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STATE OF MICHIGAN
IN THE SUPREME COURT
Appeal from the Michigan Court of Appeals

SIXARP, LLC
d/b/a Praxis Packaging Solutions,

Petitioner/Appellee,

v

Byron Township,

Respondent/Appellant,

Supreme Court: 166190

Court of Appeals: 361888

MOAHR/Tax Tribunal: 21-000523

RESPONDENT/APPELLANT BYRON TOWNSHIP'S RESPONSE TO PETITIONER-APPELEE SIXARP, LLC, d/b/a PRAXIS PACKAGING SOLUTIONS' ANSWER TO APPLICATION FOR LEAVE

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Dated: November 20, 2023

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INTRODUCTION

Sixarp LLC d/b/a Praxis Packaging Solutions (hereinafter "Praxis") views the issues in this case as something not worth this Court's attention. Praxis' position is somewhat understandable as the Court of Appeals' conclusion benefits Praxis. That the decision benefits one party, however, does not make the decision correct. As set forth in Byron Township's (hereinafter "Township") Application for Leave (hereinafter "Application"), the Court of Appeal's decision is flawed as it imputes equitable jurisdiction to the Tribunal despite there being no statutory basis to do so and relies on *Parkview Memorial Ass'n v Livonia*—a case that is no longer good law—to modify the Tribunal's statutory jurisdiction in this case.[1]

To bolster the Court of Appeals' decision and dissuade this Court from review, Praxis makes several arguments that Township will address below to the extent not already addressed in the Application.

ARGUMENT

I. The Newspaper Notice.

In its response to the Application, Praxis references the publication of the March 10th meeting date in the Grand Rapids Press, the sole place that date was referenced, but never indicates that Praxis was aware of the publication. Indeed, Praxis has never stated that it saw the Grand Rapids Press publication or relied on that date in any way during the relevant time period. The Court of Appeals' heavily weighed the Grand Rapids Press publication in its Opinion and appears to have imputed knowledge of that publication to Praxis to justify the untimely March

[1] 183 Mich App 116; 454 NW2d 169 (1990).

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Board of Review (hereinafter "MBOR") filing without evidence to support that conclusion.[2] The Court of Appeals' reliance on this unproven fact is a reversable error.

Praxis does not dispute that it received the 2021 Notice of Assessment (hereinafter "Notice") prior to the MBOR meeting and that the meeting dates were stated on the Notice. Instead, Praxis claims that this information is irrelevant as it does not directly pertain to the exemption claim. The Notice, however, is relevant to an exemption claim as it reflects the taxable value on the roll which would show if the exemption was granted or denied and provides notice of the MBOR review dates. More importantly, notice of the dates should not be limited to the information contained in the assessor's denial of the exemption claim because knowledge is knowledge regardless of how it is obtained. A hyper focus on the assessor's denial to ignore all other evidence, especially evidence that provided actual notice of the hearing dates like the notice, publication at the Township Hall, and Township's website, is to miss the forest for the tree. Praxis had actual knowledge of the MBOR dates and simply failed to timely appeal.

II. The Issue in this Case is Jurisdictional.

The parties do not dispute that under the plain language of MCL 211.9m/n a timely exemption denial by the assessor must be protested to the MBOR for the Tribunal to have jurisdiction over the matter.[3] That the Court of Appeals spent slightly more than five pages of its fourteen page opinion addressing issues under the heading "Jurisdiction of the Michigan Tax Tribunal" is evidence of the importance of jurisdiction to the case. In performing its analysis, the Court of Appeals relied on caselaw interpreting MCL 205.735a and its predecessor to interpret

[2] See *SIXARP LLC d/b/a Praxis Packaging Solutions v Byron Twp*, __ Mich App __; __ NW2d __ (2023) (COA Docket No. 361888) ("*SIXARP*"), slip op at 2, 5, 11, and 13; a copy of the opinion was attached to the Township's Application as Exhibit 1.

[3] As stated in the application the statutes are functionally identical in regard to the statutory requirements and will be addressed in the singular in this Response.

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MCL 211.9m/n's requirements. Considering that the requirements of the two are similar in that a denial must first go to the March Board and then to the Tribunal within 35 days it makes sense to read them in *pari materia*.[4] If a statute provides the Tribunal jurisdiction over a matter the statute is jurisdictional and read in light of other jurisdictional statutes.[5] Praxis declines to address the similarities and instead simply says "MCL 211.9m applies here, not MCL 205.735a."[6]

Praxis attempts to distinguish the statutes from each other, but relies on caselaw interpreting the MCL 205.735a to argue that the Tribunal has jurisdiction under MCL 211.9m/n. This position is not internally coherent and, instead, proves that the statutes should be read together. That the parties rely on the exact same case law in making their application arguments is further proof that MCL 205.735a's and MCL 211.9n/m are similar statutes that should be read as such.

