

STATE OF MICHIGAN
COURT OF APPEALS

AMERICAN PRESIDENTIAL ESTATES, INC,

Plaintiff- Appellant,

v

VAN BUREN TOWNSHIP and WASTE
MANAGEMENT OF MICHIGAN, a/k/a
AREA DISPOSAL,

Defendants- Appellees.

UNPUBLISHED
May 24, 1996

No. 175012
LC No. 93-306323

Before: O'Connell, P.J., and Reilly and D.E. Shelton,* JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting summary disposition in favor of defendants on the basis of plaintiff's lack of standing. We reverse.

On October 27, 1989, defendant Van Buren Township ("the township") entered into an agreement with defendant Waste Management in which Waste Management agreed to provide periodic collection and disposal of garbage and rubbish from all residential units within the township. The agreement excluded multiple family residences¹ (except for Bayshore North) and mobile home parks².

Plaintiff is the owner and operator of Presidential Estates Mobile Home Community and Capital Hills Mobile Home Community (collectively referred to as "Presidential Estates") within the township. On March 2, 1993, plaintiff filed this action alleging that despite repeated requests, defendants have refused to provide garbage and rubbish collection to the residential units within Presidential Estates. As a result, plaintiff has been forced to hire and pay contractors to collect and dispose of garbage and rubbish within Presidential Estates. Plaintiff alleged a denial of equal protection³ "in that there is no rational reason to classify mobile home residential units located within Presidential Estates, that are a place of abode for persons living as independent families, differently than single family homes that are not located within a mobile home park which are places of abode for persons that live as independent

* Circuit judge, sitting on the Court of Appeals by assignment.

families.” Plaintiff alleges that the agreement between defendants denies due process⁴ “in that it is arbitrary, or irrational, or illogical as applied to Presidential Estates.”

The township filed a motion for summary disposition pursuant to MCR 2.116(C)(5) and (8). On the issue of standing, the township argued that:

Plaintiff’s Complaint essentially alleges that Van Buren Township discriminates against the occupants of mobile homes by treating them differently than it treats the occupants of houses for trash hauling services. . .

However, Plaintiff . . . is not among the class of personas affected by the Township’s allegedly discriminatory action.

* * *

In short, since Plaintiff is not a mobile home resident, it has no standing to allege that the Township trash hauling contract deprives mobile home residents of their constitutional rights to equal protection and due process.

The trial court granted the township’s motion. It agreed with the township’s characterization of the complaint as one “premised on allegations of discrimination against persons living in mobile home [parks], i.e. Presidential Estates’ residents, and thus rest[ing] on the constitutional rights of third parties.” The court also held that “[i]nso far as plaintiff may be able to pass on the costs of [the private collection service] to its tenants, the Court finds that plaintiff has not demonstrated a personal stake which is sufficient to confer standing upon it.”

On appeal, plaintiff argues that as the owner and operator of a mobile home park, it has standing to challenge the constitutionality of defendant’s refusal to provide refuse collection service to mobile home parks. We agree.

In *Taylor v Blue Cross & Blue Shield*, 205 Mich App 644, 655-656; 517 NW2d 864 (1994), this Court explained standing as follows:

Standing is the legal term used to denote the existence of a party’s interest in the outcome of the litigation and that will assure sincere and vigorous advocacy. To have standing, a plaintiff must demonstrate a legally protected interest that is in jeopardy of being adversely affected and must allege a sufficient personal stake in the outcome of the dispute to ensure the controversy to be adjudicated will be presented in an adversarial setting that is capable of judicial resolution. Generally, a plaintiff shows a personal stake in a lawsuit by demonstrating injury to the plaintiff or to the plaintiff’s property.

“Standing requires a demonstration that the plaintiff’s substantial interest will be detrimentally affected in a manner different from the citizenry at large.” *Dodak v State Administrative Bd*, 441 Mich 547, 554; 495 NW2d 539 (1993).

We do not agree with defendants and the court that the claims rest on the constitutional rights of third parties. The complaint alleges that the agreement deprives plaintiff of equal protection and due process. A similar claim was advanced by owners of multiple dwellings in *Alexander v Detroit*, 392 Mich 30; 219 NW2d 41 (1974). Although that case does not discuss the plaintiffs’ standing, the case is instructive inasmuch as it indicates that the denial of a service to a category of properties may violate the constitutional rights of the property owners, without regard to their occupancy of the affected properties. Plaintiff in this case, as the owner and operator of the mobile home park, has an interest in the affected property and is entitled to assert that the agreement violates its constitutional rights, which are distinct from those of the mobile home occupants. Although defendants argue that *Alexander* is distinguishable because plaintiff does not have an ownership interest in the dwellings, we are not persuaded the case should be read so narrowly.

