

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

CHARLES E. LIKEN,

Plaintiff-Appellant,

v

STATE OF MICHIGAN d/b/a DEPARTMENT  
OF TREASURY d/b/a REVENUE DIVISION, and  
STATE EMPLOYEES RETIREMENT BOARD,

Defendants-Appellees.

---

UNPUBLISHED  
February 12, 2002

No. 222588  
Court of Claims  
LC No. 98-016937-CM

Before: Fitzgerald, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Plaintiff appeals as of right the Court of Claims' orders granting summary disposition in defendants' favor. We reverse.

Plaintiff, who retired in 1991 from his employment with the state of Michigan, first argues, in essence, that the accumulated sick leave installment payments paid to early retirants over a sixty-month period under certain sections of the State Employees' Retirement Act (SERA), MCL 38.1 *et seq.*, including the section under which he retired, MCL 38.19b, are exempt from state taxation pursuant to MCL 38.40(1), and thus he, rather than defendants, was entitled to summary disposition. We agree. We review a trial court's grant of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

A recent decision of this Court is controlling in this case. In *Stone v State of Michigan*, 247 Mich App 507; \_\_ NW2d \_\_ (2001),<sup>1</sup> this Court addressed a similar situation where retirants under a different section of the SERA, MCL 38.19f, challenged the state's taxation of their monthly accumulated sick leave payments in light of MCL 38.40(1). The *Stone* Court determined that payments for accumulated sick leave under the SERA's early retirement

---

<sup>1</sup> This Court denied defendant's motion to consolidate on appeal the present case with Docket No. 217485, that case being *Stone, supra*.

provisions qualified as benefits accruing under the SERA, and therefore were tax-exempt under MCL 38.40(1).<sup>2</sup> *Stone, supra* at 516-522.

Here, plaintiff retired under an early retirement option in the SERA, MCL 38.19b, that contains the same relevant language as the section under which the *Stone* plaintiffs retired.<sup>3</sup> Because the *Stone* Court found that the *Stone* plaintiffs' accumulated sick leave accrued under the SERA and was tax-exempt under MCL 38.40(1), we are bound to reach the same conclusion here. MCR 7.215(C)(2). Thus, the Court of Claims in the present case erred in granting defendants' motion for summary disposition and in denying plaintiff's motion for summary disposition on plaintiff's original claims.

Having concluded that plaintiff was entitled to summary disposition, we need not address his alternative arguments for reversal.

Reversed.

/s/ E. Thomas Fitzgerald

/s/ Joel P. Hoekstra

/s/ Jane E. Markey

---

<sup>2</sup> MCL 38.40(1) of the SERA provides:

The right of a person to a pension, an annuity, a retirement allowance, any optional benefit, *any other right accrued or accruing to any person under the provisions of this act*, the various funds created by this act, and all money and investments and income of the funds, *are exempt from any state, county, municipal, or other local tax*, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law, and shall be unassignable except as otherwise provided in this act. [Emphasis supplied.]

<sup>3</sup> Cf MCL 38.19b(2) and MCL 38.19f(3).