While the parties read the same law to indicate opposite outcomes, not a single case cited by Praxis has held that insufficient, but timely, notice is grounds for the Tribunal to assume jurisdiction. Rather, as detailed in the Application, the MCL 205.735a case law stands for the straightforward proposition that in cases of untimely notice that deprives the opportunity to appeal to the MBOR, a 35 day catchall period contained in MCL 205.735a(6) applies and an appeal can be taken directly to the Tribunal.[7] A similar requirement, and the same 35 day appeal period, is mirrored in MCL 211.9m/n, but only in cases where the assessor's denial was issued

[4] *SBC Health Midwest Inc v City of Kenwood*, 500 Mich 65, 74; 894 NW2d 535 (2017).
[5] *Id.* ("We agree that, in evaluating petitioner's claim for an exemption under MCL 211.9(1)(a), it is proper to consider MCL 211.7n, given that both statutory provisions address whether and to what extent the personal property of an educational institution is exempt from taxation.")
[6] Praxis' Answer to Application for Leave at 14.
[7] "In all other matters, the jurisdiction of the tribunal is invoked by a party in interest, as petitioner, filing a written petition within 35 days after the final decision, ruling, or determination."

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after the MBOR's first meeting date.[8] The additional requirement in MCL 211.9m/n to trigger the 35 day appeal period is explicitly allowed by MCL 205.735a(3): "[e]xcept as otherwise provided in this section or by law . . . the assessment may be protested before the [MBOR] before the tribunal acquires jurisdiction of the dispute under subsection (6)."[9] In short, if the taxpayer has timely notice under MCL 211.9m/n, i.e., "by law," the Tribunal can only have jurisdiction if a MBOR protest is made.[10] There was no MBOR protest here, which required the Court of Appeals to rely on *Parkview* to bend the Tribunal's jurisdiction and provide a basis for the Tribunal to hear the case on remand. Praxis argues *Parkview* is good law that should be applied to this case and argues against any conflict between that case and *Elec Data Sys Corp v Flint Twp*.[11] Township addressed these arguments at length in the Application and incorporates the same here.

Praxis also argues that its April 14, 2021 petition was timely as it was filed within 35 days or "before May 31 under MCL 205.735a(6)."[12] This reinforces that statute and MCL211.9m/n and should be read together, and also misstates the applicable timeline. The exemption was denied in February 2021 via the assessor denial—more than 35 days before the Tribunal petition was filed in April.[13] Moreover, MCL 205.735a(3) requires a protest to the MBOR to assume jurisdiction under subsection (6) and that was not done.

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[8] MCL 211.9m(2)(c)("An appeal of a denial by the March board of review may be made by filing a petition with the Michigan tax tribunal within 35 days of the denial notice.").
[9] As noted by the Court of Appeals this was amended by 2021 PA 153, effective December 27, 2021, to change the statute to "the assessment must be protested . . . [.]"
[10] MCL 205.735a(3).
[11] 253 Mich App 538, 548; 656 NW2d 215 (2002).
[12] Answer to Application for Leave at Fn. 41 (P 11-12).
[13] Based on the April 14, 2021 filing date the denial notice would have to be issued on or after March 10, 2021. The only denial was issued in February 2021.

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III. The Court of Appeals Cannot Force the Tribunal to Sit in Equity.

The Tribunal's lack of equitable powers and strict jurisdictional limits have been affirmed by multiple published and precedential Court of Appeals decisions.[14] Praxis argues that certain Court of Appeal's decisions allow for the Tribunal to assume equitable jurisdiction to cure due process rights but misreads the cases. What those cases stand for is that in specific, highly unusual circumstances where a party was not aware of the correct forum to file the case in, that the time period to appeal could not run until the appropriate venue was known. None of the cases cited by Praxis stand for the proposition that when the party was aware of the need to go to the MBOR prior to the Tribunal, and failed to do so, that the Tribunal would still be able to assume jurisdiction.

