

Bond Case Briefs

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UTILITY LIENS - MICHIGAN

Sau-Tuk Industries, Inc. v. Allegan County

Court of Appeals of Michigan - June 28, 2016 - N.W.2d - 2016 WL 3524811

Property owner appealed the validity of liens for unpaid utility charges assessed by the City of Holland's Board of Public Works (BPW) under the city's charter and ordinances as authorized by the state Revenue Bonding Act (RBA) and enforced in the same manner as delinquent property taxes.

The liens in question secured payment for electric and water services to the property - which owner had leased to a tenant - and were enforced by the Allegan County Treasurer at its annual sale of properties to satisfy delinquent taxes.

The RBA contains a provision MCL 141.121(3) whereby a property owner may exempt its property from utility liens that otherwise would apply in the event that the owner's tenants fail to pay utility charges by providing the Board of Public Works (BPW) with a written notice and a copy of the lease of the affected premises.

Property owner appealed the trial court's order that granted Allegan County's motion for summary disposition because appellant failed to comply with the plain language of MCL 141.121(3) and the city's ordinances to exempt the property from the utility liens. Owner also appealed the portion of the trial court's judgment of foreclosure of the property.

Sometime in October 2006 MWP contacted the BPW about providing utility services to the property. Because MWP was a new business without an established good credit history, and because MWP was renting the property, the BPW required MWP to provide either a surety bond or a cash deposit as a condition of obtaining utility services. According to Julie Thompson, the BPW's corporate designee, the BPW does not require security by owners of property who request utility services. MWP complied with the request and obtained a surety bond in the amount of \$54,000 in May 2007. The amount of the surety bond was determined by the BPW and approved by an assistant city attorney in an April 2, 2007 letter to the insurance company. Sau-Tuk argues that this letter and Thompson's testimony show that the BPW had actual knowledge of MWP's tenancy and obligation to pay for utility services provided to the property.

The Court of Appeals disagreed, concluding that even if owner could prove that Holland's BPW had actual knowledge of the tenancy and responsibility under its lease to pay for utility charges, owner failed to follow the clear and unambiguous direction of MCL 141.121(3) and the city's ordinances to prevent the utility liens at issue from arising.