STATE OF MICHIGAN

COURT OF APPEALS

MERCY SERVICES FOR THE AGING, Plaintiff-Appellee/Cross-Appellant,	UNPUBLISHED October 21, 2010
v	No. 292569 Oakland Circuit Court
CITY OF ROCHESTER HILLS, Defendant-Appellant/Cross-Appellee.	LC No. 2008-089295-CK

Before: MURRAY, P.J., and K.F. KELLY and DONOFRIO, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's order enjoining it from charging or collecting from plaintiff an annual service charge and denying plaintiff's unjust enrichment claim. On cross-appeal, plaintiff appeals as of right from the same order. Because the trial court had subject matter jurisdiction over this case, and did not err in finding that the property was tax exempt under several independent provisions of the General Property Tax Act (GPTA), MCL 211.1 et seq., we affirm in part. Because the trial court erred in concluding that plaintiff was not entitled to a refund of the annual service charges it has paid from 2002 through 2007, we reverse in part, and remand.

This dispute arises from plaintiff's payment of an annual service charge to defendant in lieu of ad valorem property taxes. Plaintiff is a Michigan nonprofit corporation which owns and operates the Mercy Bellbrook Retirement Community in Rochester Hills, a housing and medical care facility for low and middle income elderly persons. Pursuant to the Michigan State Housing Development Authority Act (MSHDAA), MCL 125.1415a(1), the property, because it is owned by a nonprofit housing corporation, is exempt from all ad valorem property taxes. Further pursuant to that statute, plaintiff "shall pay to the municipality in which the project is located an annual service charge for public services in lieu of all taxes" and the annual service charge "shall not exceed the taxes that would be paid but for this act." MCL 125.1415a(2). Plaintiff has been paying defendant annual service charges since the late 1980s. In February 2008, plaintiff filed suit in the Oakland Circuit Court seeking a declaratory judgment that defendant's annual services charges were illegal, and pursuing a refund of the unlawfully imposed charges it had paid from 2002 through 2007 (approximately $1,293,228), under a theory of restitution/unjust enrichment. The trial court determined that the annual service charges were unlawful, but found that laches barred plaintiff's claim for a refund.

On appeal, defendant first contends that the trial court erred in determining that it had subject matter jurisdiction over this case. Whether a trial court had subject matter jurisdiction over a claim presents a question of law that is reviewed de novo. *Ryan v Ryan*, 260 Mich App 315, 331; 677 NW2d 899 (2004).

According to defendant, the essence of this case concerns whether the subject property is tax exempt under the GPTA and therefore, the case falls squarely within the tax tribunal's exclusive jurisdiction. The tax tribunal's jurisdiction statute, MCL 205.731, provides, in relevant part:

> The tribunal has exclusive and original jurisdiction over all of the following:
>
> (a) 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.
>
> (b) A proceeding for a refund or redetermination of a tax levied under the property tax laws of this state.

This proceeding is one where plaintiff sought a declaratory judgment that defendant had no right to impose an annual service charge and also pursued a refund of the allegedly unlawful annual service charges imposed in the six years prior to plaintiff filing suit. Annual service charges are not taxes; they are imposed in lieu of taxes. Defendant imposed the charges pursuant to the MSHDAA, which is not a property tax law. MCL 125.1401 states that the purpose of the MSHDAA is to address "a seriously inadequate supply of, and a pressing need for, safe and sanitary dwelling accommodations within the financial means of low income or moderate income families or persons." Accordingly, this is not a proceeding for review of a decision "relating to assessment, valuation, rates, special assessments, allocation, or equalization, under the property tax laws of this state," within the meaning of MCL 205.731(a). We found no authority to support defendant's argument that, because the annual service charge issue required a preliminary finding of whether the property was tax exempt under the GPTA, this necessarily compels a finding that this case falls within the tax tribunal's exclusive jurisdiction. Neither does this case fall within the ambit of MCL 205.731(b), which pertains to cases for a refund or redetermination "of a tax levied under the property tax laws." There was no tax levied in this case, only an annual service charge in lieu of a tax. And again, defendant levied the annual service charge under the MSHDAA, which is not a property tax law.

