

**STATE OF MICHIGAN
IN THE SUPREME COURT OF MICHIGAN**

BRIGGS TAX SERVICE, LLC,
Individually and on behalf of all others similarly situated,

Petitioner/Appellee,

v

DETROIT PUBLIC SCHOOLS,
DETROIT BOARD OF EDUCATION, CITY OF DETROIT,
RAYMOND WOJTOWICZ as WAYNE COUNTY TREASURER,
KENNETH BURNLEY, KEN A. FORREST, DORI FREELAIN,
PAMELA ANESTEY, MICHAEL BRIDGES, MARY ELLIS,
ROBERT F. MOORE, NELIDA BRAVO, MARVIS 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,

Respondent/Appellants.

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Supreme Court Docket No: ¹³⁸¹⁸²~~138168~~

Court of Appeals No: 278865

Michigan Tax Tribunal No: 319592

RESPONDENT-APPELLANT
WAYNE COUNTY TREASURER'S
REPLY BRIEF

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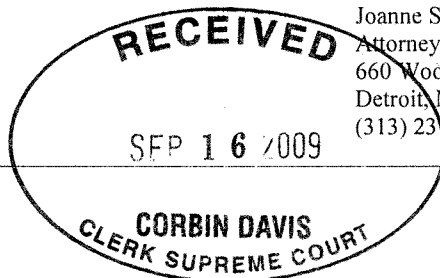


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INTRODUCTION

While replete with allegations of “pernicious” government conspiracy theories, “tort” proximate-cause analysis, and moral rhetoric, Petitioner-Appellee’s (Briggs’) response to the Brief on Appeal of the Detroit Public Schools (DPS), the Detroit Board of Education, the City of Detroit and the Wayne County Treasurer is devoid of any merit, or serious analysis of the arguments put forward by the Respondents-Appellants, including the Wayne County Treasurer.

The Respondent-Appellant, Wayne County Treasurer (Treasurer), contends that no mutual mistake of fact was committed by the city assessor and taxpayer. The actions of the DPS regarding the authorization of the applicable 18 school operating mills constituted a “mistake of law”, and not fact, and that the Michigan Tax Tribunal properly dismissed the Briggs’ Tribunal action for lack of jurisdiction. 16 MTT 145 (2007)

Briggs advances the unsupported and erroneous argument that this Court in *Ford Motor Company v Woodhaven*, 475 Mich 425; 725 NW2d 247 (2006) “effectively” but not expressly, rejected prior mutual mistake cases of lower courts and the Tribunal. This argument is totally unsubstantiated and false.

In reversing the Tax Tribunal’s Opinion and Order granting motions for summary disposition, the Briggs Court of Appeals¹ issued a decision that was not only clearly erroneous, but also clearly conflicted with prior Supreme Court precedent. Further, the decision also conflicted with a virtually identical Court of Appeals’ “mistake of law” holding in *Upper Peninsula Generating Co. v. City of Marquette*, 18 Mich App 516; 171 NW2d 572 (1969), which the Court of Appeals failed to even mention, or address. (COA Docket No: 271631 (2007)).

¹ *Briggs Tax Service LLC v Detroit Public Schools, et al.*, Unpublished Opinion Per Curiam of the Court of Appeals, (Docket No. 271631) (2007)

Contrary to Briggs' erroneous contentions, the Tax Tribunal considered the *Ford Motor* case, and properly relied on the *Upper Peninsula* case. In addition, the *Ford Motor* case did not define a "mistake of law", or involve a millage question. Briggs, like the Great Wizard of Oz, does not want this Court to look behind the "factual" curtain to see the mistake of law committed by the DPS, but instead, wants the Court to accept its faulty "factual" causation chain analysis without any legal support.

The Briggs Court of Appeals finding of a "mutual mistake of fact" was clearly erroneous and in direct conflict with a virtually identical "mistake of law" ruling in *Upper Peninsula Generating Co. v. City of Marquette*, 18 Mich App 516; 171 NW2d 572 (1969). What comprises a "question of law" is a legal issue which went totally unaddressed by the Briggs Court of Appeals.

In ruling, the Briggs Court of Appeals completely, and seemingly purposefully, avoided the *Upper Peninsula* "mistake of law" case and found a "mutual mistake of fact" permitting the Court of Appeals to discard the Tribunal's 30-day jurisdictional filing period. Instead, the Court of Appeals erroneously held a three year jurisdictional period applicable pursuant to MCL 211.53a, citing the *Ford Motor* case, and *Wikman v. City of Novi*, 413 Mich 617, 652-653; 322 NW2d 103 (1982), two cases which did not involve a "mistake of law," or even discuss what a "mistake of law" constituted.

