

**LANZO CONSTRUCTION, Petitioner-Appellee,**  
**v.**  
**CITY OF SOUTHFIELD, Respondent-Appellant.**

No. 268567.

**Court of Appeals of Michigan.**

June 28, 2007.

Before: Whitbeck, C.J., and Wilder and Borrello, JJ.

PER CURIAM.

Respondent appeals by leave granted the Tax Tribunal's September 10, 2004 order denying its request for costs and attorney fees.<sup>[1]</sup> For the reasons set forth below, we reverse and remand for a hearing to determine the appropriate sanctions.

On appeal, respondent argues that the Tax Tribunal, upon finding that petitioner's petition and motion for reconsideration were filed in violation of MCR 2.114(D), erred in not imposing sanctions against petitioner and its counsel because, pursuant to MCR 2.114(E), sanctions are mandatory upon a court's finding that MCR 2.114(D) was violated. Absent fraud, our review of a decision by the Tax Tribunal is limited to determining whether the Tribunal erred in applying the law or adopted a wrong principle. Catalina Marketing Sales Corp v Dep't of Treasury, 470 Mich 13, 18-19; 678 NW2d 619 (2004).

MCR 2.114(E) provides the following

If a document is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees. The court may not assess punitive damages.

Because MCR 2.114(E) states that a court "shall impose" sanctions on a party, its counsel, or both, if it finds that MCR 2.114 was violated, a court has no discretion in determining whether sanctions should be imposed. In re Forfeiture of Cash & Gambling Paraphernalia, 203 Mich App 69, 73; 512 NW2d 49 (1993). When MCR 2.114 is violated, the imposition of sanctions is mandatory. *Id.*; see also Attorney General v Harkins, 257 Mich App 564, 576; 669 NW2d 296 (2003).

Petitioner argues that MCR 2.114 does not apply to proceedings before the Tax Tribunal because the Tribunal has its own provision, TTR 205.1145, regarding the awarding of costs to a prevailing party. The Tax Tribunal Rules "govern the practice and procedure in all cases and proceedings before the tribunal." TTR 205.1111(1). However, "[i]f an applicable entire tribunal rule does not exist, the 1995 Michigan Rules of Court, as amended, . . . shall govern." TTR 205.1111(4); Signature Villas, LLC v Ann Arbor, 269 Mich App 694, 705; 714 NW2d 392 (2006). TTR 205.1145, like MCR 2.625, addresses the awarding of costs to a prevailing party. The purpose of awarding costs is to reimburse the prevailing party the costs it paid during the course of the litigation. Wells v Dep't of Corrections, 447 Mich 415, 419; 523 NW2d 217 (1994). The purpose of imposing sanctions under MCR 2.114, however, is to "deter parties and attorneys from filing

documents or asserting claims and defenses that have not been sufficiently investigated and researched or that are intended to serve an improper purpose." FMB-First Michigan Bank v Bailey, 232 Mich App 711, 723; 591 NW2d 676 (1998). Nothing in TTR 205.1145 or any other Tax Tribunal Rule addresses sanctions. Therefore, because no applicable Tax Tribunal Rule exists regarding sanctions, MCR 2.114 applies to proceedings before the Tax Tribunal. TTR 205.1111(4). Accordingly, because the Tax Tribunal found that petitioner's petition and motion for reconsideration were filed in violation of MCR 2.114(D), the Tax Tribunal erred when it failed to sanction petitioner, its counsel, or both. In re Forfeiture of Cash & Gambling Paraphernalia, *supra* at 73. We reverse the Tax Tribunal's September 10, 2004 order and all subsequent orders denying respondent's request for costs and attorney fees and remand for a hearing to determine an appropriate sanction.

Respondent also requests that we impose sanctions on petitioner because petitioner's motion to dismiss before this Court and its brief on appeal lacked legal merit. Damages and other disciplinary action may be taken when an appeal or a proceeding in an appeal is determined to be vexatious. MCR 7.216(C). Such a determination may be made at our initiative or "on the motion of any party filed under MCR 7.211(C)(8)." MCR 7.216(C)(8). MCR 7.211(C)(8) provides that "[a] party's request for damages or other disciplinary action under MCR 7.216(C) must be contained in a motion filed under this rule. A request that is contained in any other pleading, including a brief filed under MCR 7.212, will not constitute a motion under this rule." Respondent's request for sanctions was contained in its reply brief filed pursuant to MCR 7.212(G). Therefore, respondent's request for sanctions is improperly before the Court, and we decline to address the issue.

In reaching our conclusion, we note that the parties raise and discuss the propriety of the Tax Tribunal's decision that petitioner's petition and motion for reconsideration were filed in violation of MCR 2.114. On review of the record before us, we cannot find that the Tax Tribunal erred in applying the law or adopted a wrong principle in rendering its decision. Catalina Marketing, *supra*. To the contrary, the Tax Tribunal's factual finding that petitioner violated MCR 2.114 is supported by competent, material and substantial evidence. *Id.* Neither petitioner nor its counsel made a reasonable inquiry into when respondent mailed its summer tax bills or whether petitioner had property in the City of Southfield on December 31, 2002.

Finally, we note that petitioner argues that the Tax Tribunal should have sanctioned respondent under MCR 2.114. This issue is not properly before this Court where petitioner failed to cross appeal the Tax Tribunal order denying sanctions. Prentis Family Foundation, Inc v Barbara Ann Karmanos Cancer Institute, 266 Mich App 39, 60; 698 NW2d 900 (2005).

Reversed and remanded. We do not retain jurisdiction.

[1] Because we treated respondent's claim of appeal as an application for leave to appeal and granted the application, Lanzo Constr v Southfield, unpublished order of the Court of Appeals, entered July 17, 2006 (Docket No. 268567), petitioner's claim that we do not have jurisdiction to hear the present appeal because respondent did not timely file its claim of appeal is without merit.