The parties both discuss this Court's recently released case of *Kasberg v Ypsilanti Twp*, ___ Mich App ___; ___ NW2d ___ (2010). The plaintiffs in *Kasberg* filed suit in the tax tribunal challenging the defendant's tax assessment of the plaintiffs' real property. The plaintiffs alleged that the defendant wrongfully denied them a property tax exemption for nonprofit charitable corporations pursuant to the MSHDAA. The tax tribunal dismissed the case, finding that it lacked jurisdiction because the claimed exemption was a creature of the state's police power under the MSHDAA, not of the GPTA. This Court reversed, finding that the tax tribunal did have jurisdiction over the case because the plaintiffs were challenging an assessment, and that assessment was imposed "under the property tax laws," i.e., the GPTA. *Kasberg* is distinguishable from the instant case. In *Kasberg*, a tax was assessed, and the plaintiffs sought to

challenge it seeking a property tax exemption. Here, there was no tax assessed. Despite the fact that *Kasberg*, too, involved an MSHDAA exemption issue, this Court found jurisdiction in *Kasberg* based on the fact that a tax was assessed on the plaintiff's property, and the plaintiffs challenged that assessment. That scenario is not present here. As such, *Kasberg* does not compel a finding that the tax tribunal has jurisdiction in this case.

Also, there is no merit to defendant's argument that plaintiff was required to comply with MCL 205.735a(3) of the Tax Tribunal Act, which provides:

> Except as otherwise provided in this section or by law, for an assessment dispute as to the valuation or exemption of property, the assessment must be protested before the board of review before the tribunal acquires jurisdiction of the dispute under subsection (6).

For the reasons discussed above, this is not an assessment dispute. It is a dispute centered on the annual service charge in lieu of a tax. Therefore, plaintiff's failure to bring its claim to the board of review prior to filing suit does not invalidate its claim.

Next, defendant argues on appeal that the trial court erred in finding that the subject property is tax exempt under the GPTA. This Court reviews de novo issues of statutory interpretation. *Universal Underwriters Ins Group v Auto Club Ins Assoc*, 256 Mich App 541, 544; 666 NW2d 294 (2003).

The trial court held that the subject property was exempt from all taxes pursuant to three independent provisions in the GPTA: MCL 211.7o(7), MCL 211.7o(8), and MCL 211.7r. Plaintiff had also argued that the property was exempt pursuant to MCL 211.7o(1), but the trial court did not address that provision. MCL 211.7o(7) provides:

> A charitable home of a fraternal or secret society, or a nonprofit corporation whose stock is wholly owned by a religious or fraternal society that owns and operates facilities for the aged and chronically ill and in which the net income from the operation of the corporation does not inure to the benefit of any person other than the residents, is exempt from the collection of taxes under this act.

Plaintiff is a nonprofit corporation that is wholly owned by an order of the Roman Catholic Church. Plaintiff owns and operates the subject property, which is a housing and medical care facility for low and middle income elderly persons. Many of the residents of the property suffer from serious medical illnesses and the facility provides 24/7 medical care by physicians, nurses, and other health care professionals. Plaintiff does not pay any shareholder dividends, and any net income derived from the property is applied to pay for the cost of the property's operation. Therefore, plaintiff meets the criteria and defendant does not dispute the establishment of the criteria for tax exemption under MCL 211.7o(1). In light of this conclusion, we need not address the alternate GPTA provisions under which plaintiff claims exemption.

Finally, on cross-appeal, plaintiff argues that the trial court erred in dismissing its unjust enrichment claim. Whether a claim for unjust enrichment can be maintained is a question of law, which this Court reviews de novo. *Morris Pumps v Centerline Piping, Inc*, 273 Mich App 187,

193; 729 NW2d 898 (2006). Also reviewed de novo is a trial court's dispositional ruling on an equitable matter. *Id*.

Plaintiff has been paying defendant annual service charges since the 1980s. The trial court held, and we agree, that defendant unlawfully imposed these charges. Plaintiff paid defendant approximately $1,293,327.59 in annual service charges from 2002 through 2007 alone. Because the statute of limitations for unjust enrichment claims is six years, plaintiff brings an unjust enrichment claim seeking restitution in the form of a refund of annual service charges for the six-year period that preceded the filing of the complaint. See MCL 600.5813 (stating that "[a]ll other personal actions shall be commenced within the period of 6 years after the claims accrue and not afterwards unless a different period is stated in the statutes.") and MCL 600.5815 (stating that "[t]he prescribed period of limitations shall apply equally to all actions whether equitable or legal relief is sought."). Although defendant questions whether the statute of limitations is actually six years, it presents no authority to suggest an alternate time period.