ARGUMENT I

A MISTAKE OF LAW CANNOT BE TRANSFORMED INTO A MUTUAL MISTAKE OF FACT

As provided by the Court of Appeals in *Upper Peninsula Generating Co. v. City of Marquette*, 18 Mich App 516, 517; 171 NW2d 572 (1969),

*“Although M.C.L.A. 211.53a . . . permits recovery of excess taxes notwithstanding the failure to register a protest, it does so only if the portion exceeding the lawful amount is paid either as the result of mutual mistake of fact or . . . clerical error. The **failure to obtain the voters’ approval for the millage in excess of the constitutional limitation cannot be characterized as a mistake of fact, and therefore plaintiff is not entitled to relief under this statute”**.*

Despite the *Upper Peninsula* holding, the Court of Appeals in *Briggs*, without any reference or analysis of the *Upper Peninsula* “mistake of law” decision, held erroneously that a “mutual mistake of fact” was committed. In fact, the *Upper Peninsula* case is not even mentioned in the *Ford Motor* case, or the Court of Appeals decision in *Briggs*. In contrast both the *Ford Motor* case as well as *Upper Peninsula* are cited in the Tribunal’s decision. 16 MTT 145 (2007)

A similar “mistake of law” case, *Carpenter v. City of Ann Arbor*, 35 Mich App 608; 192 NW2d 523 (1971) is also not mentioned or addressed by the Court of Appeals. Briggs’ Brief, similar to the Briggs Court of Appeals decision, does not address the merits of the *Upper Peninsula*, or *Carpenter* cases except to say, without any support, that they were “old”, “narrow interpretations” which were rejected and “superseded by the *Ford Motor Company* case, which is total fiction. (Briggs’ Response Brief, page 30-31)

Neither the *Briggs* case, nor the *Ford* case, or Briggs’ Brief provide a definition of a “mistake of law”.

In this case, there is no “mutual mistake of fact” committed by the taxpayer (Briggs), the Assessing Officer of the City of Detroit, or the Wayne County Treasurer. Applying previously unraised arguments about torts and “proximate cause”, Briggs’ attempts to construct a faulty “factual” chain of mistakes originating with the DPS to include the city assessor. While tort concepts have no application to a tax refund case, this previously unraised argument also holds no merit, as, the ultimate “legal” mistake was caused by the DPS legal misinterpretation of

Proposal A, not the city assessor. Briggs has not shown anywhere in its Brief that an assessor can change a millage rate. MCL 211.24b(2).

There is also no statutory requirement or case law that suggests that a legal error or mistake has to be predicated on the request for a “legal” opinion, or the lack of a request, or the obtaining of a legal opinion by a lawyer and Briggs’ Brief cites no law to the contrary.

Citing the dissent in *Wolverine Steel Co. v. City of Detroit*, 45 Mich App 671; 207 NW2d 194 (1973), also does not sustain any of Briggs’ contentions. As Justice O’Hara himself indicated, there is no razor sharp delineation as to what constitutes a “mistake of law”. *Id* at 677-678. Recognizing that the law does not exist outside of factual circumstances does not transform every mistake of law into a mistake of fact. To do so would totally abrogate and eviscerate any “mistake of law”.

Brigg’s citation of the unpublished *Bridgewater Interiors v City of Detroit*, 2003 WL 22796986 (Unpublished, Mich App 2003) case for the proposition that a mistake about a tax rate can be a factual mistake subject to MCL 211.53a is entirely misleading. First, the *Bridgewater* Court analyzed the case under MCL 211.53b, not MCL 211.53a. Second, no legal conclusions were involved. In *Bridgewater*, the assessors themselves made a mistake which was clerical and not legal in nature. The assessors knew the subject property was in a renaissance zone (and therefore exempt from certain levies, but not others), and intended to treat it as such by coding it with a 7, which would have caused the computer to not apply the taxes that do not apply in a renaissance zone. The assessors made a clerical error by not coding the property with code 7, and as a result, the wrong tax rate was applied. *Bridgewater* has nothing to do with reliance upon a certified tax rate provided by another taxing unit.

