STATE OF MICHIGAN

COURT OF APPEALS

MVW GAME, L.L.C., Plaintiff-Appellee,	UNPUBLISHED October 23, 2012
v	No. 304999 Oakland Circuit Court
MICHIGAN FILM OFFICE and MICHIGAN DEPARTMENT OF TREASURY, Defendants-Appellants.	LC No. 2010-111855-AA

Before: MURRAY, P.J., and CAVANAGH and STEPHENS, JJ.

PER CURIAM.

Defendants appeal as of right the trial court's order granting plaintiff's motion for summary disposition. We affirm.

I. BACKGROUND

Plaintiff was created as a single-purpose entity for the sole purpose of producing a "Man vs. Wild" video game based on the Discovery Channel's "Man vs. Wild" television series starring Bear Grylls. Plaintiff was set-up in Farmington Hills, Michigan by Scientifically Proven Entertainment, LLC, after defendant Michigan Film Office contacted SPE to inform SPE of the film production tax credit.

After opening its operations in December 2009, in March 2010 plaintiff filed an application with defendants for a Michigan film production tax credit. The application described the production project as a third-person action video game based on the Discovery Channel's television series "Man vs. Wild" and identified $400,798 in anticipated tax credits.

On June 24, 2010, the MFO mailed a letter to plaintiff dated June 8, 2010, advising plaintiff that its application for a Michigan film production credit was being denied:

> The film production credit statute requires that the applicant be an "eligible production company." Your application was denied because MVW Game, LLC, is not an "eligible production company" as we have interpreted the definition of that term under the statute. We have consistently maintained that the "eligible production company" with respect to a particular project is the entity in charge of making or producing the overall film or digital, media project. As a

> practical matter, this concept of overall control means that the applicant must have ownership of, and or control over, all of the intellectual property and other rights necessary to produce the production in its entirety. An applicant with less than overall control over the project is not an "eligible production company" eligible for the credit.
>
> Although MVW Game, LLC will retain ownership of the finished video game's source code and certain other intellectual property; it is clear from the contract submitted to us that MVW Game, LLC does not own or control all of the intellectual property and other rights necessary to develop and produce, in its entirety, the video game entitled "Man vs. Wild: The Game." The contract uses "work-for-hire" language and clearly indicates a vendor-type relationship between MVW Game, LLC and Crave Entertainment. Crave Entertainment retains the exclusive rights to manufacture, market, advertise, publish and distribute the finished product, and Crave Entertainment takes an exclusive license back from MVW Game, LLC to use its intellectual property. Accordingly, although MVW Game, LLC actually writes the game code and designs the technical and structural elements of the game, it does not own or control all of the rights necessary to produce the video game as an overall project.

Following defendants' denial of the film production tax credit, plaintiff appealed this decision by filing a complaint in Oakland Circuit Court. Thereafter, plaintiff filed a motion for summary disposition pursuant to MCR 2.116(C)(9) and (10), arguing that it met all the requirements of an "eligible production company" under MCL 208.1455 and that the MFO's statement that an applicant needed to "have ownership of, and or control over, all of the intellectual property and other rights necessary to produce the production" was contrary to the plain language of MCL 208.1455. In the alternative, plaintiff argued that even if the trial court determined that it was not an eligible production company, summary disposition was appropriate because defendants engaged in improper rule making in violation of the Administrative Procedures Act, MCL 24.201 *et seq*., by imposing additional requirements on applicants seeking to obtain a film production tax credit without properly promulgating any rules or guidelines.

After hearing oral arguments on the motion, the trial court issued an opinion and order granting plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(10). The trial court concluded that MCL 208.1455(13)(k) only required that an eligible production company produce a product for distribution and did not require an eligible production company to have ownership or control over all rights necessary to produce a product. The trial court also concluded that the statute required a company to first be approved as an eligible production company before owning all of the project's necessary intellectual property rights to be eligible for the tax credit. From this ruling, defendants appeal as of right.

II. ANALYSIS

Defendants argue that the trial court erred in granting plaintiff's motion for summary disposition because plaintiff did not qualify as an "eligible production company" pursuant to MCL 208.1455.[1] A trial court's decision on a motion for summary disposition is reviewed de novo. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). "We review a motion brought under MCR 2.116(C)(10) by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party." *Id*. "Summary disposition is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Id*. Statutory interpretation involves a question of law which this Court also reviews de novo. *Dessart v Burak*, 252 Mich App 490, 494; 652 NW2d 669 (2002) aff'd 470 Mich 37 (2004). "[T]ax exemption statutes are interpreted according to ordinary rules of statutory construction." *Andrie, Inc v Treasury Dep't*, 296 Mich App 355, 364-365; 819 NW2d 920 (2012) (quotation marks and citation omitted). Also "[w]hen a statute specifically defines a given term, that definition alone controls." *Haynes v Neshewat*, 477 Mich 29, 35; 729 NW2d 488 (2007).

