all inferior courts and tribunals except as otherwise provided by law; power to issue, hear and determine prerogative and remedial writs; supervisory and general control over inferior courts and tribunals within their respective jurisdictions in accordance with rules of the supreme court; and jurisdiction of other cases and matters as provided by rules of the supreme court.

Furthermore, MCL 600.605 provides that “[c]ircuit courts have original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state.”

The parties rely on *Wikman, supra* at 617, and *Romulus City Treasurer v Wayne Co Drain Comm’r*, 413 Mich 728; 322 NW2d 152 (1982), in support of their respective arguments on appeal. A brief review of each of these cases, and their progeny, is appropriate to resolve the jurisdictional issue in this case.

In *Wikman*, the council of the defendant city passed a resolution confirming special assessment rolls for the paving of a portion of a road. *Wikman, supra* at 630. The plaintiffs “filed [a class action] suit in circuit court seeking injunctive relief and claiming that the assessments were determined in an arbitrary and inequitable manner.” *Id.* The *Wikman* Court noted:

[MCL 205.731] grants the Tax Tribunal jurisdiction over proceedings challenging both assessments and special assessments. In the context of taxation, the word “assessment” denotes the determination of the share of the tax to be paid by each taxpayer, *Williams v Mayor of Detroit*, 2 Mich 560, 565 (1853). For the purpose of collecting *ad valorem* taxes, or taxes based on the value of property, the word “assessment” means the determination of the value of property for tax purposes [MCL 211.10]. [*Wikman, supra* at 632.]

The plaintiffs argued that the complaint raised constitutional issues and that they sought “equitable relief which the Tax Tribunal lacks the power to grant.” *Id.* at 646. In response, our Supreme Court noted:

Generally speaking, an agency exercising quasi-judicial power does not undertake the determination of constitutional questions or possess the power to hold statutes unconstitutional. However, the constitutional claims in this case do not involve the validity of a statute. Rather, plaintiffs’ claim is merely an assertion, in constitutional terms, that the assessment was arbitrary and without foundation. [*Wikman, supra* at 646-647 (citation omitted).]

Furthermore, the *Wikman* Court noted that the plaintiffs’ requests for equitable relief, including preliminary and permanent injunctions against the defendants, did not divest the MTT of exclusive jurisdiction. *Id.* at 649. Finally, the Supreme Court declined to address the plaintiffs’ argument that the circuit court was the only forum to bring a class action suit, reasoning that “[t]he tribunal’s exclusive jurisdiction includes all proceedings for review of an agency’s decision under the property tax laws” and that the “plaintiffs can obtain in the Tax Tribunal the same relief sought by another name in the circuit court.” *Id.* at 649. Accordingly, the Supreme Court held that the Tax Tribunal had exclusive jurisdiction over the proceeding because the plaintiffs sought a “direct review of the governmental unit’s decision concerning a special assessment for a public improvement.” *Id.* at 626.

In *Romulus, supra* at 733, the plaintiffs, acting in their official capacity as city and township treasurers and as landowners, brought suit alleging that the defendants “committed a constructive fraud by collecting money for administrative expenses through special assessment procedures.” The plaintiffs sought an accounting of the drain commissioner defendant’s records, a declaration that the defendant’s administrative expenses must be paid from the county’s general fund, a preliminary injunction enjoining the defendants from enforcing the special assessment and an order that the collected monies held in escrow by defendants be returned to the landowner plaintiffs. *Id.* at 734. The Supreme Court distinguished the case from the *Wikman* proceeding, noting that “[t]he focus of the present claim concerns not the factual underpinnings of the pertinent assessments, but rather how funds collected pursuant to the special assessment laws may be spent.” *Romulus, supra* at 736. Regarding the expertise of the MTT, the Supreme Court noted as follows:

The expertise of the tribunal members can be seen to relate primarily to *questions concerning the factual underpinnings of taxes*. In cases not involving special assessments, the tribunal’s membership is well-qualified to resolve the disputes concerning those matters that the Legislature has placed within its jurisdiction: assessments, valuations, rates, allocation and equalization. In special assessment cases, the tribunal is competent to ascertain whether the assessments are levied according to the benefits received. *Although the tribunal, in making its determinations, will make conclusions of law, [MCL 205.751], the matters within its jurisdiction under [MCL 205.731] most clearly relate to the basis for a tax, and much less clearly to the proper uses which may be made of the funds once collected. Questions concerning how the funds collected may be expended do not appear to be implicated in disputes related to assessments, valuations, rates, allocation and equalization.* The question presented here is

whether the exclusive jurisdiction of the Tax Tribunal extends to such questions when the funds are collected pursuant to special assessment laws. [*Romulus, supra* at 737-738 (emphasis added).]

