

STATE OF MICHIGAN
COURT OF APPEALS

LAFARGE MIDWEST, INC.,

Petitioner-Appellee,

v

CITY OF DETROIT,

Respondent-Appellant.

FOR PUBLICATION

October 12, 2010

9:00 a.m.

No. 289292

Tax Tribunal

LC No. 00-318224; 00-328284;

00-328928

Advance Sheets Version

Before: JANSEN, P.J., and CAVANAGH and K. F. KELLY, JJ.

CAVANAGH, J.

Respondent, the city of Detroit, appeals as of right an order of the Michigan Tax Tribunal granting petitioner's motion for summary disposition under MCR 2.116(C)(10). We affirm.

Petitioner, Lafarge Midwest, Inc., was responsible for the payment of ad valorem property taxes on three parcels of land that are the site of its cement plant, which is located within the Delray Renaissance Zone in Detroit. In 2005, 2006, and 2007 petitioner's real property tax bills included a school debt service tax of 13 mills, consistent with the school district electors' approval of \$116,156,390 in school building and site bonds. The 13-mill property tax was levied by the Detroit Public School District for retirement of bonded debt. Petitioner filed a petition with the Michigan Tax Tribunal, challenging the tax on the ground that the property was subject to the Michigan Renaissance Zone Act (RZA), MCL 125.2681 *et seq.*, and exempt from this school debt service tax.

Subsequently, petitioner moved for summary disposition, arguing that the property was exempt from the school debt service tax because none of the exceptions to the general exemption set forth in MCL 211.7ff applied to the property. First, petitioner argued, the tax levied was not a special assessment under the exception set forth in MCL 211.7ff(2)(a). Second, because the school debt service tax was not levied by a "local governmental unit," i.e., a county, city, village, or township, the exception to the general exemption set forth in MCL 211.7ff(2)(b) did not apply. Third, the tax was not levied pursuant to any of the Revised School Code sections listed under the exception set forth in MCL 211.7ff(2)(c). And, fourth, a casino was not being operated on the property, so the exception set forth under MCL 211.7ff(3) did not apply.

More particularly, with regard to the second exception to the exemption, petitioner argued that a "school district" is not considered a "local governmental unit" under the definition

provided in the RZA, MCL 125.2683(g).¹ And contrary to respondent’s anticipated claim, the definition of “local governmental unit” provided in the General Property Tax Act was inapplicable to this case involving the RZA. In support of its position, petitioner cited the case of *Kinder Morgan Mich, LLC v City of Jackson*, 277 Mich App 159, 166; 744 NW2d 184 (2007), which held that MCL 211.7ff must be liberally construed to effectuate the purposes of the RZA—securing tax relief for properties located in renaissance zones. Accordingly, petitioner argued, because the debt obligations were approved by school district electors and not electors “of the local governmental unit,” this exception to the general exemption did not apply. Thus, petitioner’s property was exempt from the tax, and it was entitled to a refund of the overpaid tax as well as an order granting summary disposition in its favor.

In response to petitioner’s motion for summary disposition, the city argued that MCL 211.7ff(2)(b) actually contains two separate and independent clauses. The statute provides that property in a renaissance zone is not exempt from the collection of “[a]d valorem property taxes specifically levied for the payment of principal and interest of obligations approved by the electors *or* obligations pledging the unlimited taxing power of the local governmental unit.” MCL 211.7ff(2)(b). At issue in the *Kinder* case was the second clause, not the first clause, and because the first clause was at issue in this case, *Kindler* provides no guidance. The city claimed that the tax was levied “to satisfy the indebtedness of the School District of the City of Detroit.” Thus, the fact that the school district is not a “local governmental unit” as that term is defined in the RZA is irrelevant; the tax was levied for the repayment of principal and interest of obligations approved by the electors. The city argued that if the “Legislature [had] intended for the limiting term ‘local governmental unit’ to apply to both clauses of MCL 211.7ff(2)(b) it could have easily done so by the simple placement of a couple of commas.” Accordingly, the city requested that the tribunal deny petitioner’s motion for summary disposition and enter a judgment in the city’s favor.

The Tax Tribunal agreed with petitioner, holding that the definition of “local governmental unit” does not include school districts and that the city’s “stance of the Legislature’s intent [is] unconvincing.” The tribunal concluded that, in light of the clear definition of “local governmental unit,” as well as the mandate to read the property tax act in conjunction with the RZA, a clerical error or mutual mistake of fact existed and resulted in an error on petitioner’s tax bills. Accordingly, petitioner’s motion for summary disposition was granted, and the city was ordered to remove the school debt tax from the taxes charged to the property and refund any overpaid taxes. This appeal followed.

