

Court of Appeals, State of Michigan

ORDER

Township of Grosse Ile v L D'Agostini & Sons Inc

Docket No. 300226

LC No. 07-724915-CK

Michael J. Talbot
Presiding Judge

Kurtis T. Wilder

Brian K. Zahra
Judges

The Court orders that the motion for immediate consideration and motion to reply to the answer to the motion for peremptory reversal are GRANTED.

The Court further orders that the motion for peremptory reversal is GRANTED. In light of the position taken by both the appellant and the appellee, the Court VACATES the circuit court's order of September 8, 2010, denying summary disposition to the appellant on Counts II and III of the Counterclaim. The parties agree that the circuit court held that appellant township should have raised governmental immunity as an affirmative defense. The circuit court erred in so ruling. The burden is on the plaintiff to plead in avoidance of governmental immunity when suing a governmental agency. *Odom v Wayne Co*, 482 Mich 459, 479; 760 NW2d 217 (2008). Governmental immunity is a characteristic of government, not an affirmative defense. *Mack v Detroit*, 467 Mich 186, 202-203; 649 NW2d 47 (2002); *Kendricks v Rehfield*, 270 Mich App 679, 681; 716 NW2d 623 (2006). The Court REMANDS the case to the circuit court for reconsideration of the township's motion for summary disposition on the merits.

The Court does not retain jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

NOV 22 2010

Date

Sandra Schultz Mengel
Chief Clerk