Accordingly, the *Romulus* Court concluded that the circuit court, and not the MTT, had jurisdiction to resolve the plaintiffs' claims and, if appropriate, grant declaratory and injunctive relief. *Id.* at 738-739. The Supreme Court reasoned that the MTT did not have jurisdiction because "questions as to the lawful expenditure of funds do not arise within the other matters within the tribunal's jurisdiction" and "the tribunal's expertise relates much more directly to other questions concerning the lawfulness of challenged special assessments." *Id.* at 738.

More recently, our Supreme Court decided *Highland-Howell Dev Co, LLC v Twp of Marion*, 469 Mich 673; 677 NW2d 810 (2004). There, the "[p]laintiff's complaint contained a count alleging that [the] defendant breached a promise to construct a sewer line through [the] plaintiff's property." *Id.* at 674. Holding that the MTT has exclusive jurisdiction over matters "relating to assessment, valuation, rates, special assessments, allocation, or equalization, under property tax laws," the Supreme Court concluded that the "[p]laintiff's claims for breaches of promise or contract are not within the scope of [MCL 205.731], and therefore are within the circuit court's jurisdiction." *Id.* at 676.

This Court has frequently applied the *Wikman* and *Romulus* decisions to determine whether the circuit court or the MTT has subject-matter jurisdiction over the proceedings. In *South Haven, supra* at 241, this Court held that the circuit court erred in concluding that the MTT had exclusive jurisdiction to decide the plaintiff's claims that the defendant board of county commissioners and the defendant treasurer misallocated the funds generated from a road millage and improperly gave the funds resulting from the millage vote to the defendant county road commission. The *South Haven* Court noted that the case was similar to the facts in *Romulus* and found that "whether defendants were required to allocate the road millage funds . . . is not a question 'relating to assessment, valuation, rates, special assessments, allocation, or equalization,' or involving the 'refund or redetermination of a tax,' under the property tax laws, within the meaning of MCL 205.731." *South Haven, supra* at 241.

In *Meadowbrook Village Assoc v City of Auburn Hills*, 226 Mich App 594, 597; 574 NW2d 924 (1997), this Court held that the MTT erred in determining that it had jurisdiction to consider the plaintiff's constitutional challenge to the defendant city's determination regarding the taxable value of the plaintiff's property. Specifically, the plaintiff sought "a ruling [by the MTT] that the terms taxable value, assessment, and assessed in Const 1963, art 9, § 3 have the same meaning." *Id.* (internal quotations omitted). This Court found that the MTT did not have jurisdiction to decide the plaintiff's claim because it involved a constitutional question. *Id.*

Finally, in *Kostyu v Dep't of Treasury*, 170 Mich App 123, 126; 427 NW2d 566 (1988), the plaintiff appealed a final assessment to the Tax Tribunal and also brought an action in circuit court asserting that the defendant employed a methodology in computing his tax liability under MCL 205.21 and requesting that the defendant's policy be declared invalid or unconstitutional as a violation of due process. The *Kostyu* Court looked to the "core" of the plaintiff's complaint and held:

A review of Kostyu’s complaint in the circuit court reveals that the issues raised are squarely within the Tax Tribunal’s jurisdiction and the Tax Tribunal can provide Kostyu with the procedural due process he seeks. Since Kostyu’s claims involve the methodology employed by the Department in arriving at a taxpayer’s final income tax liability, the circuit court correctly ruled that it lacked subject matter jurisdiction. [*Id.* at 130.]

In this case, plaintiffs raise eight claims on behalf of the affected class, including: alleged violations of MCL 380.1211 (Count I) and City of Detroit ordinances requiring a refund of “unjustly or illegally collected taxes” (Count II); a request for a constructive trust to be imposed on defendants in the amount of the taxes levied since 2002 (Count III); claims for constructive fraud (Count IV) and conversion (Count V); alleged violations of plaintiffs’ state rights to due process (Count VI) and 42 USC § 1983 (Count VII); and negligent and intentional misrepresentation by defendants (Count VIII). In their second amended complaint, plaintiffs alleged:

44. Defendants knew or should have known that they had no legal right to *levy, collect and/or receive* the illegal 18 mil[l] levy.

