STATE OF MICHIGAN

COURT OF APPEALS

HIGHLAND-HOWELL DEVELOPMENT CO., LLC. Plaintiff-Appellant, V TOWNSHIP OF MARION, Defendant-Appellee.	UNPUBLISHED November 19, 2002 No. 231937 Livingston Circuit Court LC No. 98-016767-CZ

Before: Owens, P.J., and Talbot and Meter, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from an order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(4). We reverse and remand. We decide this case without oral argument pursuant to MCR 7.214(E).

In count I of plaintiff's amended complaint[1], plaintiff sought damages based on defendant's alleged breach of a promise to construct a sewer line on plaintiff's property. Plaintiff alleged that that the promise was made as part of defendant's creation of a special assessment district. Count II was a direct challenge to the special assessment.[2]

In its motion for summary disposition, defendant contended that plaintiff's complaint, as a whole, fell within the Michigan Tax Tribunal's exclusive jurisdiction. The trial court agreed and dismissed both counts.

On appeal, plaintiff contends that the trial court erred in granting defendant's motion for summary disposition as to count I. Generally, we review de novo a trial court's decision on a motion for summary disposition. *Travelers Ins Co v Detroit Edison Co*, 465 Mich 185, 205; 631 NW2d 733 (2001). "Jurisdictional questions under MCR 2.116(C)(4) are questions of law that are also reviewed de novo." *Id.*

[1] An amended complaint supersedes an earlier complaint. *Nippa v Bottsford Gen Hosp*, 251 Mich App 664, 679; 651 NW2d 103 (2002), citing MCR 2.118(A)(4). Accordingly, we are not persuaded that there is any relevance to plaintiff's original complaint.

[2] Plaintiff has abandoned its challenge to the trial court's dismissal of count II.

Our determination of whether the trial court erred in granting defendant's motion for summary disposition requires us to consider the scope of the Tax Tribunal's exclusive jurisdiction. MCL 205.731 provides that the Tax Tribunal has exclusive jurisdiction over the following:

> (a) A proceeding for direct review of a final decision, finding, ruling, determination, or order of an agency relating to assessment, valuation, rates, special assessments, allocation, or equalization, under property tax laws.
>
> (b) A proceeding for refund or redetermination of a tax under the property tax laws.

Guiding our review are two Supreme Court decisions explaining the scope of the Tax Tribunal's exclusive jurisdiction: *Wikman v Novi*, 413 Mich 617; 322 NW2d 103 (1982) and *Romulus Cty Treasurer v Wayne Co Drain Comm'r*, 413 Mich 728; 322 NW2d 152 (1982).

In *Wikman*, the plaintiffs sought injunctive relief in circuit court claiming that special assessments for paving a public roadway were determined in an arbitrary and inequitable manner. *Wikman, supra* at 630. The *Wikman* Court ruled that the Tax Tribunal had exclusive jurisdiction over the matter because it involved "direct review of the governmental unit's decision concerning a special assessment for a public improvement." *Id.* at 626.

In *Romulus*, the plaintiffs alleged that the defendants "committed a constructive fraud by collecting money for administrative expenses through special assessment procedures." *Romulus, supra* at 733. The *Romulus* Court noted that the *Romulus* plaintiffs' case differed from the *Wikman* case because the latter involved a claim that "the assessments were not levied according to the benefits received." *Id.* at 736. The *Romulus* Court further noted:

> The expertise of the tribunal members can be seen to relate primarily to questions concerning the factual underpinnings of taxes. In cases not [sic] involving special assessments, the tribunal's membership is well-qualified to resolve the disputes concerning those matters that the Legislature has placed within its jurisdiction: assessments, valuations, rates, allocation and equalization. In special assessment cases, the tribunal is competent to ascertain whether the assessments are levied according to the benefits received. Although the tribunal, in making its determinations, will make conclusions of law, MCL 205.751, the matters within its jurisdiction under MCL 205.731 most clearly relate to the basis for a tax, and much less clearly to the proper uses which may be made of the funds once collected. Questions concerning how the funds collected may be expended do not appear to be implicated in disputes related to assessments, valuations, rates, allocation and equalization. [*Id.* at 737-738.]

Thus, because the constructive fraud claim raised in *Romulus* did not fall within the Tax Tribunal's typical areas of expertise, as evidenced by MCL 205.731, the *Romulus* Court ruled that the Tax Tribunal did not have exclusive jurisdiction over the claim. *Id.* at 738.

Here, the *Wikman* and *Romulus* decisions plainly indicate that the Tax Tribunal has exclusive jurisdiction over any challenge to a special assessment. Accordingly, plaintiff wisely abandoned count II.

However, count I did not challenge the special assessment, nor did it challenge the improvements that were actually made as part of that special assessment. Instead, count I alleged that defendant breached its promise to make an improvement that was not part of the final special assessment district. In other words, plaintiff sought damages for a breach of contract. As such, we believe that count I was more analogous to the constructive fraud claim in *Romulus,* than the direct challenge to the special assessment in *Wikman.* As a result, count I did not raise legal issues falling within the Tax Tribunal's area of expertise. Accordingly, we conclude that the trial court erred in ruling that count I fell within the Tax Tribunal's exclusive jurisdiction and in dismissing count I pursuant to MCR 2.116(C)(4). *Travelers, supra* at 205.

