

STATE OF MICHIGAN
COURT OF APPEALS

MOUNT HOLLYWOOD, LIMITED
PARTNERSHIP,

UNPUBLISHED
November 4, 1997

Plaintiff-Appellant,

v

LIQUOR CONTROL COMMISSION,

No. 194724
Court of Claims
LC No. 95-015748-CM

Defendant-Appellee.

Before: Young, P.J., and Markman and Smolenski, JJ.

PER CURIAM.

Plaintiff Mount Hollywood, Limited Partnership, appeals as of right an order granting summary disposition pursuant to MCR 2.116(C)(8) and (10) in favor of defendant Liquor Control Commission. We affirm.

Defendant canceled plaintiff's request for the transfer of a class C liquor license from the owner of the license, 27 Walnut, Inc., to plaintiff. Plaintiff then filed a complaint against defendant in the Court of Claims. The complaint asserted that plaintiff was the assignee of the license pursuant to an October, 1993, agreement entered into between plaintiff and 27 Walnut. (We note that this agreement was executed on behalf of 27 Walnut by James J. McCarthy, the president of and a shareholder in 27 Walnut. McCarthy is also a partner of plaintiff Mount Hollywood). The complaint further asserted, however, that a Frederick Duemling had obtained a judgment in Macomb Circuit Court ordering that the license should be transferred to Duemling. (We note that McCarthy, as president of 27 Walnut, had previously entered into security agreements with and assigned the license to Duemling in June, 1993). Plaintiff's complaint contended that defendant's transfer of the license to Duemling would constitute a taking of plaintiff's property without due process of law. Plaintiff's complaint, therefore, requested injunctive relief, specifically, an order enjoining defendant from transferring the license to any other person or entity except plaintiff and an order compelling defendant to transfer the license to plaintiff. Finally, plaintiff's complaint requested damages incurred as a result of defendant's failure to transfer the license to plaintiff and attempted transfer of the license to Duemling.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(8) and (10). Defendant contended that plaintiff, as a mere applicant, had no property interest protected by due process in the license.

The trial court granted defendant's motion on both grounds. In granting the motion pursuant to MCR 2.116(C)(10), the trial court refused both to issue an order compelling defendant to transfer the license to plaintiff and to reverse defendant's decision to deny plaintiff's application to transfer the license. In granting the motion pursuant to MCR 2.116(C)(8), the trial court found that plaintiff was "merely a potential transferee" and therefore had no property interest in the license. The trial court concluded that defendant, accordingly, had neither taken plaintiff's property nor denied plaintiff due process of law.

On appeal, plaintiff again argues that it has a property interest in the license that is protected by due process of law.

A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone. *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994). All factual allegations in support of the claim are accepted as true. *Marcelletti v Bathani*, 198 Mich App 655, 658; 500 NW2d 124 (1993). The motion should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. *Id.* In this case, plaintiff's due process claim was not so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. Rather, the conclusion that plaintiff had no protected property interest in the license could only have been made after considering matters outside the pleadings. Thus, we conclude that the trial court erred in granting summary disposition of plaintiff's due process claim under MCR 2.116(C)(8).

However, we will nevertheless affirm where the trial court has reached the right result, albeit for the wrong reason. *Zimmerman v Owens*, 221 Mich App 259, 264; 561 NW2d 475 (1997). Summary disposition of all or part of a plaintiff's claim pursuant to MCR 2.116(C)(10) is appropriate only when there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law. *Osman v Summer Green Lawn Care, Inc.*, 209 Mich App 703, 706; 532 NW2d 186 (1995).

With respect to due process, this Court explained as follows in *St Louis v Michigan Underground Storage Tank Financial Assurance Policy Bd*, 215 Mich App 69; 544 NW2d 705 (1996):

The federal and state constitutional guarantee that a person will not be deprived of life, liberty, or property without due process of law. . . . Invocation of the right to due process necessarily requires involvement of a life, liberty, or property interest. . . . For a property interest in a benefit . . . to exist, a person must have more than just a need, desire for, or a unilateral expectation of the benefit. . . . A claimant must have a legitimate claim of entitlement. [*Id.* at 74-75.]

The holder of a class C liquor license who seeks renewal of that license has an interest in property such that he is entitled to due process protection. *Bundo v Walled Lake*, 395 Mich 679, 683; 238 NW2d 154 (1976).. However, this Court has opined that the mere expectation that a new license applicant or transferee might possess does not rise to the level of a property interest entitled to due process protection. *Bunn v Liquor Control Comm’n*, 125 Mich 84, 90; 335 NW2d 913 (1983); *Barr v Pontiac City Comm’n*, 90 Mich App 446, 451; 282 NW2d 348 (1979).