\* \* \*

50. The ordinances of the City of Detroit require a refund to the taxpayers of *unjustly or illegally collected taxes*.

\* \* \*

53. As to the City, Board, DPS and Defendant Wojtowicz in his official capacity, *the collection, receipt and/or retention of funds collected pursuant to the illegal 18 mil[l] levy* was wrongful and inequitable.

\* \* \*

56. In *assessing, levying, collecting and/or receiving the illegal 18 mil[l] levy*, Defendants falsely collected the funds under the guise of legal authority.

\* \* \*

62. The *receipt and distribution of the illegal 18 mil[l]s* by Defendants in this case amounted to a conversion under common law.

\* \* \*

66. In *assessing, levying, collecting and/or receiving the illegal 18 mil[l] levy*, Defendants have violated Michigan Const. art. 9, § 6, and have taken the property of Plaintiff[s] and the Class without due process of law in violation of Michigan Const. art. 1, § 17.

\* \* \*

70. The actions of the Defendants in *charging and/or collecting an 18 mil[l] assessment* after authority to do so had expired is a taking of property in violation of the 14<sup>th</sup> Amendment of the United States Constitution.

\* \* \*

79. Defendants' representations [that the 18 mill school operating tax was due and payable] were false because *Defendants did not have authorization to impose the illegal 18 mil[l] levy*.

80. Upon information and belief, Defendants made the representations innocently, negligently, or recklessly without knowledge of their truth. [Emphasis added.]

Under the section entitled "Relief Requested," plaintiffs stated:

Plaintiffs individually and on behalf of the Class members request entry of a judgment for the following relief:

- A. Order that Defendants account for all of the revenue levied and/or collected or received as a result of the illegal 18 mil[l] levy;
- B. Order that Defendants pay to Plaintiffs and the Class members the damages incurred as a result of Defendants' unlawful actions alleged above;
- C. Order that Defendants immediately cease all efforts to collect the illegal 18 mil[l] levy;
- D. Order that Defendants pay interest, reasonable attorney fees and costs;
- E. Grant such other and further relief as this Court deems Plaintiffs and the Class to be entitled.

A review of plaintiffs' second amended complaint in its entirety and the evidentiary proof submitted below reveals that plaintiffs request a refund of the tax assessed and levied by defendants on plaintiffs' non-homestead properties from 2002 to 2005. To determine whether the MTT had jurisdiction over the matter, we note that it is important to determine what plaintiffs *do not* request. Plaintiffs do not: (1) request a determination regarding the proper use of taxes that were collected or whether funds collected pursuant to an assessment were properly spent, *Romulus, supra* at 736-738; (2) claim that defendants' actions after the taxes were assessed and collected constituted a breach of promise or contract, *Highland-Howell, supra* at 674; or (3) challenge the constitutionality of specific taxing statute, *Meadowbrook, supra* at 597.

Rather, plaintiffs' allegations are similar to the claims raised by the plaintiffs in *Wikman, supra* at 630, and *Kostyu, supra* at 126. This Court is not bound by a party's choice of labels for its cause of action because this would place form over substance. See *Johnston v Livonia*, 177 Mich App 200, 208; 441 NW2d 41 (1989). Plaintiffs attempt to couch their request for a refund

of the school operating tax assessed and levied by defendants from 2002 to 2005 in tort, equitable and constitutional terms. However, looking to the “core” of plaintiffs’ second amended complaint, *Kostyu, supra* at 130, plaintiffs seek a refund of the school operating taxes assessed on plaintiffs’ properties. Thus, in spite of the labels used in plaintiffs’ second amended complaint, we conclude that the trial court correctly found that plaintiffs sought a refund of the taxes collected by defendants from 2002 to 2005. Thus, this Court’s next task is to determine whether the MTT had exclusive jurisdiction over plaintiffs’ claims under MCL 205.731.

