STATE OF MICHIGAN

COURT OF APPEALS

TOMRA OF NORTH AMERICA, INC., Plaintiff-Appellant, v DEPARTMENT OF TREASURY, Defendant-Appellee.	UNPUBLISHED November 17, 2016 Nos. 328545 & 329932 Court of Claims LC Nos. 14-000091-MT; 14-000185-MT; 15-000151-MT

Before: RONAYNE KRAUSE, P.J., and O'CONNELL and GLEICHER, JJ.

PER CURIAM.

In these consolidated appeals, Tomra of North America, Inc. appeals from the Court of Claims' grant of summary disposition in the Department of Treasury's favor, dismissing Tomra's challenges to the department's assessment of, and refusal to refund, sales taxes. Because the department admitted in response to Tomra's complaint that Tomra had paid its sales tax in full, we reverse in Docket No. 328545 the summary disposition order based on Tomra's alleged failure to pay the subject tax before protesting it, and we remand for further proceedings. Tomra's 2015 complaint would not have been required had the proceedings related to the 2014 complaints been resolved on the merits. As this opinion reinstates those actions, we dismiss Docket No. 329932 as moot.

I. FACTS

Tomra sells, leases, and repairs bottle return machines found in grocery stores. In connection with the sale and lease of these machines, Tomra collected and remitted sales tax to the department. It argued, however, that certain of its transactions were exempt from sales and use tax and it therefore did not collect and remit those amounts. In 2011, the department audited Tomra's sales and use taxes for the period October 1, 2003 through December 31, 2008 and determined that Tomra had underpaid. Tomra requested an informal conference to appeal the bill for underpaid taxes and thereafter filed a claim for an additional refund of $2,000,000. The department denied this request and upheld its finding of underpayment. On May 8, 2014, Tomra filed its first complaint in the Court of Claims to challenge the allegedly underpaid sales tax bill.

On May 9, the department issued final assessments for the underpaid sales and use taxes for the audited period—$829,114.15 for sales tax and $353,826.28 for use. As described in the Court of Claims' judgment, in June 2014, Tomra

mailed a letter and check to the Department. The subject line of the letter states that it is in regard to:

> Use Tax for Tax Period: October 1, 2003 to December 31, 2008
> Final Bill for Taxes Due (Final Assessment)
> Issued: May 9, 2014
>
> In the body of the letter, [Tomra] stated, "In connection with the above-referenced Final Bill for Taxes Due (Final Assessment), the Taxpayer is making a payment UNDER PROTEST in the amount of $829,114.15. **This payment should be applied first to outstanding tax due and then to interest due.**" A check in the amount of $829,114.15 accompanied the letter.

The department applied the $829,114.15 payment first to the use tax and then to the sales tax. This left $353,826.28 owing of Tomra's sales tax debt. Tomra filed a second complaint in the Court of Claims on July 29, 2014, challenging the May 9 tax assessment. Tomra averred in paragraph 41, "On June 19, 2014, [Tomra] paid in full Final Assessment No. TH82977 under protest in the amount of $829,144.15." The department answered, "Treasury admits the allegations in paragraph forty-one (41)." The Court of Claims consolidated the actions.

The department sought summary dismissal based on MCL 205.22(2), which at that time provided, "In an appeal to the court of claims, the appellant shall first pay the tax, including any applicable penalties and interest, under protest and claim a refund as part of the appeal."[1] Noting the $353,826.28 sales tax deficit, the department questioned the court's jurisdiction to hear the matter. The Court of Claims agreed and dismissed both 2014 complaints. Tomra appeals those rulings in Docket No. 328545.

Tomra claims that it did not learn of the error in its June 2014 letter regarding the apportionment of its 2014 payment until after the close of discovery, in March 2015. Tomra requested that the department reapportion its payments to cover the sales tax. When the department refused, Tomra filed a new complaint in the Court of Claims, describing the department's apportionment of its payment as causing the sales tax deficit and reasserting its request for a tax refund. The Court of Claims dismissed this complaint as well and Tomra appeals in Docket No. 329932.

II. ADMISSION BY THE DEPARTMENT

In relation to its 2014 complaints, Tomra contends that the Court of Claims should have held the department to its admission in its July 2014 answer and therefore denied its summary disposition motion. The department never sought to amend its answer to recant its admission that Tomra had paid its 2014 sales tax. Accordingly, Tomra asserts, the Court of Claims erred in

[1] This line was removed from the statute by 2015 PA 79.

dismissing Tomra's complaints on the ground that the challenged sales tax had not been paid in full.

We review de novo a trial court's decision on a summary disposition motion. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). We also review de novo the interpretation and applicability of a statute, like MCL 205.22. *Adams Outdoor Advertising, Inc v City of Holland*, 463 Mich 675, 681; 625 NW2d 377 (2001). However, we review for an abuse of discretion a magistrate's general conduct of litigation, see *In re King*, 186 Mich App 458, 66; 465 NW2d 1 (1990), such as the court's decision whether to recognize and follow a stipulation of the parties. See *Kosch v Kosch*, 233 Mich App 346, 352; 592 NW2d 434 (1999).

