

# Case Digests

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## Bankruptcy—Stays of Contingent Claims

In *Frederick v Federal-Mogul Corp*, No 266735, 2006 Mich App LEXIS 3642 (Dec 19, 2006), the plaintiff was a tool and die maker employed by the defendant. He alleged that he invented a new machine and process for the manufacturing of engine bearings, which he disclosed to defendant in 2000. He alleged the defendant promised it would keep the invention secret and compensate plaintiff fairly if the company decided to use it. Defendant filed for bankruptcy in 2001. Plaintiff alleges that defendant began using his process in 2003, filing a complaint for misappropriation of trade secrets, unjust enrichment, equitable and promissory estoppel, and breach of contract. The case turned on whether the claim properly arose before or after the bankruptcy filing date.

Defendant argued in trial court that either the action was barred by the automatic stay in bankruptcy, 11 USC 362, or was preempted because the "alleged agreement was an executory contract" under 11 USC 365 and belonged in the bankruptcy court. The trial court held that the bankruptcy court was the proper venue to resolve these issues and granted the defendant's motion for summary judgment. On appeal, the plaintiff argued that Michigan statutory law controls when a claim arises, in order to determine whether or not it is blocked by the automatic stay of prior claims. Under the Bankruptcy Code, an automatic stay bars actions that could have been commenced before the filing of bankruptcy or that involve a claim that arose before the bankruptcy date. 11 USC 362(a)(1). Although the plaintiff's claim was contingent on events occurring after the filing of bankruptcy, the court held that such claims fit the definition of a claim in the Bankruptcy Code. See *In re M Frenville Co, Inc*, 744 F.2d 332, 336 (3<sup>rd</sup> Cir, 1984). The claim for purposes of the Bankruptcy Code began in 2000 and not on any state-law "accrual date," i.e., 2003, and was thus barred by the automatic stay.

## Contracts—Construction—Subcontracting—Unjust Enrichment

In *Morris Pumps v Centerline Piping, Inc*, Nos 268717, 268718, 2006 Mich App LEXIS 3584 (Dec 12, 2006), appellee/defendant was a general contractor working on a sewer treatment plant for the City of Detroit. Defendant furnished performance and payment bonds for the project, while plaintiffs contracted for material and supplies from a subcontractor (Centerline) for mechanical work. After delivery of the material and supplies, Centerline went out of business without paying the plaintiffs. A new subcontractor was hired to complete the mechanical work and used the materials delivered by the plaintiffs to do so. Neither the general contractor nor the new subcontractor reimbursed

the plaintiffs. The plaintiffs sued Centerline for breach of contract and the general contractor for unjust enrichment.

On appeal, the court of appeals held that the existence of an express contract between Centerline and the plaintiffs did not bar a claim of unjust enrichment as between the general contractor and plaintiff, since the general contractor was not a party to this contract. Next, the court ruled that the general contractor's enrichment was "unjust," because of its supervisor relationship to Centerline and that the new subcontractor was likely to know that the material had been used and the plaintiff not paid. In addition, the fact that the general contractor paid the new subcontractor more than the amount of its contract with Centerline did not negate its obligations to the plaintiffs; it could attempt to recover these extra costs from Centerline.

The existence of the plaintiff's claim for damages against Centerline did not negate a claim of unjust enrichment against the general contractor; the non-breaching party normally can elect either remedy when both are available. Although recent case law bars unjust enrichment when a damage remedy is also available against the same defendant, *Belle Isle Grill Corp v Detroit*, 256 Mich App 463, 478, 666 NW2d 271 (2003), the court stated that simultaneous, alternative remedies are not barred if sought against different defendants. Finally, the existence of a claim against the general contractor's payment bond, under the scheme set out by the PWBA, MCL 129.201 *et seq.* and not pursued by the plaintiffs in this case, did not bar their claims for unjust enrichment.

## Contracts—Forum Selection Clauses

In *Turcheck v Amerifund Fin, Inc*, 272 Mich App 341, 725 NW2d 684 (2006), plaintiff sued in Wayne County Circuit Court to recover alleged unpaid commissions due to her under a contract with the defendant. The trial court dismissed her claim without prejudice based on forum-selection and choice-of-law provisions in the employment contract, which specified that Washington state law governed and a county circuit court in Washington had exclusive jurisdiction over disputes. The trial court held that the forum-selection and choice-of-law clause were enforceable under Michigan law, because they did not result in a forum inconvenient to either party and agreement to the clause was not "obtained by misrepresentation, duress, the abuse of economic power, or other unconscionable means." MCL 600.745(3)(c)-(e).

The court of appeals affirmed dismissal. One question, on which Michigan courts have not yet ruled, was whether to honor the choice of law provision and therefore use Washington law to assess whether the forum-selection clause was enforceable; the court did not reach this question because Washington and Michigan law are essentially the same on forum-selection clause validity. The court held that the plaintiff had failed to present evidence of unfair bargaining power on the part of the defendant, the plaintiff had not presented any evidence that the Washington forum would be "unreasonable, unjust, substantially inconvenient, or unfair," and that any inconvenience of

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the Washington forum was within the contemplation of the parties when they signed the contract.