Accordingly, we conclude that the MTT has exclusive jurisdiction to hear the matter because plaintiffs request a direct review of a final decision by an agency or an official relating to the assessment of plaintiffs’ non-homestead property tax under the property tax laws. MCL 205.731(a). DPS is an “agency” because it is a “board” that is empowered to make an assessment. MCL 205.703(a); *South Haven, supra* at 238. Treasurer and City are both agencies who have “collected a tax for which [a] refund is claimed.” *Id.*

Furthermore, pursuant to MCL 380.432, defendants are directed to assess and levy the non-homestead tax on plaintiffs’ properties. A “first class school district board,” such as DPS, “shall prepare estimates of the amount of taxes necessary for its needs for the ensuing fiscal year.” MCL 380.432(1). DPS is also directed to “adopt a budget in the same manner and form as required for its estimates and *determine the amount of tax levy* necessary for that budget and shall certify on or before the date required by law the amount to the city.” MCL 380.432(2) (emphasis added). Next,

The proper officials of the city shall apportion the school taxes in the same manner as the other taxes of the city are apportioned, and *the amount apportioned shall be assessed, levied, collected, and returned for the school district in the same manner as taxes of the city.* The tax levied by the school district, in the discretion of the legislative body of the city, may be stated separately on each tax bill. [MCL 380.432(3) (emphasis added).]

Finally, the CEO of the school district is directed to fulfill the duties of the school board under sections one through three. MCL 380.432(4). However, in no instance shall the board of a school district collect “more than 18 mills for school operating purposes or the number of mills levied in 1993 for school operating purposes, whichever is less.” MCL 380.1211(1). Therefore, the MTT had exclusive jurisdiction under MCL 205.731(a).

Moreover, in light of our conclusion, *supra*, that plaintiffs’ sought a refund of the non-homestead property tax imposed on plaintiffs’ properties from 2002 to 2005, the MTT had exclusive subject-matter jurisdiction under MCL 205.731(b) based on the type of relief requested. *Wikman, supra* at 631. Accordingly, the circuit court was prohibited from exercising jurisdiction over all of plaintiffs’ claims, except the Headlee Amendment claims, because the subject matter was within the MTT’s exclusive jurisdiction. *Id.* at 646. A review of the pleadings demonstrates that defendants were entitled to judgment as a matter of law, and the lower court record shows that plaintiffs failed to establish a genuine issue of material fact. *Bock, supra* at 710. Therefore, the trial court did not err in granting defendants’ motion for summary disposition pursuant to MCR 2.116(C)(4) and concluding that the MTT had exclusive subject-matter jurisdiction over all of plaintiffs’ claims, except the Headlee Amendment claims.

Plaintiffs finally argue that the trial court erred in dismissing their 2002 and 2003 Headlee Amendment claims pursuant to MCR 2.117(C)(7) because plaintiffs failed to bring their claims within one-year after the claims accrued. Further, plaintiffs contend that the trial court erred in dismissing their 2004 Headlee Amendment claims pursuant to MCR 2.116(C)(8) for failure to state a claim. Because we conclude that defendants failed to bring the Headlee Amendment claims within one year after each accrued, we decline to address the merits of plaintiffs' allegations.

Initially, we note that where the trial court fails to dismiss a claim under the proper subrule to MCR 2.116(C), this Court may review the trial court's decision under the proper subrule. See *Spiek v Dep't of Transportation*, 456 Mich 331, 338; 572 NW2d 201 (1998). This Court will not reverse a trial court's decision where the right result was reached. *Willett v Waterford Twp*, 271 Mich App 38, 55; 718 NW2d 386 (2006). Although the trial court dismissed plaintiffs Headlee Amendment claims under both MCR 2.116(C)(7) and (C)(8), we will review the matter under MCR 2.116(C)(7).

This Court reviews de novo the grant or denial of a motion for summary disposition. *Cawood v Rainbow Rehab Ctr*, 269 Mich App 116, 118; 711 NW2d 754 (2005). MCR 2.116(C)(7) provides grounds for summary disposition where the claim is barred by the statute of limitations. "In analyzing a motion for summary disposition pursuant to MCR 2.116(C)(7), the contents of the complaint are accepted as true unless contradicted by documentation submitted by the movant." *Pusakulich v Ironwood*, 247 Mich App 80, 82; 635 NW2d 323 (2001). If there is no factual dispute, whether a plaintiff's claim is barred under a principle set forth in MCR 2.116(C)(7) is a question of law for this Court to decide. *Huron Tool & Engineering Co v Precision Consulting Services, Inc*, 209 Mich App 365, 377; 532 NW2d 541 (1995). If a factual dispute exists, however, summary disposition is not appropriate. *Id.*

The Headlee Amendment was adopted by referendum, effective December 23, 1978. *American Axle & Mfg, Inc v City of Hamtramck*, 461 Mich 352, 355; 604 NW2d 330 (2000). The Headlee Amendment states, in relevant part:

Units of Local Government are hereby prohibited from levying any tax not authorized by law or charter when this section is ratified or from increasing the rate of an existing tax above that rate authorized by law or charter when this section is ratified, without the approval of a majority of the qualified electors of that unit of Local Government voting thereon. [Const 1963, art 9, § 31.]