In *Bunn*, the plaintiff sold the real and personal property that constituted his bar business to Lawson. *Id.* at 87. The sale agreements also contained a reassignment clause requiring Lawson to reassign the liquor licenses to plaintiff in the event of a default. *Id.* Lawson defaulted. *Id.* Plaintiff successfully foreclosed and reacquired the bar premises. *Id.* 88. In the meantime, the defendant liquor control commission had revoked Lawson’s licenses pursuant to the recommendation of the city commission. *Id.* at 87-88. The commission subsequently refused plaintiff’s request for a hearing concerning his petition to have the city recommend reinstatement of his liquor licenses. *Id.* at 88. Plaintiff filed a complaint and subsequently moved for summary judgment. *Id.* The trial court granted plaintiff’s motion and ordered the defendant liquor control commission to grant plaintiff’s application for the retransfer of his liquor licenses. *Id.* at 88, 93. The defendant liquor control commission appealed. *Id.*

This court affirmed in part and modified in part the grant of summary judgment. *Id.* at 95. This Court held that once the plaintiff foreclosed upon the bar property he held a reasonable and legitimate claim of entitlement to the liquor licenses that entitled him to due process protection. *Id.* at 92-93. In so holding, this Court noted that it was appropriate to look to the nature of the transaction and the agreements involved. *Id.* at 90 (citing *Barr, supra* at 453). This Court noted that a licensing rule prohibited a licensee from selling or transferring an interest in the underlying business licensed by the liquor control commission without the commission’s prior written approval. *Id.* at 93 (citing 1980 AACCS, R. 436.1023). Thus, this Court concluded:

In the present case, because plaintiff’s sale of the business, including the underlying contractual arrangements, was approved by the MLCC, his expectation of retransfer, should any problems arise, was legitimate. As the Court noted in *Perry Sindermann* [408 US 593, 601; 92 S Ct 2694; 33 L Ed 2d 570 (1972)], “[a] person’s interest in a benefit is a ‘property’ interest for due process purposes if there are such rules or mutually explicit understandings that support his claim or entitlement to the benefit and that he may invoke at a hearing.” [*Bunn, supra* at 93.]

Thus, like *Bunn*, we look to the nature of the transaction and the agreements involved in this case to determine whether plaintiff had a protected property interest in the license. Plaintiff places much emphasis on the existence of the assignment agreement. It is true that the courts have recognized that agreements to assign a liquor license are valid and enforceable. See, e.g., *Brown v Yousif*, 445 Mich 222, 232-233; 517 NW2d 727 (1994); *Commercial Acceptance Corp v Benvenuti*, 341 Mich 100, 103; 67 NW2d 129 (1954), overruled in part on another ground *Bundo, supra* at 691-692. However, such transfers are subject to the approval of the liquor control commission. MCL 436.17; MSA 18.988; *Brown, supra* at 232, n 18; *Bunn, supra* at 92. Indeed, in this case, the assignment agreement

explicitly provided that the assignment of the license was subject to defendant's approval. Thus, we disagree that the assignment agreement gave plaintiff anything more than a unilateral expectation of entitlement to the license.

Plaintiff also emphasizes the allegedly substantial investments it has made in the license. However, we can envision a situation wherein an applicant for a liquor license, who has no property interest in his desire for or expectation of obtaining a license, may also make substantial investments in preparation for a license. However, we conclude that such investment simply gave plaintiff a unilateral expectation of entitlement to the license.

What we fail to discern in plaintiff's argument is any indication that plaintiff relied on any rules promulgated by or mutually explicit understandings with defendant that would give rise to a legitimate expectation of entitlement to the license. Cf. *Bundo*, *supra* at 695 (reliance on a licensing practice that provided for renewal as a matter of course); *Bunn*, *supra* at 93 (reliance on the liquor control commission's approval of the original sale of the bar business, including the license reassignment clause). We acknowledge that defendant did direct plaintiff and 27 Walnut to amend the assignment contract, in relevant part, as follows:

That until such assignment, conveyance, and transfer is fully approved by the State of Michigan, and/or other required governmental agencies, Mount Hollywood shall have the right to operate the establishment pursuant to the License of 27 Walnut . .

However, where the amendment only gave plaintiff a right to operate under 27 Walnut's license pending defendant's approval, we conclude that the very amended language itself fails to raise a legitimate expectation that plaintiff was entitled to the license.

In summary, even granting the benefit of any reasonable doubt to plaintiff, we conclude that plaintiff failed to create a question of fact concerning whether it had a legitimate claim of entitlement to the license. *Stehlik v Johnson (On Rehearing)*, 206 Mich App 83, 85; 526 NW2d 633 (1994). Accordingly, we conclude that the trial court correctly concluded that plaintiff did not have a protected property interest in the license.

In *Bunn*, this Court held that the proper remedy for the failure to accord the plaintiff a due process hearing on his transfer application was not an order directing the liquor control commission to grant the transfer, but rather was a remand for a due process hearing. *Id.* at 93. Thus, in this case, even if we had held that plaintiff had a protected property interest, the proper remedy would not be an order compelling defendant to transfer the license to plaintiff, but rather would be to simply remand to defendant for a due process hearing. However, we have concluded that plaintiff has no protected property interest. Therefore, we need not remand for a due process hearing. Because there is no need for a due process hearing, we cannot say on the facts of this case that the trial court abused its discretion in failing to grant plaintiff's requested injunctive relief. *Soergel v Preston*, 141 Mich App 585, 590; 367 NW2d 366 (1996); *Bunn*, *supra*. We decline plaintiff's invitation to become enmeshed in other litigation that is irrelevant to the resolution of the merits of the limited issues raised in this appeal.

We likewise decline plaintiff's invitation to review defendant's final administrative decision to cancel plaintiff's transfer request where the proper procedure for such review was a direct appeal of that decision. See, e.g., *J&P Market, Inc v Liquor Control Comm'n*, 199 Mich App 646; 502 NW2d 374 (1993).

Affirmed.

/s/ Robert P. Young, Jr.

/s/ Stephen J. Markman

/s/ Michael R. Smolenski