

Jurisdiction of appeal from drain code assessment

FACTS:

In 2009, Pittsfield Charter Township created a special assessment district to finance its obligations for a drainage district project. Under the project, the Washtenaw County drain commissioner reconstructed a section of a stormwater drain that forced overflow waters to pool on residential properties south of the assessment district. The drain commissioner apportioned \$1.7 million to the township which paid its obligation, in part, from its general fund and the remainder by assessment against property owners in the assessment district.

Ashley Ann Arbor, LLC, (Ashley), one of the property owners, objected to the special assessment at a public hearing held by the township. The hearing notice advised property owners that they had a right to file a written appeal with the Michigan Tax Tribunal (MTT) within 30 days of confirmation of the special assessment roll. The roll was confirmed on March 24, 2009.

Within 30 days of confirmation of the special assessment roll, Ashley filed a petition in the MTT challenging its inclusion, for various reasons, in the assessment district. The matter was set for a hearing in the MTT for the September 2011 Prehearing General Call. In December 2010, Ashley filed a complaint in the Washtenaw County Circuit Court raising the same challenges. In addition, Ashley filed a motion in the MTT to transfer the matter to the circuit court. The MTT granted Ashley's motion on the basis that the special assessment was made under the drain code and, as a consequence, the MTT lacked jurisdiction to hear the matter.

Ashley then filed a motion for summary disposition in the circuit court. The township argued, first of all, that the assessment was imposed under the public improvements act (PIA) for which appeals are made to the MTT. According to the township, the court lacked jurisdiction and should dismiss the issues pending in the court. The township alternatively argued that if the special assessment was made under the drain code for which appeals are made to the circuit court, Ashley nonetheless failed to timely file an appeal with the circuit court within 30 days of March 24, 2009.

Ashley agreed that the PIA authorizes the township to levy a special assessment for the township to make a public improvement. In this case, however, Ashley argued that the

improvement was made by the county drain commissioner. Ashley also argued that there is no statutory authority under the PIA to make drain improvements.

The circuit court summarily dismissed Ashley's claims. Ashley appealed to the Michigan Court of Appeals.

QUESTION # 1:

Does the MTT have authority to hear an appeal of a special assessment imposed under the drain code?

Answer according to the Court of Appeals:

No. The court based its decision on a review of the Tax Tribunal Act. MCL 205.731(a) of the Act provides that the MTT has exclusive jurisdiction over proceedings "under the property tax laws of this state." Despite a ruling in 1984 by the Michigan Supreme Court in *Eyde v Lansing Charter Twp* that upheld a property owner's challenge in the MTT to a special assessment levied by a township which arose from the drain code, the court reasoned that the subsequent enactment of 1992 PA 175 which included language that the property laws of the state did not include the drain code dictated a different result.

QUESTION # 2:

Did Ashley's filing in the MTT toll the statute of limitations with respect to the requirement to file an appeal with a court of competent jurisdiction within 30 days?

Answer according to the Court of Appeals:

Yes. The court reasoned that under the facts of the case the statute of limitations was tolled when the appeal was filed with the MTT. The court further held that, equitably, the period of time was tolled based on prior uncertainty of the law and the advice of the township to file the appeal with the MTT.

Ashley Ann Arbor, LLC v Pittsfield Charter Township, No. 304904 (Dec. 27, 2012)

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