A Headlee Amendment claim must be brought within one-year after the cause of action accrued. MCL 600.308a(3); *Taxpayers Allied for Constitutional Taxation [TACT] v Wayne Co*, 450 Mich 119, 124-125; 537 NW2d 596 (1995). In the case of an individual plaintiff bringing a Headlee Amendment claim, a cause of action accrues on the date that the tax is due. *Id.* at 123-124. A Headlee Amendment claim brought by a plaintiff on behalf of the public would accrue at the time the resolution implementing the tax is passed. *Id.* at 124 n 7.

In this case, taxes were due on plaintiffs' properties on July 1<sup>st</sup> of each tax year. See MCL 211.44a(2)-(3). Thus, plaintiffs' property taxes for 2002 were due July 1, 2002, plaintiffs' property taxes for 2003 were due July 1, 2003, and plaintiffs' property taxes for 2004 were due July 1, 2004. The lower court record shows that plaintiffs were in receipt of the property tax

bills in 2002, 2003 and 2004. Thus, plaintiffs' Headlee Amendment claims began to accrue on July 1 of 2002, 2003 and 2004. *TACT*, *supra* at 123-124. Plaintiffs' original complaint was not filed until August 8, 2005. Accordingly, because plaintiffs failed to bring their Headlee Amendment claims within one-year after each of the claims accrued, defendants were entitled to summary disposition pursuant to MCR 2.116(C)(7).

Plaintiffs argue on appeal that the trial court erred in failing to apply the discovery rule, reasoning that the resolutions certifying the imposition of the school operating tax were in the sole possession of defendants. Moreover, plaintiffs urge this Court to apply the doctrine of equitable tolling to avoid an unjust and harsh result. Plaintiffs' arguments are without merit.

Under the discovery rule, the statute of limitations "begins to run when the plaintiff discovers or, through the exercise of reasonable diligence, should have discovered a possible cause of action." *Moll v Abbott Laboratories*, 444 Mich 1, 5; 506 NW2d 816 (1993). However, this rule is applied in limited and specific situations. *Lemmerman v Faulk*, 449 Mich 56, 66-68; 534 NW2d 695 (1995) (noting that the discovery rule is generally applicable in negligence, medical malpractice and products liability actions). Furthermore, the doctrine of equitable tolling has generally been applied to toll the period of limitations in a medical malpractice action. See *Ward v Siano*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (Docket No. 265599, issued November 14, 2006). "Equitable or judicial tolling ordinarily applies to a specific extraordinary situation in which it would be unfair to allow a statute of limitations defense to prevail because of the defendant's bad faith or other particular and unusual inequities." *Id.*, slip op at 2. Additionally, "[a]bsent statutory language allowing it, judicial tolling is generally unavailable to remedy a plaintiff's failure to comply with express statutory time requirements." *Id.* (citations omitted).

Plaintiffs have failed to cite any authority showing that the discovery rule or the doctrine of equitable tolling is applicable in the context of a Headlee Amendment case. "It is insufficient for an appellant to simply announce a position or assert an error and then leave it up to this Court to rationalize and discover the basis for his claims, or unravel and elaborate for him his arguments." *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998). Furthermore, assuming that the discovery rule is applicable to the present case, the lower court record shows that plaintiffs were in receipt of the property tax bills in 2002, 2003 and 2004. Thus, plaintiffs discovered or should have discovered, through the exercise of reasonable diligence, a possible cause of action when they received a copy of their tax bills in 2002, 2003 and 2004. As defendants correctly note on appeal, the resolutions implementing the challenged taxes were a matter of public record and plaintiffs have failed to show that they did not have access to these records. Accordingly, we conclude that plaintiffs' arguments are without merit and defendants were entitled to summary disposition pursuant to MCR 2.116(C)(7).

Affirmed.

/s/ Jane E. Markey  
/s/ William B. Murphy  
/s/ Kirsten Frank Kelly