

STATE OF MICHIGAN
COURT OF APPEALS

In re PETITION OF EMMET COUNTY
TREASURER FOR FORECLOSURE.

EMMET COUNTY TREASURER,

Petitioner-Appellant,

UNPUBLISHED
January 24, 2013

v

HARBOR WATCH CONDOMINIUM
ASSOCIATION,

Respondent-Appellee.

No. 308892
Emmet Circuit Court
LC No. 11-003059-CH

Before: SAWYER, P.J., and MARKEY AND WHITBECK, JJ.

PER CURIAM.

Petitioner appeals by right a February 20, 2012, judgment of foreclosure dismissing petitioner's tax forfeiture with respect to respondent's property, parcel number 52-19-06-356-170 (hereinafter "the subject property"). The circuit court found as a matter of law that the property is a nontaxable "general common element," rather than a taxable "condominium unit," under the Michigan Condominium Act (MCA), MCL 559.101 *et seq.* We reverse.

I. Facts

Petitioner initiated this action by filing a petition for foreclosure in the circuit court, identifying properties forfeited to the Emmet County Treasurer for unpaid taxes. The petition described the subject property as a detached garage owned by the Harbor Watch Condominium Association. Respondent filed an objection to the petition, claiming that its delinquent taxes were invalid because no law authorized the tax, MCL 211.78k(2)(a), and because the tax was not legally levied, MCL 211.78k(2)(c). In its objection, respondent included several portions of its condominium subdivision plan which describe the subject property as a "limited common element." Nothing in the record establishes that the subject property was leased or assigned to any unit of the condominium association during the period of taxation.

On February 17, 2012, the circuit court held a hearing on respondent's objections. Petitioner challenged the court's jurisdiction to hear the matter and disputed respondent's claim that the subject property was a common element. After hearing arguments from both parties, the court found for respondent:

[The subject property] is not assigned to any particular...condominium unit so it couldn't be taxed appurtenant to a unit So it is not and does not as of the date in question qualify as a limited common element

So, notwithstanding the depiction and the language in the documents, this Court's conclusion as a matter of law on the face of the documents is that as of 2009, this garage unit was a general common element, the value of which needed to be spread across all of the units in the Association.

The circuit court issued an order consistent with its findings, dismissing the petition for foreclosure with respect to the subject property.

II. Analysis

Any party may raise a lack of subject matter jurisdiction at any time. *Paulson v Secretary of State*, 154 Mich App 626, 630; 398 NW2d 477 (1986). Whether a court has subject-matter jurisdiction is a question of law which we review de novo. *In re Wayne Co Treasurer*, 265 Mich App 285, 290; 698 NW2d 879 (2005).

This matter requires the reconciliation of two conflicting statutes. On one hand, MCL 205.731(a) grants the Michigan Tax Tribunal exclusive and original jurisdiction over "[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." The authority of the Tax Tribunal is "effective notwithstanding the provisions of any statute, charter, or law to the contrary." MCL 205.707. On the other hand, if a person claiming an interest in a parcel of property identified in a petition for tax foreclosure challenges the validity or correctness of that property's unpaid taxes, MCL 211.78k(2) & (3) grants the circuit court authority to hear that person's objections.

This Court recently addressed the apparent conflict between the statutory jurisdiction of the circuit court and that of the tax tribunal by explaining the two courts' complimentary roles in tax disputes. *In re Petition of Wayne Co Treasurer for Foreclosure*, 286 Mich App 108, 110-113; 777 NW2d 507 (2009). There, the respondent successfully challenged a tax foreclosure in the circuit court by arguing that its property qualified for a religious purpose exemption. *Id.* at 110. This Court reversed, holding that the Tax Tribunal had exclusive jurisdiction to determine whether the respondent qualified for the exemption. *Id.* at 110, 113. This Court emphasized that "[t]he need to preserve the tribunal's exclusive jurisdiction is especially great where . . . factual issues requiring the tribunal's expertise are present." *Id.* at 112, quoting *Michigan Consolidated Gas Co v China Twp*, 114 Mich App 399, 402; 319 NW2d 565 (1982). The tax tribunal members are especially qualified to resolve disputes concerning assessments, valuations, rates, allocation, and equalization. *Id.* But the tax tribunal "has no jurisdiction to hold statutes invalid or to consider constitutional matters; only the circuit court may do so." *Id.*

In sum, this Court held that the circuit court has jurisdiction over tax forfeiture challenges that do not require *any* findings of fact, i.e., the circuit court only has jurisdiction over such cases that require only a construction of law. *In re Petition for Foreclosure*, 286 Mich App at 112-113. If a tax forfeiture challenge involves factual dispute requiring the tribunal’s expertise, “it falls squarely within the Tax Tribunal’s exclusive jurisdiction.” *Id.* at 113. This includes direct challenges to a tax assessment per se, as well as peripheral matters related to enforcement. *Id.* Because the respondent’s challenge was not to the validity of the statute itself but instead to the application of an exemption to its particular piece of property, the Court held that the Tax Tribunal had exclusive jurisdiction over the case. *Id.* at 113.

Here, the validity of the tax at issue depends on whether the subject property is a general common element or an individual condominium unit. The MCA mandates that “[s]pecial assessments and property taxes” be “assessed against the individual condominium units . . . and not the total property of the project or any other part of the project” MCL 559.231(1). The MCA defines “condominium unit” as a “portion of the condominium project designed and intended for separate ownership and use” MCL 559.104(3). It defines “limited common elements” as “a portion of the common elements reserved in the master deed for the exclusive use of less than all of the co-owners,” MCL 559.107(2), and “general common elements” as “the common elements other than the limited common elements,” MCL 559.106(5).

We conclude the Tax Tribunal has exclusive jurisdiction of this tax dispute. Respondent is not challenging the validity or constitutionality of a statute. Rather, respondent is challenging the assessment of a tax to a particular parcel of property. Respondent argued that the subdivision master plan requires a finding that the subject property is a general common element. The circuit court agreed “as a matter of law” in light of respondent’s exhibits. But, petitioner challenged respondent’s characterization of the subject property as a general common element, arguing that it was a “separate unit,” and that “it was appropriately assessed.” The circuit court has jurisdiction where a tax “forfeiture challenge does not require *any* findings of fact, but rather *only* construction of law.” *In re Petition for Foreclosure*, 286 Mich App at 112 (*emphases added*). While respondent’s exhibits may have suggested that the subject property is a general common element, the circuit court was still required to examine the subdivision master plan and make that finding. While this factual finding may have been obvious, it is a factual finding nonetheless. Although the subject property may have been improperly assessed as an individual condominium unit, that determination is an issue that falls within the tribunal’s jurisdiction, not that of the circuit court.

Respondent argues that *Paris Meadows, LLC v City of Kentwood*, 287 Mich App 136, 138; 783 NW2d 133 (2010), mandates that we find that the subject property is a nontaxable common element. In *Paris Meadows*, this Court held that common elements of a condominium development cannot be taxed independently from condominium units, even when a developer reserves the right to develop the common elements in the future. *Id.* at 147. But *Paris Meadows* does not control in this case because the issue here is where jurisdiction lies to determine the factual issue of whether the subject property is or is not a general common element. We note that *Paris Meadows* was an appeal from the Tax Tribunal, not the circuit court. Consequently,

Paris Meadows supports our conclusion that the circuit court lacked jurisdiction to determine respondent's claim that the subject property is a nontaxable general common element.

We reverse. No taxable costs pursuant to MCR 7.219, a question of public policy involved.

/s/ David H. Sawyer

/s/ Jane E. Markey

/s/ William C. Whitbeck