Plaintiff has alleged an economic injury resulting from defendants’ actions sufficient to confer standing. According to the complaint, plaintiff “has been forced to hire contractors to collect and dispose of rubbish and garbage from the residential units within Presidential Estates.” Whether plaintiff is required by law to provide this service, as suggested by defendants,⁵ or as a practical matter in order to compete with other housing alternatives, is immaterial for the purposes of determining standing. The expense is important, however, inasmuch as it demonstrates that plaintiff has a “personal stake in the lawsuit” , and has an “substantial interest . . . detrimentally affected in a manner different from the citizenry at large.” *Taylor, supra; Dodak, supra*.

Whether plaintiff is able to pass on the expense of the private service to the mobile home occupants is not determinative of plaintiff’s standing. The court stated that “the fact that plaintiff can defray the costs complained of to its tenants negates any claim of substantial economic injury.” Plaintiff contends that in *Bacchus Imports, Ltd v Dias*, 468 US 263; 104 S Ct 3049; 82 L Ed 2d 200 (1984), the Supreme Court rejected the notion that standing is lost because a plaintiff may be able to pass on the expense resulting from the challenged action to customers. We agree.

In *Bacchus*, liquor wholesalers sued to challenge the constitutionality of an excise tax imposed by Hawaii on wholesale sales of liquor. Hawaii argued that the plaintiffs lacked standing because they had not shown that the tax resulted in an economic injury for the wholesalers because they could pass on the cost of the tax to their customers, the retailers. The Supreme Court rejected this argument, stating:

The wholesalers are, however, liable for the tax. Although they may pass it on to their customers, and may attempt to do so, they must return the tax to the State whether or not their customers pay their bills. Furthermore, even if the tax is completely and successfully passed on, it increases the price of their products as compared to the exempted beverages, and the

wholesalers are surely entitled to litigate whether the discriminatory tax has had an adverse impact on their business. The wholesalers plainly have standing to challenge the tax in this Court. *Id.* at 267.

Defendants attempt to distinguish *Bacchus* on the basis that the liquor tax was required to be paid by the wholesalers, whereas in this case, the agreement “applies to the residents of the mobile home parks, not the parks themselves” We are not persuaded. Even if the harm caused to plaintiff is considered an indirect effect of the agreement, it would still be an injury sufficient to confer standing. See *Government Suppliers Consolidating Services, Inc. v Bayh*, 753 F Supp 739, 759-760 (SD Ind, 1990) and cases cited therein.

Therefore, we conclude that the trial court erred in determining that plaintiff lacked standing to bring the instant action. We decline to address the merits of the townships’ argument that it was entitled to summary disposition pursuant to MCR 2.116(C)(8) because that issue was not decided by the trial court. *Smit v State Farm Mutual Ins Co*, 207 Mich App 674, 685; 525 NW2d 528 (1994). The order granting defendants summary disposition is reversed.

Reversed.

/s/ Peter D. O’Connell
/s/ Maureen Pulte Reilly
/s/ Donald E. Shelton

¹ “Multiple Family Residence” is defined in the contract as “the grouping together of four or more residential units under a common roof.”

² “Mobile Home Park” is defined in the contract as “a parcel of land designed for placement of mobile homes for residential use.”

³ 1963 Const, art 1, § 2.

⁴ 1963 Const, art 1, § 17.

⁵ The township cites MCL 125.2306; MSA 19.855(106) for the proposition that plaintiff has the obligation to provide for garbage collection for its mobile home occupants. That statute merely mandates that the department of public health promulgate rules governing garbage storage and disposal for mobile homes. Our review of the Administrative Code did not disclose a rule imposing an obligation on mobile home park owners to provide for garbage collection. 1984 AACS, R 325.3353 states “The transfer and disposal of garbage and rubbish from a mobile home park or seasonal mobile home park shall be as prescribed by Act No. 641 of the Public Acts of 1978, as amended, being § 299.401 et

seq. of the Michigan Compiled Laws, and known as the solid waste management act.” The solid waste management act was repealed by 1994 PA 451, § 90101. Solid waste management is currently governed by MCL 324.11501 *et seq.*; MSA 13A.11501 *et seq.*, which, like its predecessor, does not appear to impose an obligation to dispose of garbage or refuse on the owner of the mobile home park.