ARGUMENT II

THE LAW ON MCL 211.53a IS NOT SETTLED AND THE COURT OF APPEALS ERRED IN MISAPPLYING BOTH THE FORD MOTOR AND ELTEL MISTAKE OF FACT HOLDINGS

The Briggs Court of Appeals “mutual mistake of fact” analysis distorts this Court’s *Ford Motor* holding to support its erroneous finding. The *Ford Motor* case did not involve a millage question. Neither did the *Eltel* decision. *Eltel Associates LLC v. City of Pontiac*, 278 Mich App 588; 752 NW2d (2008). The *Ford* and *Eltel* cases also did not involve a “mistake of law,” or define a “mistake of law”, and the facts of either case are not “materially similar” to the present case.

In *Ford Motor*, Ford itself mistakenly reported information on its personal property statement, causing an overstated amount of taxable property. The mistaken facts included personal property which was incorrectly classified, doubled in value, non-taxable, retired, and/or idle. The Court recognized that a mutual mistake of fact occurred, as (1) Ford itself mistakenly believed facts regarding its own property and reported said facts to the Assessor, (2) the Assessor, relied upon the belief that the mistaken Ford generated facts were accurate, and (3) the mistaken Ford documents, relied upon by the Assessor, resulted in excessive assessments of Ford property. Therefore, in *Ford Motor Corp.*, the taxpayer itself actively caused the excessive assessment by erroneously reporting its personal property to the local assessor. *Ford Motor, supra*.

Contrary to the *Ford Motor* case, MCL 211.53a is inapplicable as this case does not involve a “mutual mistake of fact” assessment dispute between the assessor and the taxpayer. The Briggs’ case involves a “mistake of law” by DPS regarding Proposal A’s² authorization of voter-approved millage. Contrary to *Eltel*, this case also does not involve an exempt property

² Const 1963, Art 9, Sec 3 (Proposal A)

assessment created by the actions of the taxpayer and the city assessor. Instead, this case concerns the authority of the millage tax rate on the assessment. The Court of Appeals in the *Briggs* case failed to understand this legal point and erred in its analysis and application of the *Ford Motor* and *Eltel* decisions.

ARGUMENT III

MCL 211.53a IS NOT APPLICABLE TO A LEGAL MISTAKE MADE BY A DPS OFFICIAL

The Court of Appeals *Briggs*' decision as to MCL 211.53a is a violation of statutory construction. Contrary to *Briggs* contention, Appellants have not misinterpreted footnote 7 of the Court of Appeals Decision. MCL 211.53a does not contain the word "agent," or DPS official, or Wayne County Treasurer. Neither the City Assessor, nor the Wayne County Treasurer had any power, or duty to change, or review the DPS certified tax rate. MCL 211.24(b)(2). Therefore, the whole substance of the transaction, being the levy and certification of the unauthorized DPS millage, due to the legal interpretation of Proposal A, could not have been caused by the taxpayer (*Briggs*), the Assessor, or the Wayne County Treasurer, as required for action under MCL 211.53a.

The clear legislative intent of MCL 211.53a is to hold an "assessor" accountable for the assessors own factual mistakes, not for a legal mistake of a DPS official. While the expiration of a millage can be misconstrued as a "fact", it was in reality a "mistake of law" on the part of DPS in its belief that no vote was required to continue the 18 mills due to the legal interpretation of Proposal A.

This court is not being asked to "restrict" the application of MCL 211.53a, or to violate the rules of statutory construction, but instead to apply both as the Court of Appeals decision failed to do. MCL 211.53a speaks to a taxpayer who is "assessed". In this case, *Briggs* is not

appealing the assessment on its property. What Briggs fails to acknowledge is that the statute contemplates an error in the assessment on which the mutual mistake is based, not on the tax rate which is not created by the assessor. This is precisely the holding in *Upper Peninsula*.

Notably, despite Brigg's contention, neither the City Assessor, nor the Wayne County Treasurer has ever admitted that they have committed any "mistake" in this case, nor do the statutes cited by Briggs (MCL 211.10, 10e, 24, 27a, 41 and MCL 380.432) provide an assessor with the power, or affirmative duty, to review, or change a millage rate. MCL 211.24b(2)

ARGUMENT IV

THE CITY OF DETROIT ASSESSOR'S ACTIONS DO NOT CONSTITUTE A MUTUAL MISTAKE OF FACT

Pursuant to MCL 211.10, a city assessor is required to **make an assessment** of all real and personal property within a city. Verifying the accuracy of an **assessment** is the sole duty of the assessor; the assessor has no legal duty to confirm the "legality", or accuracy of a millage.