MCL 208.1455(1) provided that "[t]he Michigan film office, with the concurrence of the state treasurer, may enter into an agreement with an eligible production company providing the company with a credit against the tax imposed by this act. . . ." MCL 208.1455(13)(d) defined "eligible production company" as follows:

> (d) "Eligible production company" or "company" means *an entity in the business of producing qualified productions*, but does not include an entity that is more than 30% owned, affiliated, or controlled by an entity or individual who is in default on a loan made by this state, a loan guaranteed by this state, or a loan made or guaranteed by any other state.[2] [Emphasis and footnote added.]

A "qualified production" is defined by MCL 208.1455(13)(k), which provided, in relevant part:

> (k) "State certified qualified production" or "qualified production" means *single media or multimedia entertainment content created in whole or in part in this state for distribution or exhibition to the general public in 2 or more states by any means and media in any digital media format, film, or video tape, including, but not limited to*, a motion picture, a documentary, a television series, a television miniseries, a television special, interstitial television programming, long-form television, interactive television, music videos, interactive games, *video games*, commercials, internet programming, an internet video, a sound recording, a video, digital animation, or an interactive website. [Emphasis added.]

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[1] This opinion deals with the interpretation of MCL 208.4155 as amended by 2010 PA 312, effective December 21, 2010. The most current version of MCL 208.1455 was amended by 2011 PA 77, effective July 12, 2011.

[2] The parties do not dispute that plaintiff is not owned, affiliated, or controlled by an entity that is in default on a loan made or guaranteed by the state of Michigan or any other state.

We hold that plaintiff was an eligible production company as defined by MCL 208.1455(13)(d) as it was (1) an entity in the business of producing (2) a qualified production. A clear reading of the statutory provision shows that plaintiff's creation of the video game qualified as "producing" a qualified production. "Terms that are not defined in a statute must be given their plain and ordinary meanings, and it is appropriate to consult a dictionary for definitions." *Anzaldua v Neogen Corp*, 292 Mich App 626, 632; 808 NW2d 804 (2011), citing *Halloran v Bhan*, 470 Mich 572, 578; 683 NW2d 129 (2004). Business means "an occupation, profession, or trade[]" or "a person, partnership, or corporation engaged in commerce, manufacturing, or a service." *Random House Webster's College Dictionary* (2001). Produce means "to cause to exist; give rise to[]" or "to bring into existence by intellectual or creative ability[.]" *Random House Webster's College Dictionary* (2001). Accordingly, to be an eligible production company, the company must be in the occupation of or engaged in the commerce of bringing qualified productions into existence by intellectual or creative ability. It is not disputed that plaintiff's sole purpose was to create the "Man vs. Wild" video game through intellectual or creative ability. Thus, plaintiff was in the business of producing a qualified production.

Defendants argue that because plaintiff was developing the game pursuant to the terms of a contract with Crave Entertainment, it was not producing the game for distribution as required by MCL 208.1455(13)(k), and therefore was not a qualified production. The contract between plaintiff and Crave Entertainment provided that "Crave wishe[d] to hire [plaintiff] to develop, and [plaintiff] wishe[d] to develop for Crave." Although plaintiff produced the game for Crave Entertainment, who distributed the game, there is nothing in the statutory language that specifically requires plaintiff to both produce and distribute the qualified production. Rather, the plain terms of the statute require that plaintiff be *in the business of producing* media or multimedia entertainment *for distribution or exhibition* to the general public in two or more states. MCL 208.1455(13)(d) and (k). This language clearly provides that plaintiff must be in the business of creating games that will be distributed to the public. There is no requirement within the statute that plaintiff actually be the distributor. Defendants' interpretation is contrary to the plain terms of the statute. See MCL 208.1455.[3] The trial court properly granted plaintiff's motion for summary disposition.[4]

Affirmed.

/s/ Christopher M. Murray
/s/ Mark J. Cavanagh
/s/ Cynthia Diane Stephens

[3] For the reasons stated by the trial court in its well-written and reasoned opinion, we also reject defendants' argument that plaintiff must have had ownership in all the intellectual property involved in the production.

[4] Because we conclude that defendants' interpretation of MCL 208.1455 is contrary to the plain language of the statute, we do not address whether the requirements within its June 24, 2010, letter violated the Administrative Procedures Act.