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STATE OF MICHIGAN

COURT OF APPEALS

CITY OF DETROIT,

Plaintiff-Appellee,

v

BANNER LAUNDERING CO,

Defendant-Appellant.

UNPUBLISHED
June 10, 1997

No. 190636
Wayne Circuit Court
LC No. 95-502618-CZ

CITY OF DETROIT,

Plaintiff-Appellee,

v

THORN APPLE VALLEY, INC, d/b/a FREDERICK & HERRUD and HERRUD SMOKED MEATS,

Defendant-Appellant.

No. 190637
Wayne Circuit Court
LC No. 94-434123-CZ

CITY OF DETROIT,

Plaintiff-Appellee,

v

DOMESTIC LINEN CORP,

Defendant-Appellant.

No. 190638
Wayne Circuit Court
LC No. 95-512416-CZ

CITY OF DETROIT,

Plaintiff-Appellee,

v

No. 190639
Wayne Circuit Court
LC No. 95-502626-CZ

AMERICAN LINEN SUPPLY CO,

Defendant-Appellant.

Before: White, P.J., and Cavanagh and J.B. Bruff,* JJ.

PER CURIAM.

In this tax dispute, defendants appeal as of right the trial court's order granting summary disposition in favor of plaintiff. We affirm.

This cases involves interpretation of the City Utility Users Tax Act, MCL 141.1151 *et seq*.; MSA 5.3188(251) *et seq*. Enacted in 1970, the act gives the governing body of a city with a population of one million or more the authority to levy, assess, and collect a utility users tax. MCL 141.1152(1); MSA 5.3188(252). Pursuant to the act, plaintiff adopted the Utility Users Tax Ordinance, Detroit City Code, Article XI, §18-11-1 *et seq*., and began collecting a five-percent tax on natural gas used in the city.

Until 1985, Michigan Consolidated Gas Company (MichCon) was the only supplier permitted by state law to sell natural gas to users in the Detroit area. After the natural gas industry was deregulated in 1985, users were allowed to purchase gas from sources other than MichCon. Users who purchased gas from a source other than MichCon remitted a five-percent tax based on the cost of transportation, but paid no tax on the cost of the gas itself.

In 1987, the Detroit City Council approved a rule pertaining to the city utility users tax on natural gas. In *American Steel v City of Detroit*, unpublished opinion per curiam of the Court of Appeals, issued October 28, 1992 (Docket Nos. 126144, 126278 and 127577), this Court upheld the rule to the extent that it required customers to pay a tax on all gas used within the City of Detroit and provided by MichCon, regardless of whether MichCon actually sold the gas to the user. Thereafter, plaintiff issued proposed assessments to defendants.

Defendants argue that the trial court's decision granting summary disposition in favor of plaintiff should be reversed because the City was without authority to bill the utility users tax.[1] On appeal, an order granting or denying summary disposition is reviewed de novo. A motion for summary disposition

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

brought pursuant to MCR 2.116(C)(9) tests whether the opposing party has failed to state a valid defense to the claim asserted against it. This Court, accepting the parties' well-pleaded allegations as true, determines whether the defendant's defenses are so clearly untenable as a matter of law that no factual development could possible deny the plaintiff's right to recovery. *Nicita v Detroit (After Remand)*, 216 Mich App 746, 750; 550 NW2d 269 (1996).

We conclude that the trial court did not err in granting plaintiff's motion for summary disposition. Defendants' challenge to the proposed assessment is without merit.[2] Section 9(1) of the act authorizes the administrator to issue a proposed assessment if he determines that "a user has failed to pay the full amount of the tax due under the act." MCL 141.1169(1); MSA 5.3188(269)(1). Thus, the City of Detroit has the authority to collect the tax independent of the public utility's billing system. See MCL 141.1152(1); MSA 5.3188(252)(1) (authorizing the city to "levy, assess and collect" the tax); MCL 141.1165(3); MSA 5.3188(265)(3) (requiring the city treasurer to collect the taxes and payments). The utility's failure to bill the tax under the rule does not preclude the city from making and collecting the assessment.

Next, defendants contend that plaintiff had no authority to demand interest and penalties for unpaid taxes. Once again, we disagree. Although § 4(3) appears to define "delinquent" in terms of a user's failure to pay a tax billed by the public utility, § 4(2) indicates that a tax imposed under the act is deemed delinquent "from the time due until paid." See MCL 141.1168(2); MSA 5.3188(268)(2) (stating that penalties may be assessed against a "user failing to pay the tax . . . when due"); MCL 141.1169(1); MSA 5.3188(269)(1) (authorizing the city to issue a proposed assessment showing the amount due, together with interest and penalties, where a user has failed to pay the tax). Moreover, we conclude that defendants' interpretation of the act would lead to an unreasonable result. It would be absurd to authorize a city to collect the utility users tax, yet prohibit the imposition of interest and penalties against users who fail to pay the money due in a timely manner. Furthermore, there is no logical reason why the Legislature would allow the imposition of penalties and interest when the tax is billed by MichCon, but not when the tax is billed by the city. Statutes should be construed so as to avoid unreasonable and absurd results. *Thompson v Fitzpatrick*, 199 Mich App 5, 8; 501 NW2d 172 (1991).

In their next issue, defendants challenge the trial court's decision to assess interest for the entire period in which the debt was delinquent, but penalties only from the due date of the proposed assessment. However, although this issue is listed in defendants' statement of questions presented, defendants failed to argue the merits of their allegation of error in their appellate brief. We therefore deem this issue abandoned. See *Froling v Carpenter*, 203 Mich App 368, 373; 512 NW2d 6 (1994).

Finally, defendants argue that that plaintiff is barred from collecting a tax on the purchase price of the gas for the period covering 1988-1991. We disagree. It is undisputed that the tax on the purchase price of the gas was unpaid when the proposed assessments were issued in 1994. Further the statute contains an exception where there has been an omission of substantial portions of tax due on a return. MCL 141.1172; MSA 5.3188(272).

Affirmed. Plaintiff being the prevailing party, it may tax costs pursuant to MCR 7.219.

/s/ Helene N. White
/s/ Mark J. Cavanagh
/s/ John B. Bruff

[1] On appeal, defendants, relying on MCL 141.1169(2); MSA 5.3188(269)(2), contend that plaintiff should have waited to file suit in circuit court until a hearing was conducted before the administrator. However, we decline to review this issue. The error, if any, appears to apply only to defendants Domestic Linen and Thorn Apple Valley. However, because these defendants are raising the same legal issues as the remaining defendants, it would be pointless to remand their cases to the administrator.

[2] In fact, defendants Banner, Domestic Linen, and Thorn Apple Valley are estopped from raising this issue pursuant to the doctrine of collateral estoppel. Collateral estoppel precludes relitigation of an issue in a subsequent action between the same parties when the prior proceeding culminated in a valid final judgment and the issue was actually and necessarily determined in the prior proceeding. *Porter v Royal Oak*, 214 Mich App 478, 485; 542 NW2d 905 (1995). This issue was decided in *American Steel*, *supra*, a case involving Banner, Domestic Linen, and Thorn Apple Valley, and the City of Detroit.

Defendants argue that *American Steel* involved the city's authority to "collect" the tax, while this case concerns the city's authority to "bill" the tax. We do not find this argument persuasive. It is clear from this Court's opinion in *American Steel* that the words "collect" and "bill" were used interchangeably.