The City of Detroit Assessor is not a "robot", or a "hapless scrivener", or a "mindless functionary". The city assessor did not "rely" on the DPS millage certification to incorrectly calculate Briggs' assessment. Briggs in fact, did not appeal its "assessment". Briggs' appeal goes to the "millage rate" on the assessment, not the assessment. The Assessor is not obligated, nor was there any reason to anticipate, that the assessor would verify the legal authority of DPS to issue the 18 mills. There is also no implied requirement for the Assessor to "venture beyond" and verify a millage rate. There are also no "glossy" facts which show that the Assessor was aware that the millage was incorrect, or that the assessor knew, and purposefully failed to act, or that the assessor miscalculated the certified millage rate to arrive at the tax on the tax roll. There are also no facts to suggest that the Wayne County Treasurer was also aware. Nor is the "source" or "genesis" of the alleged mutual mistake of fact "immaterial" as Brigg's suggests, as

the statute, as well as the *Ford* decision, clearly states that the “mutual mistake of fact” must exclusively be between the taxpayer and the assessor, and not a legal mistake surrounding the interpretation of Proposal A created by a DPS official. A contrary decision would make any “mistake of law” analysis totally unnecessary. MCL 211.53a.

ARGUMENT V

MORAL RHETORIC CONTAINED IN LAW REVIEW ARTICLES DOES NOT NEGATE THAT AN UNACTIONABLE MISTAKE OF LAW WAS COMMITTED

While infused with moralistic law review articles attacking allegedly “unprincipled” government, Briggs’ Brief fails to note that this Court itself ruled in *Wikman* that there is “significant public interest” in limiting a taxpayer’s ability to contest tax assessments and receive refunds of taxes collected from the general revenue fund. Despite Briggs’ “moral” protestations, allowing Briggs to appeal three years after the applicable property taxes were paid is contrary to public policy and *Wikman*. The purpose of the 30-day filing requirement in MCL 205.735 is to provide notice of any defects to the taxing authority in a timely manner, so that the taxing authority may cure the defect with minimal injury to the public.

If a Court or Tribunal were to allow a tolling until years after the tax bills were received and paid, a great amount of injury would occur to the public where the funds collected have already been spent for the intended purpose of supporting the current operation of the taxing authorities. This is not a case where a school district has miserly hoarded “ill-gotten gains”, nor would reversal of the Court of Appeals allow “pernicious” local governments to knowingly or carelessly increase taxes under the “guise of a mistake of law” (Briggs Brief Page 2), nor would reversal not deter future “unlawful” government behavior. (Briggs Brief Page 40) The taxation world will not end if the Court of Appeals Decision is properly reversed.

By Briggs' own account, at least "120" cases (Briggs Brief page 37) have already been filed at the Tribunal by other taxpayers raising similar *Briggs* type claims challenging the Tribunal's jurisdictional filing requirement. Affirming the Court of Appeals erroneous holding would result in refunds, estimated to total over \$259 million, (See DPS Application, p. 10) which have already been collected and spent by the Detroit Public Schools. \$259 million in refunds does not comically represent a "doomsday" prediction, but does present a realistic hardship upon the public education system and especially the students, who the district serves to educate. Briggs' Brief tries to maintain a moral victimization attitude throughout its reply by facetiously insinuating that there is no public interest in the DPS being allowed to keep \$259 million in supposedly "illegal" taxes while showing only "cynical contempt" for taxpayers who demand "corrective justice". Strip away the false hyberbole and there is nothing but a tardy and misleading attempt to turn an unactionable "mistake of law" into a "factual" pay day at the expense of Detroit Public School children.

ARGUMENT VI

WAYNE COUNTY IS NOT A PARTY TO THIS ACTION AND THE WAYNE COUNTY TREASURER SHOULD NOT HAVE BEEN

Wayne County is not a party to this action and never has been. Briggs' continued "references to the County" and "Wayne County's Brief" (Briggs Brief Page 20, 27, 34) is completely misleading. In addition, Briggs' footnote one, on page ix, which without any support, or rationale, also states that the Wayne County Treasurer disregards the Court's Order Granting Leave to Appeal as to the issue involved in this matter, is also without any merit, as has naming the Wayne County Treasurer as an improper party in this entire matter. (See Respondents-Appellants Joint Appendix page 001a, Docket Entry 5-1-2006 and 12-12-2007).

RELIEF REQUESTED

WHEREFORE the Wayne County Treasurer requests that this Court reverse the erroneous Opinion of the Court of Appeals and affirm the Decision of the Tax Tribunal entered on May 31, 2007, which dismissed Briggs' Petition for lack of jurisdiction.

Respectfully submitted,

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