

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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CITY OF SOUTHGATE

Plaintiff-Appellee,

v

CARBIDEX CORPORATION,

Defendant-Appellant.

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UNPUBLISHED

March 4, 1997

No. 186334

Wayne Circuit Court

LC No. 91-110865

Before: Cavanagh, P.J., and Gage and D.A. Burrell,\* JJ.

PER CURIAM.

Defendant appeals as of right from the circuit court's summary disposition of its counterclaim against plaintiff for wrongful distraint. We affirm.

In early 1991, plaintiff filed a claim against defendant alleging that defendant owed personal property taxes for the years 1983 to 1988 pursuant to an agreement wherein defendant promised payment of the tax debts. Defendant filed a counterclaim alleging that, in an earlier attempt to collect the debt, plaintiff had wrongfully distrained an excessive amount of defendant's property. In addition, defendant claimed that plaintiff had used the seizure of defendant's property to compel defendant to execute an agreement whereby defendant would pay the full amount of taxes assessed and dismiss its appeals of those assessments before the tax tribunal. Defendant alleged that it had entered into this agreement under coercion from the city and, under the agreement's terms, had overpaid its tax liability because the assessments were in error.

On December 20, 1991, the lower court entered an order granting plaintiff summary disposition of its claim and dismissing defendant's counterclaim. Defendant appealed only the dismissal of its counterclaim. In Docket No. 150081, this Court vacated the lower court, finding that the circuit court erred in holding that it did not have subject matter jurisdiction over defendant's counterclaim.

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

On remand, the lower court granted plaintiff's motion for summary disposition of defendant's claim pursuant to MCR 2.116(C)(7). The court held that plaintiff was immune from defendant's suit pursuant to statutory governmental immunity, MCL 691.1407(1); MSA 3.996(107)(1). In addition, the lower court held that defendant's claim was barred by the three-year statute of limitations for traditional common-law tort claims, MCL 600.5805; MSA 27A.5805. Defendant appeals as of right, arguing that the trial court erred with respect to each of the bases for dismissing its claim.

On appeal, defendant asserts that the lower court erred in finding that plaintiff was cloaked with governmental immunity with respect to the distraint of defendant's property. We disagree. This Court reviews a decision to grant summary disposition de novo. *Borman v State Farm Fire & Casualty Co*, 198 Mich App 675, 678; 499 NW2d 419 (1993). When reviewing a decision on a motion pursuant to MCR 2.116(C)(7), this Court must accept all well-plead allegations as true and construe them in a light most favorable to the plaintiff. *Asher v Exxon Co, USA*, 200 Mich App 635, 638; 504 NW2d 728 (1993). Summary disposition should not be granted unless no factual development could provide a basis for recovery. *Grazia v Sanchez*, 199 Mich App 582, 584; 502 NW2d 751 (1993). If no facts are in dispute, the issue whether the claim is statutorily barred is one of law for the court. *Executone Business Systems Corp v IPC Communications, Inc*, 177 Mich App 660, 665; 442 NW2d 755 (1989).

Immunity from tort liability is broadly granted to governmental entities pursuant to MCL 691.1407(1); MSA 3.996(107)(1). *Adam v Sylvan Glynn Golf Course*, 197 Mich App 95, 96-97; 494 NW2d 791 (1992). The immunity statute provides in pertinent part: "Except as otherwise provided in this act, all governmental agencies shall be immune from tort liability in all cases wherein the governmental agency is engaged in the exercise or discharge of a governmental function." MCL 691.1407(1); MSA 3.996(107)(1). An activity that is mandated or authorized, either expressly or implicitly, by constitution, statute or other law, is a governmental function. *Adam, supra* at 97. This definition is to be broadly interpreted as requiring only that there be some basis in law for the activity. *Id.* Tort liability may be imposed only if the governmental agency was involved in an ultra vires activity, i.e., an activity which is not mandated or authorized by constitution, statute or other law. *Hyde v University of Michigan Board of Regents*, 426 Mich 223, 253; 393 NW2d 847 (1986).

In the present case, defendant's claim is based on the alleged wrongful distraint by plaintiff of defendant's property. Pursuant to statutory authority, if a person, firm, or corporation refuses to pay a tax on property, the municipal government "shall . . . collect the tax by seizing the personal property of that person, firm, or corporation." MCL 211.47; MSA 7.91. Clearly then, plaintiff's seizure of defendant's personal property for the purpose of satisfying the tax debt was a governmental activity. Defendant contends that the seizure was an ultra vires act based on authority holding that the seizure of property which is excessive in light of the taxes owed is unlawful. See *Joy Management Co v City of Detroit*, 176 Mich App 722, 732-733; 440 NW2d 654 (1989). However, when analyzing whether a governmental entity is performing a governmental function, we focus on the general activity, rather than the specific conduct at the time the tort occurred. *Marlin v Detroit*, 177 Mich App 108, 112-113; 441 NW2d 45 (1989). We find that plaintiff was exercising its statutory authority to collect taxes and,

therefore, it was cloaked with immunity in its specific conduct. Hence the trial court did not err in granting plaintiff summary disposition on this claim.

Since we find dismissal of defendant's claim proper on governmental immunity grounds, we need not address defendant's challenge of the trial court's finding with respect to the applicable statute of limitations.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Hilda R. Gage

/s/ Daniel A. Burrell