Wells Fargo Rail Corp v Michigan affirmed that equitable powers were only vested in certain courts, and not the Tribunal.[15] "[A]lthough equitable relief may not be directly available from the MTT, nothing in the TTA prohibits a litigant from seeking equitable relief to enforce writs, orders, and directives that the MTT issues."[16] In short, the Tribunal can only rule on matters it is conveyed jurisdiction over. Any enforcement of a Tribunal order that requires a power outside of the Tribunal's jurisdiction, whether that be equitable or otherwise, must be sought in a venue that has the power to enforce the order. In *Wells Fargo,* the taxpayer timely filed its appeal with the Court of Claims under MCL 207.15, but did so after the 35 day period to appeal to the Tribunal had run.[17] "The parties had no way of knowing that [the Court of Appeals] . . . would conclude that MCL 207.15 was implicitly repealed" and the taxpayer "reasonably

[14] See, e.g., *Elec Data Sys Corp v Twp of Flint* 253 Mich App 538, 548; 656 NW2d 215 (2002) (internal citation omitted).
[15] *Wells Fargo Rail Corp v State of Michigan*, __ Mich App __; __ NW2d __ (2022) (Docket No. 359399), lv den 990 NW2d 355 (2023). A copy of the decision was attached to Praxis' response brief.
[16] *Id*. at 19.
[17] *Id*. at 25.

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relied on MCL 207.15 to timely file its case with the Court of Claims."[18] As the Court concluded the Tribunal had exclusive jurisdiction after MCL 207.15 was invalidated, the Tribunal was ordered to assume jurisdiction on remand as the 35 day appeal period was "tolled as a matter of equity."[19]

Craig v County of Grand Traverse, an unpublished Court of Appeals case cited by Praxis, not only declined to extend equitable powers to the Tribunal, but relied on *Parkview* and *Bickler v Dep't of Treasury* for the proposition that the Tribunal had equitable power in the first place.[20] *Bickler* was rejected in *Craig* as *Bickler* was decided in 1989 and had already been rejected in a published Court of Appeal's decision "because its statement as to the equitable powers of the Tax Tribunal was mistaken and constituted dicta."[21]

All of the cases where the Tribunal has been remanded to assume jurisdictions are cases where the Tribunal incorrectly interpreted its jurisdictional limits or where the 35 day catchall appeal period in MCL 205.735a would be satisfied if calculated from the date notice was received of the denial or appropriate venue to hear the case. That is not the issue here and the Tribunal lacks the power to sit in equity to hear this matter.

CONCLUSION

The Court of Appeals decision in this case is one that not only reinforces dueling lines of case law, it calls into question the nature of the Tribunal's jurisdiction: is it strictly statutory or malleable. While the parties can make various arguments as to the impact of this decision, the

[18] *Id*. at 27.
[19] *Id*. at 21.
[20] *Craig v County of Grand Traverse*, unpublished per curiam opinion of the Court of Appeals, issued April 16, 2019 (Docket No. 342780) at 7-8; *Parkview*, 183 Mich App at 116; *Bickler* **v** *Dep't of Treasury*, 180 Mich App 205; 446 NW2d 644 (1989). A copy of *Craig* was attached to Praxis' response brief.
[21] *Craig*, at Fn. 3 (citing *Curis Big Boy, Inc v Dep't of Treasury*, 206 Mich App 139, 142-143; 520 NW2d 369 (1994)).

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Tribunal's own actions since the decision are evidence of the issues that will arise if the Court of Appeals' decision stands. In an October 17, 2023 Order in *Play At Atlantis LLC v City of Melvindale*, the Tribunal cited the Court of Appeal's opinion in this case and found that a factual dispute regarding sufficiency, *not* timeliness, of notice in an otherwise untimely appeal "raises a question of fact for hearing as to whether Petitioner's due process rights were violated."[22] The Tribunal will address a due process issue, decide the due process issue, and potentially waive its own jurisdictional requirements to hear an untimely appeal despite not being empowered to address constitutional issues or expand its jurisdiction solely based on the Court of Appeals' decision in this case.[23]

The issues in this case go beyond the parties and the facts. Affirming that the Tribunal's jurisdiction is strictly limited by statute and cannot be expanded is necessary to not only ensure that the Tribunal does not expand its powers beyond its bounds, but also to clarify Michigan law. Based on the arguments in the application and this response, Township respectfully requests this Court vacate the Court of Appeals' decision based on the application and affirm the Tribunal or, in the alternative, grant the application and allow the case to proceed.

Respectfully Submitted ,

/s/ Laura M. Hallahan

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[22] Tax Tribunal Docket No. 22-001168. Docket Entry 54 at page 2. A copy has been attached as Exhibit A to this response.
[23] *Id*.

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Brief complies with the word and format limitations of MCR 7.305(E)(3). The Brief contains 2296 words (2800 entire document).

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CERTIFICATE OF SERVICE

On the date below I served via the Court's efile system Respondent-Appellant's Answer to Application for Leave on:

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I declare that the statements above are true to the best of my information, knowledge and belief.

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Dated: November 20, 2023