

STATE OF MICHIGAN
COURT OF APPEALS

PARKWOOD LIMITED DIVIDEND HOUSING
ASSOCIATION,

Plaintiff-Appellant,

v

STATE HOUSING DEVELOPMENT
AUTHORITY,

Defendant-Appellee.

UNPUBLISHED
October 26, 2001

No. 218433
Wayne Circuit Court
LC No. 98-839763-CK

PARKWOOD LIMITED DIVIDEND HOUSING
ASSOCIATION,

Plaintiff-Appellant,

v

STATE HOUSING DEVELOPMENT
AUTHORITY,

Defendant-Appellee.

No. 229448
Court of Claims
LC No. 99-017226-CM

Before: Cooper, P.J., and Sawyer and Owens, JJ.

COOPER, J. (*dissenting*).

I respectfully disagree with the majority's conclusion that proper subject matter jurisdiction in this case was in the circuit court. Rather, I believe that this action would have ultimately resulted in money damages and was properly before the Court of Claims. MCL 600.6419; 600.6419a. "[A] declaratory judgment is appropriate in the Court of Claims only if the underlying dispute or controversy is of a nature lending itself to an eventual remedy in money damages against the state or one of its branches." *77th Dist Judge v Michigan*, 175 Mich App 681, 700; 438 NW2d 333 (1989). Moreover, the Supreme Court in *Silverman, supra* at 217, specifically disagreed with the theory that declaratory and monetary claims, based on the same underlying conflict, could be brought in the circuit court and court of claims respectively.

Rather, the *Silverman* court held that both claims must be filed in the court of claims as it is capable of deciding the case as a whole. *Id.*

I further believe that any ruling allowing plaintiff sole possession of the escrow accounts would amount to monetary damages. MCL 125.1493(b). Section 1493(b) enabled defendant to establish the maximum return of six percent per fiscal year available to plaintiff, provided in section 23(b) of the parties regulatory agreement, on any of the project's assets or income. A decision that plaintiff would be entitled to the money in the accounts, if it paid off the mortgage, would effectuate an eventual money judgment against defendant. However, § 1493(b) also provides that upon plaintiff's dissolution, any surplus money in excess of the maximum return belongs to defendant.

Even if I were to accept the argument that this money properly belongs to plaintiff, which I do not, this situation is analogous to that of an escrow agent holding a good faith deposit for a client. If that client were to file in circuit court, asking for its rights to have the money returned, it would clearly be considered a complaint for money damages and not a declaratory judgment.

Thus, I would affirm the decision of the circuit court.

/s/ Jessica R. Cooper