S T A T E   O F   M I C H I G A N

C O U R T   O F   A P P E A L S

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

UNPUBLISHED
March 21, 1997

v

No. 180988
Oakland Circuit Court
LC No. 93-DA5953

ERNEST MELVIN SOLOMON,

Defendant-Appellee.

Before: McDonald, P.J., and Murphy and M. F. Sapala*, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from a November 18, 1994, circuit court order affirming a November 22, 1993, district court order granting defendant's motion to suppress evidence and dismiss the criminal charges filed against defendant for two counts of larceny by conversion, MCL 750.362; MSA 28.594 and one count of filing a false tax return, MCL 205.27; MSA 7.657(27). We reverse and remand for further proceedings.

Plaintiff claims the lower courts erred in finding the seizure of certain documents unlawful and in finding defendant was immune from criminal prosecution by virtue of MCL 500.246; MSA 24.1246.[1] We agree.

Defendant was the owner of the Arlans Insurance Agency, a holding company that owned the Cadillac Insurance Company. Defendant was also the CEO and controlling stockholder of Cadillac.

The Michigan Insurance Bureau (MIB) began a comprehensive financial investigation of Cadillac's financial condition in 1986. Sometime in early 1989 it became apparent certain insurance code violations may have occurred at Cadillac.

In July 1989, the circuit court entered an order appointing a conservator and deputy conservator of Cadillac. The order authorized the conservators to "take immediate possession . . . of all property of [Cadillac] wheresoever located in the State of Michigan… ." The order also enjoined

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* Recorder's Court judge, sitting on the Court of Appeals by assignment.

defendant from engaging in the insurance business, except as authorized by the conservators, and from disposing of Cadillac's property.

The investigation of Cadillac continued through 1989. Those involved in the investigation recommended that the MIB conduct an audit of Arlans to determine whether the Arlans Agency improperly withheld premium payments from Cadillac. On January 2, 1990, the circuit court entered an order declaring Cadillac insolvent and authorizing its liquidation. Dhiraj Shah, the Michigan Insurance Bureau Commissioner, was appointed Cadillac's receiver and Jacqueline Reese its deputy receiver. The order authorized Shah and Reese to "take permanent possession of all properties and assets of [Cadillac] wheresoever located …."

Sometime after the order of liquidation was entered, the MIB's investigation of Arlans began. The objectives of the audit were to determine the financial condition of Arlans and all of its subsidiaries, to examine asset transfers between Arlans and Cadillac, and to determine the possible existence of criminal activity. The State Police and the Attorney General's office were both involved in the criminal aspect of the investigation. During the examination, issues arose regarding defendant's refusal to produce documents. Ultimately the matter was referred to the MIB's Office of Licensing Enforcement. Thereafter, faced with the risk of losing his license to conduct business in the insurance industry, defendant voluntarily complied with document requests.

Sometime during the Arlans investigation Reese, acting as the deputy liquidator of Cadillac, discovered a file removed from Cadillac's file room that she believed related to Cadillac and possibly evidenced some wrongdoing by defendant. The file, known as the "Cupelli file", was ultimately turned over to the attorney general. It is from the trial court's determination to suppress this file, plaintiff now appeals.

On appeal plaintiff argues the trial court improperly concluded, absent a search warrant, Reese was without authority to seize the Cupelli File. We agree and find the search and seizure proper on several alternate grounds.

The right to be free from unreasonable searches and seizures is guaranteed by both the United States and Michigan Constitutions. US Const Am IV; Const 1963, art 1, §11. Generally a warrantless search is unreasonable per se. *Tallman v DNR*, 421 Mich 585; 365 NW2d 724 (1984). Thus, here, the district court found the search and seizure of the "Cupelli file" improper because it was occasioned without a warrant. The problem with the district court's analysis is it overlooks the fact the "Cupelli file" was discovered at the Cadillac office building in the Cadillac file room during the time Cadillac was undergoing liquidation and Reese was operating pursuant to a Circuit Court order that permitted her to :

> . . . take permanent possession of all properties and assets of [Cadillac] wheresoever located, including but not limited to all property of whatsoever nature in the possession of its agents, assigns and all persons acting in concert with it, and of any nature whatsoever, including all bank deposits, accounts receivable, and all books, records, monies and effects of every kind and description, ...

There can be no claim Reese was without authority to search Cadillac's file room wherein the file was located. Nonetheless defendant appears to argue that notwithstanding the propriety of the search, because the file contained alleged personal papers belonging to defendant, it was not the "property" or an "asset" of Cadillac and thus was not subject to seizure.

Both the district and circuit courts appear to have accepted defendant's classification of the file as "personal." We decline to do so. The file was not marked as defendant's personal property and contained as its first page an inventory sheet which clearly referenced physical improvements made to the Cadillac agency. Although the file also contained records of improvements made to defendant's home and deli business, none of the payments for the improvements came from defendant's personal checkbook. Instead the file revealed the majority of the payments came from various insurance companies, one of which was suspected of owing Cadillac millions of dollars in unremitted premiums. Beside the fact the file seems to suggest defendant utilized various insurance agency funds to finance the improvements to his home and deli business, nothing in the file pertains to him in his personal capacity. We believe both the district and circuit court judges clearly erred in finding the file contained personal records that were improperly seized. *Lombardo, supra*.

