

STATE OF MICHIGAN
COURT OF APPEALS

CHRYSLER FINANCIAL SERVICES
AMERICAS, LLC f/k/a DAIMLERCHRYSLER
FINANCIAL SERVICES AMERICAS LLC,

UNPUBLISHED
August 7, 2012

Plaintiff-Appellant,

v

DEPARTMENT OF TREASURY,

No. 304105
Court of Claims
LC No. 11-000007-MT

Defendant-Appellee,

and

STATE TREASURER and STATE OF
MICHIGAN,

Defendants.

Before: GLEICHER, PJ., and SAAD and BECKERING , JJ.

PER CURIAM.

Plaintiff Chrysler Financial Services Americas, LLC (“Chrysler Financial”) appeals as of right the Michigan Court of Claims’s order granting defendant the Department of Treasury’s (“the Department”) motion for summary disposition. The Department moved the court for summary disposition under MCR 2.116(C)(4), (6), and (7). The court held that this action arose from the same transaction or occurrence as an earlier action filed by Chrysler Financial (Case No. 10-000017-MT) and that it should have been joined with that original action. Therefore, the court concluded that it lacked subject-matter jurisdiction to decide the case and granted the Department’s motion. Because we conclude that both the present case and the earlier action filed by Chrysler Financial are based on substantially the same cause of action, we affirm.

I. PERTINENT FACTS

DaimlerChrysler Financial Services Americas, LLC's¹ ("DaimlerChrysler Financial") 2005 Michigan tax return indicated that DaimlerChrysler Financial was due a refund. On July 10, 2006, the Department issued a "State of Michigan Remittance Advice" notifying DaimlerChrysler Financial that it seized \$1,466,041.94 owed to DaimlerChrysler Financial and applied the amount to the wage withholding tax accounts receivable of DaimlerChrysler Corporation. Similarly, on July 21, 2006, the Department notified DaimlerChrysler Financial that it seized \$400,791.10 due to DaimlerChrysler Financial and applied that amount to DaimlerChrysler Corporation's wage withholding tax accounts receivable. DaimlerChrysler Financial did not appeal this decision by the Department. Three years passed.

On September 22, 2009, Chrysler Financial filed a "Petition for Claim of Refund" with the Department under MCL 205.30(2).² The petition demanded that the Department promptly refund, with interest, both the July, 10, 2006, and July 21, 2006, tax-refund payments that the Department intercepted to offset the DaimlerChrysler Corporation withholding obligations. In its petition, Chrysler Financial alleged that the payments were improperly seized and that the Department did not have the authority to intercept a tax-refund payment from Chrysler Financial to offset the debt of DaimlerChrysler Corporation, a separate legal entity.

On March 2, 2010, Chrysler Financial filed an action (Case No. 10-000017-MT) in the Court of Claims for a writ of mandamus and a declaratory judgment. It again alleged that the July 2006 tax-refund payments were improperly seized and that the Department did not have the authority to offset the obligation of DaimlerChrysler Corporation by intercepting Chrysler Financial's 2005 tax-refund payments.

Later, the Department moved for summary disposition under MCR 2.116(C)(4) on the basis that the Court of Claims lacked subject-matter jurisdiction; it argued that Chrysler Financial did not file its complaint within the 90-day time limit set forth in MCL 205.22(1).³

¹ DaimlerChrysler Financial Services Americas, LLC is Chrysler Financial's predecessor in interest.

² The statute of limitations governing MCL 205.30(2) is found in MCL 205.27a and provides the following:

(2) A deficiency, interest, or penalty shall not be assessed after the expiration of 4 years after the date set for the filing of the required return or after the date the return was filed, whichever is later. The taxpayer shall not claim a refund of any amount paid to the department after the expiration of 4 years after the date set for the filing of the original return. [MCL 205.27a(2).]

³ MCL 205.22(1) provides that a taxpayer may appeal a decision of the Department to the Court of Claims within 90 days of issuance of the decision: "A taxpayer aggrieved by an assessment,

Chrysler Financial moved for summary disposition under MCR 2.119(C)(9) and (10); it argued that the Department did not have the authority to intercept the refund payments and that it failed to assert a valid defense to Chrysler Financial's claim for a refund.