A defendant is normally bound to its admissions in its answer to a complaint. See MCR 2.111(E)(1); *Lichnovsky v Ziebart Intern Corp*, 123 Mich App 605, 608; 332 NW2d 628 (1983). A stipulation is an "agreement, admission or concession made in a judicial proceeding by the parties . . . respecting some matter incident thereto." *Staff v Johnson*, 242 Mich App 521, 535; 619 NW2d 57 (2000) (quotation marks and citation omitted). Parties who have stipulated to certain facts thereby bind the proceedings. *Id*. However, parties may not stipulate to inherently flawed proceedings. *Harris v Sweetland*, 48 Mich 110, 112; 11 NW 830 (1882) (instructing that "neither the common law nor any statute has ever . . . given the least countenance to the notion that parties by stipulation might require the . . . violation of the fundamental principles of procedure").

The Court of Claims explained its disinclination to hold the department to its admission that Tomra had paid the disputed sales tax in full as follows:

> It is true that, as a general matter, parties are bound by their pleadings. However, defects in subject-matter jurisdiction cannot be waived. Nor may subject-matter jurisdiction be granted by implied or express stipulation of the litigants. In light of the undisputed facts, holding the Department to its answer would be akin to allowing the parties to stipulate to this Court's jurisdiction. The Court cannot allow the parties to do so.

Tomra also urged application of equitable estoppel,[2] which the court rebuffed with similar reasoning:

> [T]he Court rejects [Tomra's] argument that based on its admission, the Department should be equitably estopped from asserting a lack of subject-matter jurisdiction. As [Tomra] acknowledges, "subject-matter jurisdiction cannot be acquired by estoppel." [Tomra] argues that it is not attempting to invoke estoppel to

[2] "Equitable estoppel arises where one party has knowingly concealed or falsely represented a material fact, while inducing another's reasonable reliance on that misapprehension, under circumstances where the relying party would suffer prejudice if the representing or concealing party were subsequently to assume a contrary position." *Adams v Detroit*, 232 Mich App 701, 708; 591 NW2d 67 (1998).

> prevent the Department from arguing a lack of subject-matter jurisdiction, but rather, from arguing the factual matter of whether the sales tax assessment was paid in full. This is a distinction without a difference, as it is the very fact of full payment that confers jurisdiction on this Court.

Had this case truly centered on subject matter jurisdiction, the Court of Claims' concerns would be well founded. A court's subject-matter jurisdiction is an "absolute requirement" for a valid judicial proceeding. *In re AMB*, 248 Mich App 144, 166; 640 NW2d 262 (2001). The existence of subject matter jurisdiction is a question of law. *W A Foote Mem Hosp v Dep't of Pub Health*, 210 Mich App 516, 522; 534 NW2d 206 (1995). Accordingly, a court cannot acquire subject-matter jurisdiction by consent, conduct, waiver, or estoppel. *AMB*, 248 Mich App at 166. A court should be vigilant in respecting the limits of its jurisdiction. *Straus v Governor*, 230 Mich App 222, 227; 583 NW2d 520 (1998).

But the payment of protested taxes as a prerequisite to filing suit is not an element of subject matter jurisdiction. "Jurisdiction of the subject matter is the right of the court to exercise judicial power over a class of cases, not the particular case before it; to exercise the abstract power to try a case of the kind or character of the one pending." *Altman v Nelson*, 197 Mich App 467, 472; 495 NW2d 826 (1992). In contrast, "Error in the determination of questions of law or fact upon which the court's jurisdiction in the particular case depends, the court having general jurisdiction of the cause and the person, is error in the exercise of jurisdiction." *In re Hatcher*, 443 Mich 426, 438-439; 505 NW2d 834 (1993) (quotation marks and citations omitted). The department's admission that Tomra paid its sales tax assessment in full did not bear on the question whether the case was of the class or character over which the Court of Claims had the authority to hear and decide. If Tomra had not paid the protested taxes, the court might have erred in exercising its jurisdiction, but the case would still have been of the type within the court's subject matter jurisdiction. The Court of Claims erred in ruling otherwise.

And sufficient evidence backed up the department's admission. Tomra acknowledges that the subject line of its letter erroneously instructed the department to apply its payment to the use tax shortage. However, the amount remitted exactly matched the sales tax bill. The department impliedly acknowledged that it understood Tomra's intent by admitting that Tomra had paid its sales tax shortfall in full. Because the admission bore a reasonable relation to the undisputed facts, in fact resolving on its face the ambiguity arising from the reference to use tax in Tomra's letter, this was not a case where the court was obliged to reject a stipulation as incomplete or otherwise plainly at variance with reality. See *Dana Corp v Employment Security Comm*, 371 Mich 107, 110-111; 123 NW2d 277 (1963).

For these reasons, we reverse the decision of the Court of Claims' summary dismissal of Tomra's 2014 complaints and remand for further proceedings consistent with this opinion. In light of this resolution, we need not reach Tomra's remaining claims of error.

In Docket No. 328545, we reverse and remand for further proceedings consistent with this opinion. We dismiss Docket No. 329932 as moot. We do not retain jurisdiction.

/s/ Amy Ronayne Krause
/s/ Peter D. O'Connell
/s/ Elizabeth L. Gleicher