In order to sustain a claim of unjust enrichment, a plaintiff must establish (1) the receipt of a benefit by the defendant from the plaintiff and (2) an inequity resulting to the plaintiff because of the retention of the benefit by the defendant. *Morris Pumps*, 273 Mich App at 195. Plaintiff paid defendant approximately $1,293,327.59 in annual service charges from 2002 through 2007. Defendant had no legal right to impose an annual service charge. Plaintiff was unaware of the impropriety of the charges, and therefore, simply paid what defendant asked. Defendant does not contest that this money constituted a benefit to it bestowed by plaintiff. But an inequity plainly resulted to plaintiff when defendant retained improperly imposed annual services charges.

We are not persuaded by the trial court's reasoning supporting its denial of plaintiff's unjust enrichment claim. The trial court found that it would be inequitable to compel defendant to return the money "when plaintiff actually received and knew it was receiving benefits for fees paid for [public] services including police and fire protection." The fact that plaintiff's property is exempt from taxes and annual service charges by mandate of statute manifests the Legislature's intent that a nonprofit corporation like plaintiff, so long as it meets certain requirements, is not obligated to pay taxes or annual service charges despite the fact that it may receive benefits from the city in the form of public services. Although it is true that it would be burdensome for defendant to have to return to plaintiff six years worth of annual service charges on which defendant has relied, this does not render a refund inequitable. Defendant was never entitled to the annual services charges in the first place. In essentially all cases where a party has been unjustly enriched, it would be burdensome to the enriched party to require it to return the benefit; this alone is insufficient to defeat an unjust enrichment claim.

Furthermore, the trial court's finding that laches applied to bar plaintiff's claim is unpersuasive. The doctrine of laches reflects the exercise of the reserved power of equity to withhold relief otherwise regularly given where in the particular case the granting of such relief would be unfair and unjust. *Lothian v Detroit*, 414 Mich 160, 168; 324 NW2d 9 (1982). To properly invoke the doctrine of laches, the defendant must show (1) a passage of time, (2) prejudice to the defendant, and (3) lack of diligence on the part of the plaintiff. *Eberhard v Harper-Grace Hospitals*, 179 Mich App 24, 38; 445 NW2d 469 (1989). The doctrine of laches may be applied if "compelling equities" or "exceptional circumstances" exist. *Id*. at 37. A lack of diligence on the part of a plaintiff may provide the "compelling equities" necessary to invoke

the doctrine of laches. *Id*. at 39. Furthermore, in cases displaying "compelling equities," laches may be invoked without reference to any statute of limitations period and, therefore, a claim may be held to be barred by laches early in a lawsuit before the applicable statute of limitations period has expired. *Lothian*, 414 Mich at 170.

Defendant has not shown that it has been prejudiced, nor that plaintiff acted with a lack of diligence. Prior to its hiring an expert in 2006 to investigate the propriety of the annual service charges, plaintiff reasonably assumed that the charges, particularly as they were assessed by a governmental agency, were due and owing. Once plaintiff determined that the annual service charges were being unlawfully imposed, it conveyed this to defendant and requested that defendant cease billing it and refund past collections. Defendant refused. Plaintiff then brought suit in February 2008. On these facts, defendant cannot demonstrate a lack of diligence on plaintiff's part which has prejudiced defendant. Accordingly, the trial court erred in denying plaintiff's restitution claim. There is no adequate remedy at law for plaintiff because the MSHDAA contains no mechanism by which a property owner may be refunded an unlawfully imposed annual service charge. Plaintiff is therefore entitled to the equitable remedy of a refund of the annual service charges it paid from 2002 through 2007. See *Romulus City Treasurer v Wayne County Drain Com'r*, 413 Mich 728, 746-747; 322 NW2d 152 (1982) (finding that where funds are unlawfully collected by a governmental entity, the circuit court is empowered to order a refund).

Affirmed in part, reversed in part, and remanded. We reverse the portion of the order appealed denying plaintiff's unjust enrichment claim, and affirm the remaining portions of the order. We remand to the trial court with a directive that it order defendant to refund to plaintiff the annual service charges paid to it by plaintiff from 2002 through 2007. Plaintiff, being the prevailing party, may tax costs pursuant to MCR 7.219. We do not retain jurisdiction.

/s/ Christopher M. Murray
/s/ Kirsten Frank Kelly
/s/ Pat M. Donofrio