On January 7, 2011, Chrysler Financial filed in the Court of Claims the present action for a writ of mandamus and a declaratory judgment. It asked the Court of Claims to enter an order or judgment requiring the Department to pay Chrysler Financial the refund requested in its September 22, 2009, petition for refund or, alternatively, to issue a written determination on the refund petition.

On January 12, 2011, the Court of Claims granted the Department's motion for summary disposition in the first action (Case No. 10-000017-MT). The Court of Claims held that it did not have jurisdiction because the case was not filed within the statutory 90-day period allowed under MCL 205.22(1) to appeal an "assessment, decision, or order" of the Department. Chrysler Financial appealed the Court of Claims's decision to this Court. Chrysler Financial's principal argument was that the Department's offset of Chrysler Financial's 2005 refund payment was not an "assessment, decision, or order" of the Department and, therefore, that the 90-day limitation period under MCL 205.22(1) did not apply.

On February 9, 2011, the Department moved the Court of Claims for summary disposition in the present action under MCR 2.116(C)(4), (6), and (7). With respect to (C)(4), the Department argued that the Court of Claims did not have jurisdiction over the claim because Chrysler Financial failed to timely appeal the Department's offset of the refund within the appropriate 90-day period. The Department asserted that Chrysler Financial was simply trying to gain a new appeal period through the additional, improper September 22, 2009, refund petition. With respect to (C)(7), the Department asserted that the claim was barred by prior payment because there was no outstanding unpaid refund as Chrysler Financial's refund was processed in the normal course of business in 2006.⁴ With respect to (C)(6), the Department argued that it was entitled to summary disposition because there was another action pending in the Court of Appeals (Case No. 10-000017-MT) that involved the same parties, arose from the same subject matter, and sought the same remedy.

decision, or order of the department may appeal the contested portion of the assessment, decision, or order to the tax tribunal within 35 days, or to the court of claims within 90 days after the assessment, decision, or order."

⁴ Chrysler Financial's September 22, 2009, refund request was the second refund request stemming from its 2005 tax return. The first request was the return itself which has already been acted upon by the Department. Chrysler Financial filed its petition for refund with the Department under MCL 205.30(2), which provides in pertinent part:

A taxpayer who paid a tax that the taxpayer claims is not due may petition the department for refund of the amount paid within the time period specified as the statute of limitations in section 27a. *If a tax return reflects an overpayment or credits in excess of the tax, the declaration of that fact on the return constitutes a claim for refund.* [Emphasis added.]

On April 27, 2011, the Court of Claims granted the Department's motion for summary disposition in the present action. The Court of Claims held that this action arose from the same transaction or occurrence as the first action filed by Chrysler Financial (Case No. 10-000017-MT) and, thus, should have been joined with the original action. Therefore, the Court of Claims concluded that it did not have subject-matter jurisdiction.

On March 20, 2012, this Court affirmed the Court of Claims's ruling in the first action (Case No. 10-000017-MT) that the Department's interception of Chrysler Financial's 2005 tax-refund amounts and use of them to offset the DaimlerChrysler Corporation debt was a "decision" by the Department. *Chrysler Fin Servs Americas, LLC v Dep't of Treasury*, unpublished opinion per curiam of the Court of Appeals, issued March 20, 2012 (Docket No. 302299), slip op at 1. This Court concluded that the Court of Claims did not have subject-matter jurisdiction to hear the case because Chrysler Financial failed to bring its action within the 90-day period provided by MCL 205.22(1). *Id.*

II. ANALYSIS

Chrysler Financial argues that that the Court of Claims erred when it granted summary disposition in favor of the Department on the basis that the present case arose out of the same transaction as the first action filed by Chrysler Financial (Case No. 10-000017-MT). Chrysler Financial insists that this action and the first action (Case No. 10-000017-MT) are based upon different transactions. Specifically, Chrysler Financial asserts the first action arose from the Department's issuance of the remittance advices in July 2006 and its' actions pursuant to those notices but that the second action relates solely to the September 22, 2009, petition of refund. Furthermore, Chrysler Financial emphasizes that it does not seek the same relief in both actions. We reject this argument.

