

STATE OF MICHIGAN
COURT OF APPEALS

PIERSON TOWNSHIP,

Plaintiff-Appellant,

v

CENTRAL SANITARY LANDFILL, INC.,

Defendant-Appellee.

UNPUBLISHED

February 7, 1997

No. 188060

LC No. 94-00S595-CZ

Before: Wahls, P.J., and Young and J.H. Fisher,* JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition to defendant pursuant to MCR 2.116(C)(10) in this Headlee Amendment case. We reverse.

Plaintiff township enacted an ordinance pursuant to MCL 299.424a; MSA 13.29(24a) (currently MCL 324.11532; MSA 13A.11532), which provided for the collection of landfill impact fees to be levied on solid waste entering landfills located within its boundaries. This ordinance was not submitted to a vote of the township's eligible voters. Defendant, a corporation which operates a landfill within plaintiff's borders, ceased to pay its landfill impact fee and was alleged to have understated its landfill impact fee liability in past payments, triggering the instant litigation.

Plaintiff argues that the trial court erred in ruling that plaintiff's landfill impact fee was a tax rather than a fee. We agree with plaintiff in part and reverse.

A motion for summary disposition under MCR 2.116(C)(10) tests the factual support for a claim and should be granted only when it is impossible for the claim to be supported at trial because of a deficiency that cannot be overcome. *Osman v Summer Green Lawn Care, Inc.*, 209 Mich App 703, 705-706; 532 NW2d 186 (1995). In ruling on the motion, the trial court must consider not only the pleadings but also any depositions, affidavits, admissions, or other documentary evidence submitted by the parties. *Id.*, p 706. In deciding such a motion, the court must give the benefit of reasonable doubt to the nonmovant and determine whether a record might be developed that would leave open an issue

* Circuit judge, sitting on the Court of Appeals by assignment.

upon which reasonable minds may differ. *Id.* Before judgment may be granted, the court must be satisfied that it is impossible for the claim to be supported by evidence at trial. *Id.* In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position on a motion for summary disposition by affidavits, depositions, admissions, or other documentary evidence. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

The Headlee Amendment prohibits tax increases by both state and local governments without direct voter approval. Const 1963, art 9, § 25; *Airlines Parking, Inc v Wayne Co*, 452 Mich 527, 532-533; 550 NW2d 490 (1996). More specifically, the Headlee Amendment requires that a proposal by local government to levy a new tax or increase the rate of an extant tax beyond the limit imposed by law must be approved by a majority of the local voters. Const 1963, art 9, § 31; *Airlines Parking, supra*, p 533. Where revenue generated by a regulatory “fee” exceeds the cost of regulation, the “fee” is actually a tax in disguise. *Gorney v City of Madison Heights*, 211 Mich App 265, 268; 535 NW2d 263 (1995). It is not disputed that, if plaintiff’s landfill impact fee is a tax, rather than a fee, then plaintiff’s ordinance violates the Headlee Amendment.

This case is distinguishable from *North Star Line v Grand Rapids*, 259 Mich 654; 244 NW 192 (1932). In that case, the Court held that the State had occupied “the whole field relative to regulating motor vehicles as common carriers on the highways of this State,” subject only to a limitation which did not suffice to save the defendant’s ordinance. *Id.*, p 259. Here, on the other hand, the Legislature did not preempt the field because it specifically permitted plaintiff to impose an impact fee. MCL 299.424a(1); MSA 13.29(24a)(1) (currently MCL 324.11532(1); MSA 13A.11532(1)). Contrary to defendant’s assertion that *any* revenues raised by plaintiff’s ordinance must be a tax, the appropriate consideration is whether the revenue generated by plaintiff’s ordinance exceeds the actual cost of regulation. *Gorney, supra*, p 268.

Because plaintiff’s ordinance was a legislative enactment, defendant bore the burden of overcoming its presumptive constitutionality. *Id.*, p 267. Despite defendant’s submission of a County Board of Commissioners’ resolution detailing a separate, county-level landfill fee scheme that would have disbursed some fee revenues to defray plaintiff’s costs arising from defendant’s landfill, no evidence was presented on what plaintiff’s actual landfill-related costs were, or on the activities that plaintiff actually engaged in with regard to landfills like defendant’s within its borders. Giving the benefit of reasonable doubt to plaintiff, defendant failed to present sufficient evidence to overcome the ordinance’s presumptive constitutionality. Accordingly, the trial court erred in granting defendant’s motion for summary disposition. *Quinto, supra*, p 362; *Gorney, supra*, p 267. We take no position as to whether defendant’s motion would be properly granted with a more developed factual record.

Reversed.

/s/ Myron H. Wahls
/s/ Robert P. Young, Jr.
/s/ James H. Fisher