

Court of Appeals, State of Michigan

ORDER

International Business Machines Corp v Department of Treasury

Docket No. 336525

LC No. 16-000254-MT

Michael F. Gadola
Presiding Judge

Michael J. Kelly

Brock A. Swartzle
Judges

The Court orders that the motion to file a reply brief in response to the answer to the motion to dismiss is GRANTED. Thus, the reply brief filed with the motion is accepted for filing.

The motion to dismiss is DENIED because appellee has not presented any appropriate ground for dismissal under MCR 7.211(C)(2). Particularly, appellee's argument that this case is not ripe for review does not actually concern whether this appeal is moot, i.e., whether this Court *could* grant relief in this appeal. See, e.g., *Visser v Visser*, 495 Mich 862; 836 NW2d 693 (2013) (issues moot where no relief can be granted). Rather, appellee's argument amounts to an assertion that this Court *should* not grant relief to appellant because of its alleged failure to exhaust administrative remedies before bringing suit in the Court of Claims. That concerns the merits of the appeal, not whether the appeal is moot.

Further, the alternative motion to affirm pursuant to MCR 7.211(C)(3) is also DENIED for failure to persuade the Court that it is manifest that the questions to be reviewed are so unsubstantial as to need no argument or formal submission or were not properly raised. We recognize that it appears undisputed between the parties that, under the current state of relevant case law, a case call panel would be bound by MCR 7.215(J)(1) to follow *Gillette Comm Operations North America & Subsidiaries v Dep't of Treasury*, 312 Mich App 394; 878 NW2d 891 (2015), and affirm the grant of summary disposition in favor of appellee. But that is insufficient to establish that this appeal presents questions that are so unsubstantial as to need no argument or formal submission in light of the ability of the case call panel to consider issuing a conflicting opinion under MCR 7.215(J)(2) following *Gillette* only because it is bound to do so by MCR 7.215(J)(1).



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

MAY 16 2017

Date


Chief Clerk