We review a decision to grant summary disposition de novo. *Fast Air, Inc v Knight*, 235 Mich App 541, 543; 599 NW2d 489 (1999). MCR 2.116(C)(6) provides that a motion for summary disposition can be granted if "[a]nother action has been initiated between the same parties involving the same claim." "MCR 2.116(C)(6) does not require that all the parties and all the issues be identical. Rather, the two suits must be between the same parties and involving the same claims. Thus, complete identity of the parties is not necessary, and the two suits must be based on the same or substantially the same cause of action." *JD Candler Roofing Co v Dickson*, 149 Mich App 593, 598; 386 NW2d 605 (1986) (internal quotation marks omitted), citing *Ross v Onyx Oil & Gas Corp*, 128 Mich App 660, 666-667; 341 NW2d 783 (1983); see also *Fast Air*, 235 Mich App at 545 n 1. Summary disposition under MCR 2.116(C)(6) is appropriate where [r]esolution of either action will require examination of the same operative facts." *Dickson*, 149 Mich App at 601.

We conclude that the Court of Claims properly granted summary disposition in favor of the Department because "[a]nother action [had] been initiated between the same parties involving the same claim." MCR 2.116(C)(6). Chrysler Financial initiated the present case while the first action (Case No. 10-000017-MT) was pending, and both cases involve the same parties: Chrysler Financial and the Department. See *id.* Moreover, both cases involve the same claim, i.e., they are "based on the same or substantially the same cause of action." See *id.*; *Dickson*, 149 Mich App at 598. Chrysler Financial's first action (Case No. 10-000017-MT) was

for a writ of mandamus and a declaratory judgment; Chrysler Financial argued that the Department did not have the authority to offset the obligation of DaimlerChrysler Corporation by intercepting Chrysler Financial's 2005 tax-refund payments and, therefore, requested payment of the refund amounts that the Department intercepted. Like the first action, Chrysler Financial in the present case filed a complaint for a writ of mandamus and a declaratory judgment and again argued that there was no legal basis for the Department to offset the refunds due to Chrysler Financial. Chrysler Financial in this case seeks payment of the refund amounts that the Department intercepted or, alternatively, an order requiring the Department to issue a determination on its September 22, 2009, petition for refund. Resolution of this case requires "examination of the same operative facts" as the first case: the Department's interception of the refunds due to Chrysler Financial to offset DaimlerChrysler Corporation's debt instead of paying the refunds to Chrysler Financial. See *Dickson*, 149 Mich App at 601.

Chrysler Financial seeks to distinguish the two cases on the basis of the type of relief sought. Chrysler Financial argues that in the first action (Case No. 10-000017-MT) it sought repayment of the offset amounts but that in the present action it seeks either (1) an order directing the Department to pay the refund or (2) a writ of mandamus requiring the Department to act upon its refund petition by issuing a determination. However, as discussed above, the appropriate consideration for this Court is the underlying facts of the cases. See *id.* Moreover, Chrysler Financial's pursuit in this case of a determination by the Department on the September 22, 2009, petition ultimately seeks the same relief as the first action: payment of the refund amounts intercepted by the Department. In its September 22, 2009, petition, Chrysler Financial argued that the Department did not have the authority to intercept the refund payments and sought payment of the refund amounts that the Department intercepted to offset the debt of DaimlerChrysler Corporation; this is the same allegation and relief sought by Chrysler Financial in the first action (Case No. 10-000017-MT). Whether brought under the context of the assertion that the Department wrongfully intercepted Chrysler Financial's refund payment to offset the debt of DaimlerChrysler Corporation or in the context of the Department's failure to act on the petition for refund (which itself seeks the same relief for essentially the same reasons as the first action), the causes of action are substantially the same. See *id.* at 598.

Accordingly, the Court of Claims properly granted summary disposition in favor of the Department. See MCR 2.116(C)(6). Given our resolution of this issue, we need not address Chrysler Financial's remaining arguments on appeal.

Affirmed.

/s/ Elizabeth L. Gleicher

/s/ Henry William Saad

/s/ Jane M. Beckering