

STATE OF MICHIGAN
COURT OF APPEALS

DANIEL W. RONEY

Plaintiff-Appellant,

v

A. SHELTON TRUCKING AND RIGGING, INC.,

Defendant,

and

GENERAL MOTORS CORPORATION,

Garnishee Defendant-Appellee.

Before: Jansen, P.J., and Reilly and W.C. Buhl*, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition in favor of garnishee defendant pursuant to MCR 2.116(C)(10). We affirm.

This appeal stems from an underlying action by plaintiff to collect on a note which defendant A. Shelton Trucking & Rigging, Inc. ("Shelton") executed in favor of plaintiff. Plaintiff obtained a money judgment against Shelton, and attempted to satisfy that judgment through several garnishments. After plaintiff successfully satisfied a portion of his judgment, plaintiff served a writ of garnishment on General Motors Corporation ("GM"). Shelton had previously been hired by GM's freight broker, Xpresssystems, Inc., to perform motor carrier services for GM. GM filed a disclosure claiming that it was not indebted to Shelton because it already paid Xpresssystems, with the understanding that Xpresssystems forwarded payment to Shelton.

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

Plaintiff claims that Shelton was a motor common carrier which filed public tariffs with the Interstate Commerce Commission (ICC). Plaintiff claims that these tariffs were binding upon GM, that GM was charged with notice of these tariffs, and that such tariffs provided that GM, as the shipper, was liable for payment to plaintiff, the motor carrier, even in the event that GM's intermediary failed to make payment to plaintiff. GM, on the other hand, argues that it is not indebted to Shelton and cannot be held liable as a garnishee defendant because of the doctrine of equitable estoppel. GM further maintains that plaintiff's attempt to obtain monies through a tariff is a question properly reserved to the ICC.

We find the case of *Olson Distributing Systems, Inc v Glasurit America, Inc*, 850 F2d 295 (CA 6, 1988), instructive. In that case, the court held that the doctrine of equitable estoppel barred the carrier's claim for payment from the shipper where the shipper paid its forwarding agent in full, the forwarding agent absconded with the money without paying the carrier, and the carrier waited two to three months after final delivery service to notify the shipper that the forwarding agent did not make any payments to the carrier. The court held that the shipper could not be required to double-pay because the carrier was in the best position to reduce the loss had it notified the shipper sooner that it was not receiving payment from the forwarding agent.

Similarly, it is undisputed in the instant case that GM paid its intermediary, Xxpressystems¹, in full. GM made full payment before plaintiff, chairperson of Shelton, notified GM in September 1993, that Shelton was never paid by Xxpressystems, approximately four months after plaintiff obtained judgment against Shelton. Shelton's work for GM ended in September 1992. Until the time that plaintiff notified GM of nonpayment one year later, GM operated under the impression that Xxpressystems paid Shelton for its work. Since plaintiff was chairperson of Shelton while the company was in business, plaintiff should have known earlier than one year after completion of the contract services that his company was not paid for its work. Plaintiff was in the best position to notify GM of the nonpayment. Had plaintiff done so, GM could have remitted payment directly to Shelton, thus reducing the loss. We agree with the trial court that GM should not be forced to twice pay for its carrier services. The doctrine of equitable estoppel operates to bar plaintiff's claim. See, e.g., *Soltis v First of America Bank-Muskegon*, 203 Mich App 435, 444; 513 NW2d 148 (1994).

Affirmed. Garnishee defendant, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Kathleen Jansen
/s/ Maureen Pulte Reilly
/s/ William C. Buhl

¹ Plaintiff obtained his judgment on May 11, 1993. Xxpressystems ceased business operations sometime in 1994. Plaintiff served his writ of garnishment on GM on February 20, 1995. It does not appear that Xxpressystems is collectible.