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Comptroller of Maryland v. Broadway Services, Inc.

Court of Special Appeals of Maryland - March 31, 2021 - A.3d - 2021 WL 1206643

Comptroller of Maryland denied property management company's application for an offset credit and refund for sales tax as a "reseller" of the cleaning supplies used at three non-profit hospitals, and assessed the company unpaid sales and use taxes.

Company appealed to the tax court, which ruled for the company on the alternative ground that it acted as an agent of the hospitals. The Circuit Court denied Comptroller's petition for judicial review and affirmed the decision of the tax court. Comptroller appealed.

The Court of Special Appeals held that:

- Company had arms-length relationship with hospitals;
- Company did not have the power to alter hospitals' legal relationships;
- Hospitals did not control company's purchase of cleaning supplies;
- Company had no duty to act primarily for benefit of hospitals; and
- Company was not precluded on remand from seeking juridical review of Tax Court's rejection of its "reseller" theory.

For-profit property management company had arms-length relationship with non-profit hospitals for purpose of determining whether company acted as agent of hospitals for sales tax purposes when purchasing cleaning supplies, although company was a subsidiary of a corporation co-owned by hospital and its affiliated university, where contracts between company and hospitals was based on template used by national independent competitors, company made independent decisions regarding what cleaning supplies to provide to hospitals and how to procure them, company bore the financial risk of increased price of cleaning supplies, and contracts contained integration clause and "no oral modifications" clause that precluded assumption of any duties not therein expressed.

Property management company did not have the power to alter non-profit hospitals' legal relationships, as element in determining whether company acted as agent of hospitals for sales tax purposes when purchasing cleaning supplies, although company was a subsidiary of a corporation co-owned by hospital and its affiliated university; company was solely liable for the purchase of any cleaning supplies and its vendors had no recourse against hospitals.

on-profit hospitals did not control property management company's purchase of cleaning supplies, as element in determining whether company acted as agent of hospitals for sales tax purposes when purchasing supplies, although hospital required supplies to comply with its infectious disease policies; hospital could not require company to use a particular product.

For-profit property management company had no duty to act primarily for benefit of non-profit hospitals when purchasing cleaning supplies, as element in determining whether company acted as agent of hospitals for sales tax purposes when purchasing the supplies, although hospital had ownership interest in company; contract between company and hospitals did not create a fiduciary

duty, and there was no evidence that company accepted such a duty through parties' course of performance.

Hospitals' contractual requirement that property management company provide cleaning supplies that complied with their infectious disease control guidelines and their legal obligations did not establish an agency relationship between hospital and company; the choice of supplies was left to company.

The Court of Special Appeals could not review Tax Court's rejection of property management company's theory that it was not liable for sales tax on the purchase of cleaning supplies for hospitals because it was a "reseller" of the supplies, where Tax Court ruled for company on other grounds and company did not petition for review of the issue, and Court of Special Appeals could affirm solely on the grounds and reasons stated by the Tax Court.

Property management company was not precluded on remand from seeking juridical review of Tax Court's rejection of its theory that it was not liable for sales tax on the purchase of cleaning supplies for hospitals because it was a "reseller" of the supplies, although company did not appeal this issue following Tax Court's decision in their favor on other grounds; whether company was required to cross-petition for judicial review on this issue following Comptroller's appeal of Tax Court decision was a novel issue that had not been briefed.

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