Alternatively, defendant contends that, even if the trial court erred in granting summary disposition pursuant to MCR 2.116(C)(4), summary disposition as to count I was proper pursuant to MCR 2.116(C)(8). In fact, defendant argued below that count I failed to state a claim upon which relief could be granted. Although the trial court did not rule on this argument, it does present an alternate basis for affirming the trial court's decision. Indeed, we may affirm where the trial court reaches the right result, but for the wrong reason. *People v Jory*, 443 Mich 403, 425; 505 NW2d 228 (1993).

In *Beaudrie v Henderson*, 465 Mich 124, 129-130; 631 NW2d 308 (2001), our Supreme Court explained:

> A motion for summary disposition brought under MCR 2.116(C)(8) tests the legal sufficiency of the complaint on the basis of the pleadings alone. The purpose of such a motion is to determine whether the plaintiff has stated a claim upon which relief can be granted. The motion should be granted if no factual development could possibly justify recovery.

"All well-pleaded facts are accepted as true and are construed in the light most favorable to the nonmoving party." *Madejski v Kotmar Ltd*, 246 Mich App 441, 444; 633 NW2d 429 (2001).

Count I alleged in pertinent part: "To induce Plaintiff to purchase the property and develop it for manufactured homes, Defendant repeatedly promised Plaintiff that Defendant would install a usable east-west sewer line through Plaintiff's property by April, 1997." Plaintiff also alleged that defendant "breached its promise" to build the sewer line.

However, not all promises rise to the level of an enforceable contract. "[T]he essential elements of a valid contract are (1) parties competent to contract, (2) a proper subject matter, (3) a legal consideration, (4) mutuality of agreement, and (5) mutuality of obligation." *Thomas v Leja*, 187 Mich App 418, 422; 468 NW2d 58 (1991).

Defendant contends that count I failed to state a claim upon which relief could be granted because it did not allege "mutuality of obligation." In *Reed v Citizens Ins Co*, 198 Mich App 443, 449; 499 NW2d 22 (1993), we noted: "'[m]utuality of obligation' means that both parties to an agreement are bound or neither is bound, that is, mutuality is not present where one party is

bound to perform, but not the other." The *Reed* panel further opined that mutuality of obligation essentially means that there must be "consideration." *Id.*, quoting *Domas v Rossi*, 52 Mich App 311, 315; 217 NW2d 75 (1974). Whether there was consideration for a promise is a question of fact. *Haji v Prevention Ins Agency, Inc*, 196 Mich App 84, 87-88; 492 NW2d 460 (1992).

Here, plaintiff's allegations could be construed as either: (i) defendant only promised to install the sewer line if plaintiff purchased the property; or (ii) after some discussion, defendant and plaintiff agreed that plaintiff would purchase the property and defendant would install a sewer line on the property. If the trier of fact found the former, then there is some merit to defendant's contention that plaintiff was never obligated to do anything; if defendant was the only party obligated to perform, there was no mutuality of obligation. However, if the trier of fact found the latter, then plaintiff pleaded a claim with both consideration and mutuality of obligation. Accordingly, there is, at the very least, a factual question as to whether there was mutuality of obligation or consideration. In other words, this is not a case where no factual development could possibly justify recovery. *Beaudrie, supra* at 129-130. Consequently, summary disposition pursuant to MCR 2.116(C)(8) was premature. *Id.*; *Madejski, supra* at 444.

Moreover, plaintiff contends that count I stated a valid claim for promissory estoppel. In *Ardt v Titan Ins Co*, 233 Mich App 685, 692; 593 NW2d 215 (1999), quoting *Mt Carmel Mercy Hosp v Allstate Ins Co*, 194 Mich App 580, 589; 487 NW2d 849 (1992), we recognized that the following four elements make up a promissory estoppel claim:

> (1) a promise, (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of promisee, (3) which in fact produced reliance or forbearance of that nature, and (4) in circumstances such that the promise must be enforced if injustice is to be avoided.

Here, in regard to (1), plaintiff's complaint alleged that defendant promised plaintiff that it would construct an east-west sewer line on the property if plaintiff purchased it. As such, there was an allegation of a promise. In regard to (2), plaintiff's complaint alleged that defendant was already in the process of planning local sewer improvements. Accordingly, there were allegations supporting the reasonableness of plaintiff's reliance on defendant's promise. In regard to (3), plaintiff pleaded "reliance" by alleging that it relied on defendant's promise by both purchasing the property and not seeking alternate plans for a sewer system. Finally, in regard to (4), the complaint alleged that plaintiff's market share has been substantially reduced while waiting for defendant to honor its promise. Thus, count I was sufficiently pleaded to raise questions of fact regarding each promissory estoppel element. Therefore, we find further support for our conclusion that summary disposition pursuant to MCR 2.116(C)(8) was premature. *Beaudrie, supra* at 129-130; *Madejski, supra* at 444.

Reversed in part and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Donald S. Owens
/s/ Michael J. Talbot
/s/ Patrick M. Meter