Moreover, even if we found the file was personal in nature, we would not find suppression appropriate. Because the search was proper pursuant to the liquidation order, once the file was discovered plaintiff was free to obtain the information from the contractor, the originator of the records. Thus the inevitable discovery, or in this case, inevitable "seizure" rule applies. *People v Kroll*, 179 Mich App 423; 446 NW2d 317 (1989).

Finally, standing to challenge a search or seizure is not automatic. *People v Armendarez*, 188 Mich App 61; 468 NW2d 893 (1991). Constitutional protection against unreasonable searches and seizures is implicated only when the government infringes upon an individual's legitimate or justifiable expectation of privacy. *People v Collins,* 438 Mich 8; 475 NW2d 684 (1991). We do not believe defendant possessed a legitimate personal expectation of privacy in either Cadillac's file room or the contested file. Considering the totality of the circumstances; the orders of receivership and liquidation, defendant's vacation of his office, and defendant's awareness of the insurance commissioner's statutorily granted broad discretion to inspect all insurance companies' "books, records, documents, and papers", MCL 500.222; MSA 24.1222, we do not believe defendant's act of intermingling his "private" papers with Cadillac's files manifests an asserted privacy interest in the seized file.

For any and all of the above reasons suppression of the "Cupelli" file was clearly erroneous.[2] *Lombardo, supra*.

Next plaintiff argues the lower courts incorrectly interpreted the former immunity provision of the insurance code, MCL 500.222; MSA 24.1222, to provide complete and automatic immunity to individuals from whom the insurance commissioner obtained corporate documents and other records during the course of an investigation into violations of the insurance code. We agree and find a correct reading of the immunity statute precludes defendant's claim of transactional immunity.

The primary goal of statutory construction is to ascertain and facilitate the intent of the Legislature. *People v Stanaway*, 446 Mich 643; 521 NW2d 557 (1995). Once the legislative intent has been ascertained, it must prevail regardless of the rules of statutory construction *People v Russo*, 439 Mich 584; 682 NW2d 698 (1992). Courts must first look to the specific language of the statute to determine the legislative intent behind the law. *People v Pitts*, 216 Mich App 229; 548 NW2d 688 (1996). This Court presumes the Legislature intended what it has plainly expressed in the language of the statute. *People v Roseburgh*, 215 Mich App 237; 545 NW2d 14 (1996).

The plain language of MCL 500.246; MSA 24.1246 provides immunity applies only when an individual is required to produce "books, papers, or other documents before any court or magistrate, arbitrator or board of arbitrators, upon any investigation, proceeding or trial." The statute clearly states a court, magistrate, arbitrator or board of arbitrators must require the production of books, papers, or documents in connection with any investigation, proceeding or trial in order to invoke the protections of the immunity statute. Here, defendant was not ordered by any court, magistrate, arbitrator or board of arbitrators to produce documents. Defendants' and the lower courts' reading of the statute would effectively insert the word "or" before the phrase "upon any investigation," thus changing the plain meaning of the statute.

Moreover, the statute conspicuously makes no mention of orders issued by the commissioner of insurance to produce documents. Defendant's and the lower courts' interpretation would make the immunity statute applicable in instances where the commissioner of insurance orders the production of documents pursuant to his statutory powers. We must presume the Legislature intended what it plainly said in the statute. Id. The trial courts erred in their interpretation of the statute and application of immunity to defendant.

Defendant raises the immunity issue with regard to his right to be free from self-incrimination. The self-incrimination provision of the state constitution provides "[n]o person shall be compelled in any criminal case to be a witness against himself…." Const 1963, art 1, §17. The federal constitution provides "[n]o person…shall be compelled in an Criminal Case to be a witness against himself." US Const, Am V. However, we note in Michigan, a corporate officer may not generally invoke his or her right against self-incrimination to prevent the compelled disclosure of corporate records in his or her possession, even where compelled disclosure would tend to incriminate the corporate officer. See *Paramount Pictures Corp v Miskinis*, 418 Mich 708; 344 NW2d 788 (1984).

The lower courts erred in suppressing the records contained in the "Cupelli file" and in finding defendant was entitled to transactional immunity. We therefore reverse and remand for further proceedings. We do not retain jurisdiction.

/s/ Gary R. McDonald
/s/ William B. Murphy
/s/ Michael F. Sapala

[1] This statute was repealed by 1992 PA 182, §2, which became effective on October 1, 1992. Before its repeal, the statute provided:

> No person shall be excused from attending and testifying, or producing any books, papers, or other documents before any court or magistrate, arbitrator or board of arbitrators, upon any investigation, proceeding or trial, for a violation of any of the provisions of this code, upon the ground or for the reason that the testimony or evidence documentary or otherwise, required of him may tend to incriminate or degrade him; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be used against him upon any criminal investigation or proceeding.

[2] Analysis of the issue under the "pervasively regulated" industry exception to the warrant requirement for searches and seizures would lead us to the same result.