On appeal, the city argues that the general exemption set forth in MCL 211.7ff(1) did not apply to petitioner’s property; rather, the exception to that exemption set forth in MCL 211.7ff(2)(b) applied because the tax at issue was approved by the school district electors for payment of school debt principal and interest. We disagree.

In the absence of fraud, our review of the Tax Tribunal’s decision is limited to determining whether the tribunal misapplied the law or adopted a wrong principle. *Wexford Med*

¹ This is the current citation. At other times relevant in this case, the definition has appeared in other subdivisions of this section.

Group v City of Cadillac, 474 Mich 192, 201; 713 NW2d 734 (2006). The tribunal’s interpretation of a statute, however, presents a question of law that is reviewed de novo on appeal. *Pittsfield Charter Twp v Washtenaw Co*, 468 Mich 702, 707; 664 NW2d 193 (2003).

MCL 125.2682 of the RZA provides:

The legislature of this state finds and declares that there exists in this state continuing need for programs to assist certain local governmental units in encouraging economic development, the consequent job creation and retention, and ancillary economic growth in this state. To achieve these purposes, it is necessary to assist and encourage the creation of renaissance zones and provide temporary relief from certain taxes within the renaissance zones.

In accord, MCL 125.2689(2)(a) of the RZA states that, except as provided in MCL 125.2690, property in a renaissance zone is exempt from the collection of taxes under MCL 211.7ff of the General Property Tax Act. And MCL 211.7ff provides in part as follows:

(1) For taxes levied after 1996, except as otherwise provided in subsections (2) and (3) and except as limited in subsections (4), (5), and (6), real property in a renaissance zone and personal property located in a renaissance zone is exempt from taxes collected under this act to the extent and for the duration provided pursuant to the Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696.

(2) Real and personal property in a renaissance zone is not exempt from collection of the following:

(a) A special assessment levied by the local tax collecting unit in which the property is located.

(b) Ad valorem property taxes specifically levied for the payment of principal and interest of obligations approved by the electors or obligations pledging the unlimited taxing power of the local governmental unit.

(c) A tax levied under section 705, 1211c, or 1212 of the revised school code, 1976 PA 451, MCL 380.705, 380.1211c, and 380.1212.

The dispute between the parties came to be centered on the interpretation of MCL 211.7ff(2)(b). The city argues that this exception to the general exemption applied to petitioner’s property because the taxes were “levied for the payment of principal and interest of obligations approved by the electors.” The taxes were not levied for “obligations pledging the unlimited taxing power of the local governmental unit.” The city argues that the statute details two separate debt obligations that are excepted from the exemption and that the modifying phrase “of the local governmental unit” only applies—consistently with the rule of the last antecedent—to the second type of debt obligation for which taxes may be levied, not the first type of debt obligation, which is the one at issue here. In contrast, petitioner argues that the phrase “of the local governmental unit” applies and modifies both types of debt obligations, consistently with the plain language and purpose of the RZA. Thus, petitioner argues, because the statute itself

requires a different interpretation than would be accorded by the application of the rule of the last antecedent, that rule does not apply. See *Sun Valley Foods Co v Ward*, 460 Mich 230, 237; 596 NW2d 119 (1999).

The primary goal in construing a statute is to discern and give effect to the intent of the Legislature. *Murphy v Mich Bell Tel Co*, 447 Mich 93, 98; 523 NW2d 310 (1994). The first criterion in determining intent is the specific language of the statute. *United States Fidelity & Guaranty Co v Mich Catastrophic Claims Ass'n (On Rehearing)*, 484 Mich 1, 13; 795 NW2d 101 (2009). The fair and natural import of the terms employed, in view of the subject matter of the law, governs. *People v McGraw*, 484 Mich 120, 124; 771 NW2d 655 (2009). If the plain and ordinary meaning of the statutory language is clear, i.e., unambiguous, the Legislative intent is clear. *Nastal v Henderson & Assoc Investigations, Inc*, 471 Mich 712, 720; 691 NW2d 1 (2005); *Lansing Mayor v Pub Serv Comm*, 470 Mich 154, 157; 680 NW2d 840 (2004). In such a case, the Legislature is presumed to have intended the meaning it plainly expressed; thus, no further judicial construction is required or permitted, and the statute must be enforced as written. *Nastal*, 471 Mich at 720.