### **MIOSHA—Vicarious Liability**

In *People v Lanzo Constr Co*, 272 Mich App 470, 726 NW2d 746 (2006), a worker supervised by the defendant died when the unsupported walls of a 15- 20-foot deep trench for a sanitary sewer project collapsed on him. Defendant was charged with involuntary manslaughter and willful violation of the Michigan Occupational Safety and Health Act (MIOSHA), MCL 408.1011(a), .1035(5). The trial court convicted the defendant on the willful violation count, fining it \$10,000 and placing it on a two-year probation.

On appeal, the court of appeals affirmed, holding that the trial court appropriately applied the definition of “willfulness” in the MIOSHA statute, MCL 408.1006. The court first held that the statute expressly states there is no “malice” requirement in the definition of willful, and second, the fact that it was found not guilty of gross negligence (i.e., “reckless or wantonly indifferent to the results” of its acts) as to the manslaughter count did not preclude a finding on the MIOSHA violation count, because “willful” in that context referred simply to being “indifferent” to the MIOSHA requirements. The court also ruled that there was sufficient evidence to support a finding that the defendant’s supervisory employees acted in willful disregard of MIOSHA standards. The court held that the supervisory employee’s criminal violation of MIOSHA standards transferred vicarious liability to the defendant employer under MIOSHA, holding that “high managerial agents” for the purposes of liability are persons having “supervisory over the subject matter of the offense.”

### **Partnership Law—Joint Ventures**

In *Kay Inv Co, LLC v Brody Realty I, LLC*, No 263549, 2006 Mich App LEXIS 3795 (Dec 28, 2006), four “partners” entered into an agreement in 1969 to develop and manage a shopping center. The plaintiffs were some of the successors of the original partners, who wanted to sell the shopping center, asserting that the original 1969 agreement created a partnership, which under Michigan law does not require unanimity of assent in order to sell the property. The defendant successor opposed the sale, claiming that the 1969 agreement created a joint venture: under Michigan law co-venturers own property as tenants-in-common, which requires the consent of all tenants-in-common before the property is sold. The trial court granted summary judgment for the plaintiffs; the court of appeals reversed, finding that the 1969 agreement formed a joint venture.

The court of appeals noted that the parties stipulated that the original agreement created a tenancy-in-common on the original undeveloped land, but the plaintiffs had asserted that the shopping center itself or the profits of its management was held as partnership property. The court noted that joint ventures and partnerships are distinct legal relationships with different legal consequences, most notably that joint venturers hold property as tenants-in-com-

mon. *American Mut Liab Ins Co v Hanna, Zabriskie & Daron*, 297 Mich 599 (1941). As evidence that the parties intended a joint venture, the court noted that the 1969 agreement was limited to one specific project. Second, the parties also joined their wives to the agreement to bind their dower rights, which do not apply to partnership property. MCL 449.25(2)(e). Third, the parties did not carry on their business as if a partnership agreement applied. For instance, after one of the co-venturers died, the interest in the project passed to his heirs, rather than passing to the remaining partners. MCL 449.25(2)(d). Under the default rule, the death of a partner dissolves the partnership. MCL 449.31(4). Thus, to sell the development as a whole, all the parties must agree, or else the property must be partitioned.

### **Taxation—State taxation of Duty-free Shops**

In *Ammex, Inc v Department of Treasury*, 272 Mich App 486, 726 NW2d 755 (2006), the plaintiff sued to reclaim approximately \$380,000 of state gasoline and diesel taxes paid in part of 2001 by a duty-free store selling gasoline next to the Ambassador Bridge in Detroit; customers using the gas station cannot exit back to the U.S. but must proceed to Canada. The gas station thus operates in a “sterile area” and qualifies as a U.S. Customs Class 9 bonded warehouse. 19 USC 1555, 1557. The court of appeals affirmed two lower court rulings in favor of the plaintiffs.

On the defendant’s contention that the plaintiff lacked standing because they passed their tax burden onto their customers, the court of appeals held that the plaintiffs did suffer an injury-in-fact because plaintiff’s sales receipts stated that no such tax was part of the price paid by the consumer. Following U.S. Supreme Court precedent on state taxation of goods in similar U.S. Customs bonded warehouses, the court then held that state taxes were preempted by federal law because “the state law stands as an obstacle to the accomplishment ... of the full objectives of Congress.”

### **Taxation—Tax on Out-of-State Insurers**

In *Prudential Prop & Cas Ins Co v Department of Treasury*, 272 Mich App 269, 725 NW2d 477 (2006), the plaintiffs, New Jersey and Indiana insurance corporations, were required under the retaliatory tax statute, MCL 500.476a, .746b, to pay the greater of either the Michigan Single Business Tax (SBT) or the tax its “hypothetical twin” — a business identical to themselves but based in Michigan — would have to pay in the company’s home state. The plaintiffs challenged this system by having their “hypothetical twins” take SBT credits for the “hypothetical” out-of-state tax they would be entitled to if they were truly a Michigan company. Plaintiffs prevailed in the court of claims, but on appeal, the court of appeals reversed, holding that not allowing this use of SBT for their respective hypothetical twins did not violate equal protection rights simply because it required out-of-state insurers to pay the same taxes that Michigan insurers would in the insurers’ home state.

However, the plaintiffs may have had an issue on the computation of tax credits for association fees. Since the

insurers' home states would have given Michigan insurers tax credits on association payments, the Department should allow such credits when computing the tax on the out-of-state insurers' hypothetical Michigan twins, under the scheme of MCL 500.746a. However, since the plaintiffs never claimed such a credit, this did not otherwise invalidate the decision of the defendant to disallow the addition of SBT credits into the retaliatory tax computation.