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City of Grand Rapids v. Brookstone Capital, LLC

Court of Appeals of Michigan - October 29, 2020 - N.W.2d - 2020 WL 6370351

City brought action against housing project developer and housing association limited partnerships, who were otherwise exempt from ad valorem property taxes, for breaches of agreements for payments of a service charge in lieu of taxes and unjust enrichment for defendants' failure to pay the amount of charges billed as required under city's payments in lieu of taxes ordinance.

The Circuit Court granted city's motion for summary disposition on grounds of no genuine issue as to any material fact and denied defendants' motion for summary disposition on ground the opposing party was entitled to judgment. Defendants appealed.

The Court of Appeals held that:

- Michigan State Housing Development Authority (MSHDA) Act preempted subject portion ordinance;
- Doctrine of in pari materia did not apply, and could not reconcile, ordinance and Michigan State Housing Development Authority (MSHDA) Act; and
- Defendants breached contracts between themselves and city.

Section of Michigan State Housing Development Authority (MSHDA) Act governing tax exemptions and payment of service charges for housing projects requires that plaintiff impose an annual payment of a service charge in lieu of taxes charge to be paid by defendant owners of a subject low-income housing projects calculated for the units occupied by low-income persons or families either pursuant to the default amounts set by subpart of statute, or the amount plaintiff established by ordinance as permitted under the subpart.

Section of Michigan State Housing Development Authority (MSHDA) Act governing tax exemptions and payment of service charges for housing projects requires that plaintiff impose an annual payment of a service charge in lieu of taxes charge respecting all portions of the subject projects occupied by "other than low income persons or families" equal to the full amount of the ad valorem taxes that would have been required if the projects were not tax exempt, to be paid by defendant owners of the subject projects.

A direct conflict existed between section of Michigan State Housing Development Authority Act (MSHDA) governing tax exemptions and payment of service charges for housing projects and portion of city's payment of a service charge in lieu of taxes ordinance, and thus MSHDA Act preempted subject portion of ordinance, where ordinance required payment in lieu of taxes by a housing project owner in the amount of 4% of annual shelter rent which was defined as the total collections from all occupants of a housing project exclusive of charges for utilities provided to them, but MSHDA Act commanded city to charge fees in lieu of taxes equal to the ad valorem tax for portions of projects occupied by "other than low income persons and families."

Doctrine of in pari materia did not apply, and could not reconcile, city's payments in lieu of taxes

ordinance and section of Michigan State Housing Development Authority (MSHDA) Act governing tax exemptions and payment of service charges for housing projects, which otherwise preempted the ordinance, since the ordinance, which required payments in lieu of taxes by a housing project owner in the amount of 4% of annual total collections from all occupants of housing project exclusive of charges for utilities, and the MSHDA section, which commanded city to charge fees in lieu of taxes equal to the ad valorem tax for portions of projects occupied by “other than low income persons and families,” both lacked ambiguity.

Housing project developer and housing association limited partnerships breached contracts between themselves and city, which provided developer and housing associations the benefits of tax exemption for the low-income housing projects pursuant to section of Michigan State Housing Development Authority (MSHDA) Act governing tax exemptions and payment of service charges for housing projects in exchange for payment of a service charge in lieu of taxes pursuant to subject section of MSHDA Act, where when billed pursuant to the parties’ contracts, developer and housing associations refused to pay the contractually defined amounts required by city.