With regard to the issue of statutory ambiguity, the *Lansing Mayor* Court held that “a provision of the law is ambiguous only if it ‘irreconcilably conflict[s]’ with another provision, *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 467; 663 NW2d 447 (2003), or when it is equally susceptible to more than a single meaning,” *Lansing Mayor*, 470 Mich at 166 (first alteration in *Lansing Mayor*). When is a provision equally susceptible to more than a single meaning? The *Lansing Mayor* Court held that a “reasonable disagreement” is not the standard for identifying ambiguity. *Id.* at 168. That is, “[a] provision is not ambiguous just because ‘reasonable minds can differ regarding’ the meaning of the provision.” *People v Gardner*, 482 Mich 41, 50 n 12; 753 NW2d 78 (2008), quoting *Lansing Mayor*, 470 Mich at 165. The *Lansing Mayor* Court concluded that “a finding of ambiguity is to be reached only after ‘all other conventional means of [] interpretation’ have been applied and found wanting.” *Lansing Mayor*, 470 Mich at 165, quoting *Klapp*, 468 Mich at 474 (alteration in *Lansing Mayor*). That is, “ambiguity is a finding of last resort.” *Lansing Mayor*, 470 Mich at 165 n 6.

The provision at issue in this case is MCL 211.7ff(2)(b), which provides,

[a]d valorem property taxes specifically levied for the payment of principal and interest of obligations approved by the electors or obligations pledging the unlimited taxing power of the local governmental unit.

According to the city, the phrase should be read as follows: “Ad valorem property taxes specifically levied for the payment of principal and interest of [(1)] obligations approved by the electors or [(2)] obligations pledging the unlimited taxing power of the local governmental unit.” Thus the phrase “principal and interest of” would apply to both types of obligations, but the phrase “of the local governmental unit” would apply only to the second type of obligation, in accordance with the rule of the last antecedent. However, the statutory provision could also be read in the following manner: “Ad valorem property taxes specifically levied for the payment of [(1)] principal and interest of obligations approved by the electors or [(2)] obligations pledging the unlimited taxing power of the local governmental unit.” Thus the phrase “principal and interest of” would only apply to obligations approved by the electors and not the obligations pledging the unlimited taxing power of the local governmental unit. In *Kinder*, 277 Mich App at

168-169, the respondent, the city of Jackson, made such an argument. In this case, the city of Detroit declines to take that position, claiming that the phrase “principal and interest of” “clearly” applies to both obligations, although it fails to identify why this interpretation is “clearly” accurate.

Petitioner offers the following construction of the statutory provision: “Ad valorem property taxes specifically levied for the payment of principal and interest of [(1)] obligations approved by the electors or [(2)] obligations pledging the unlimited taxing power[,] of the local governmental unit.” The phrase “principal and interest of” would apply to both types of obligations, and the phrase “of the local governmental unit” would apply to both types of obligations. It follows, then, that another possible construction of the statutory provision is the following: “Ad valorem property taxes specifically levied for the payment of [(1)] principal and interest of obligations approved by the electors or [(2)] obligations pledging the unlimited taxing power[,] of the local governmental unit.” The phrase “principal and interest of” would only apply to obligations approved by the electors and not obligations pledging the unlimited taxing power, and the phrase “of the local governmental unit” would apply to both types of obligations.

As set forth earlier, to construe a statute we must first examine its language, according every word and phrase its plain and ordinary meaning and considering the grammatical context. MCL 8.3a; *United States Fidelity*, 484 Mich at 13. First, we turn to the phrase “principal and interest of.” The issue whether this phrase applies only to “obligations approved by the electors” or whether it also applies to “obligations pledging the unlimited taxing power of the local governmental unit” has not been raised in this case. This issue was raised in *Kinder*, but the *Kinder* Court was not required to construe the provision on the facts of that case. *Kinder*, 277 Mich App at 168-169. Because this issue was not raised by the parties, we need not construe this statutory language but will assume for purposes of this case that the phrase applies to both obligations.

Next, we consider whether the phrase “of the local governmental unit” applies to “obligations approved by the electors,” as held by the Tax Tribunal. Guidance is gleaned from the statutory language. The Legislature used the word “the” with respect to “electors.” “The” is a definite article that, when used especially before a noun—like “electors”—has a specifying or particularizing effect. See *Robinson v City of Lansing*, 486 Mich 1, 14; 782 NW2d 171 (2010). Following the rationale of *Robinson*, because MCL 211.7ff(2)(b) refers to “the electors,” we must determine to which “specific or particular” electors it refers.² If the provision had simply said “electors,” it might have referred to electors generally, as the dissent opines. However, because the phrase “of the local governmental unit” is within the same statutory provision, we conclude that “the electors” must be the electors of the local governmental unit. This interpretation recognizes that the Legislature is presumed to be familiar with the rules of statutory construction, as well as the rules of grammar. See *In re Messer Trust*, 457 Mich 371, 380; 579 NW2d 73 (1998); *Greater Bethesda Healing Springs Ministry v Evangel Builders & Constr Managers, LLC*, 282 Mich App 410, 414; 766 NW2d 874 (2009). This construction is also in compliance with the mandate to “give effect to every word, phrase, and clause in a

² The *Robinson* Court construed the “two-inch rule” set forth in MCL 691.1402a(2) of the governmental tort liability act, MCL 691.1401 *et seq.* *Robinson*, 486 Mich at 3, 5.

statute and avoid an interpretation that would render any part of the statute surplusage or nugatory.’” *Klapp*, 468 Mich at 468, quoting *State Farm Fire & Cas Co v Old Republic Ins Co*, 466 Mich 142, 146; 644 NW2d 715 (2002). The dissent’s interpretation of the provision ignores, and thereby renders surplusage or nugatory, the word “the” in “the electors.” Accordingly, we also reject the dissent’s claim that “[n]othing in the plain language of MCL 211.7ff(2)(b) specifies or limits which ‘electors’ must approve the obligation.”

The city argues that, under the rule of the last antecedent, the modifying clause “of the local governmental unit” should only apply to the antecedent “obligations pledging the unlimited taxing power” and not to “obligations approved by the electors.” Clearly, the rule of the last antecedent does not apply when its application results in a construction that is contrary to the plain language of the statute. See *Sun Valley Foods*, 460 Mich at 237. As discussed earlier, the statutory provision itself refers to “the electors,” not merely “electors” in general.

Further, as our Supreme Court noted in *Robinson*, 486 Mich at 15, “to discern the Legislature’s intent, statutory provisions are *not* to be read in isolation; rather, context matters, and thus statutory provisions are to be read as a whole.” Therefore, we turn to MCL 211.7ff(2), which provides in relevant part:

Real and personal property in a renaissance zone is not exempt from collection of the following:

(a) A special assessment levied by the local tax collecting unit in which the property is located.

(b) Ad valorem property taxes specifically levied for the payment of principal and interest of obligations approved by the electors or obligations pledging the unlimited taxing power of the local governmental unit.

(c) A tax levied under section 705, 1211c, or 1212 of the revised school code, 1976 PA 451, MCL 380.705, 380.1211c, and 380.1212.

The statute clearly states that the exemption does not apply to “[a] special assessment levied by *the local tax collecting unit*” or to “[a]d valorem property taxes levied for payment of . . . obligations pledging the unlimited taxing power of *the local governmental unit*.” MCL 211.7ff(2)(a) and (b) (emphasis added). It would be inherently inconsistent to construe the statute so as to require the payment of ad valorem property taxes levied for obligations approved by *any* group of “electors” rather than, consistent with the statutory language and overall scheme, just “*the* electors” of the local governmental unit. This construction (1) complies with the mandate that “[e]ffect is to be given to every provision, and the whole statute is to be considered in order to achieve a harmonious and consistent result,” *Ferguson v Pioneer State Mut Ins Co*, 273 Mich App 47, 52; 731 NW2d 94 (2006), and (2) recognizes the fact that the Legislature is under no “obligation to clumsily repeat language that is sufficiently incorporated into a statute by the use of such terms as ‘the,’ ‘such,’ and ‘that,’” *Robinson*, 486 Mich at 17.

In summary, we agree with the Tax Tribunal’s conclusion, albeit for different reasons, that the levy of the tax on petitioner’s property was improper in that the taxes were not levied for the payment of “obligations approved by the electors” within the meaning of MCL 211.7ff(2)(b).

After applying conventional means of statutory interpretation, we conclude that the phrase “of the local governmental unit” clearly applies to both the “obligations approved by the electors” and the “obligations pledging the unlimited taxing power.” There is no ambiguity. Thus, the Tax Tribunal properly granted petitioner’s motion for summary disposition and properly ordered the removal of the school debt service taxes from the taxes charged to petitioner’s property, as well as a refund of any overpaid taxes.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Kathleen Jansen