

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE 20th CIRCUIT COURT,
COUNTY OF OTTAWA

STACY PHOTHISAN, individually, and as
a representative of a class of similarly-
situated persons and entities,

Plaintiffs,

Case No. 25-8184-CZ

Hon. Karen J. Miedema

v

Opinion and Order

CITY OF HOLLAND, MICHIGAN, a
Municipal corporation, by and through
THE HOLLAND BOARD OF PUBLIC
WORKS,

Defendant.

**Opinion and Order on Defendant City of Holland's Motion for Summary Disposition of
Plaintiff's Complaint pursuant to MCR 2.116(C)(8); Opinion and Order on Plaintiff's
Partial Motion for Summary Disposition pursuant to MCR 2.116(C)(10) of Count I of
Plaintiff's Complaint**

I. Introduction

The City of Holland, Michigan, through its Board of Public Works (HBPW) (together, the City), supplies water and electric utilities to its customers in Holland and surrounding townships. The City establishes its electric rates through HBPW, pursuant to Chapter 12 of the City's Charter (Charter). The current version of the Charter was adopted in 1950 by a vote of the City's electors.

Plaintiff is an electrical customer of HBPW who claims that the City has been unjustly enriched by more than \$40 million dollars by overcharging its customers from on or about 2020 to the present. Plaintiff filed this purported class-action lawsuit on or about March 14, 2025. Plaintiff's Complaint consists of three counts, which are all grounded in the belief that the City



does not have the authority under the Charter or the Michigan Revenue Bond Act (RBA) to transfer monies from its electric utility fund into its general fund.

Count I of plaintiff's Complaint is titled "Unjust Enrichment – Violation of City Charter Transfer Charges."¹ In this count, plaintiff argues that the City violated the Charter by "transferring monies from the Electric Fund to the City that exceeded the limitations on such transfers set forth in the Charter."² Plaintiff further argues in Count I that "[t]he City's Transfers between July 1, 2020 and the filing of this Complaint violated the City Charter because they exceed 50% of the net income of the Electric Fund."³

Count II of plaintiff's Complaint is titled "Unjust Enrichment – Violation of MCL § 141.121 Transfer Charges. In this count, plaintiff argues that "[t]he City's Charter is subject to the RBA pursuant to MCL § 117.36, which provides that '[n]o provision of any city charter shall conflict with or contravene the provisions of any general law of the state.'"⁴ Plaintiff further asserts in Count II that "even if the City complied with its Charter in making the Transfers, the Transfers are still unlawful because they are prohibited by the Revenue Bond Act"⁵

Count III of plaintiff's Complaint is titled "Unjust Enrichment – Unreasonable Utility Rates Transfer Charges." In this Count, plaintiff argues that "[b]ecause the City's Electric Rates include and continue to include the Transfer Charge, those overall Rates are and have been unreasonable in violation of common-law ratemaking principles."⁶

¹ Complaint, p 11.

² *Id.*

³ *Id.*

⁴ *Id.* at 13.

⁵ *Id.*

⁶ *Id.* at 15.

II. Standard of Review

Summary disposition is permissible under MCR 2.116(C)(8) when the “opposing party has failed to state a claim on which relief can be granted.”⁷ “A motion under MCR 2.116(C)(8) test the legal sufficiency of the complaint.”⁸ “When deciding a motion brought under this section, a court considers only the pleadings.”⁹ “All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant.”¹⁰ A (C)(8) motion may be granted only where the claims alleged are “so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.”¹¹

In reviewing a motion under MCR 2.116(C)(10), the court must consider the pleadings, affidavits, depositions, admissions, and any other admissible evidence in favor of the nonmoving party.¹² While giving the adverse party the benefit of any reasonable doubt regarding the material facts, the court must determine whether there is a genuine and material factual dispute sufficient to warrant a trial.¹³ A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ.¹⁴

III. Law and Analysis

“A claim of unjust enrichment requires the complaining party to establish (1) the receipt of a benefit by the other party from the complaining party and (2) an inequity resulting to the complaining party because of the retention of the benefit by the other party.”¹⁵

⁷ *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 368 (1993) (quoting MCR 2.116 (C)(8)).

⁸ *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Radtke* 442 Mich at 374.

¹³ *Bertrand v Alan Ford, Inc*, 449 Mich 606, 617-618; 537 NW2d 185 (1995).

¹⁴ *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

¹⁵ *Karaus v Bank of NY Mellon*, 300 Mich App 9, 22-23; 831 NW2d 897 (2012).

a. **Unjust Enrichment – Violation of the City Charter**

Issues of statutory construction presents questions of law.¹⁶ “The primary goal of statutory interpretation is to give effect to the intent of the Legislature [, and t]his determination is accomplished by examining the plain language of the statute.”¹⁷ In addition, “[t]he prevailing rules regarding statutory construction are well established and extend to the construction of home rule charters.”¹⁸ *Slis v Michigan*, 332 Mich App 312, 335-336; 956 NW2d 569 (2020) provides further instruction:

This Courts role in construing statutory language is to discern and ascertain the intent of the Legislature, which may reasonably be inferred from the words in the statute. We must focus our analysis on the express language of the statute because it offers the most reliable evidence of legislative intent. *When statutory language is clear and unambiguous, we must apply the statute as written. A court is not permitted to read anything into an unambiguous statute that is not within the manifest intent of the Legislature. Furthermore, this Court may not rewrite the plain statutory language or substitute its own policy decisions for those decisions already made by the Legislature.*

Judicial construction of a statute is only permitted when statutory language is ambiguous. A statute is ambiguous when an irreconcilable conflict exists between statutory provisions or when a statute is equally susceptible to more than one meaning. When faced with two alternative reasonable interpretations of a word in a statute, we should give effect to the interpretation that more faithfully advances the legislative purpose behind the statute. [Quotation marks and citations omitted.] [Emphasis added.]

Section 12.16 of the Charter, titled “Limitation on Use of Utility Funds,” relates to the City’s use of funds regarding the operation of its electric utility. In pertinent part, it states the following (emphasis added):

The receipts from the operation of the electric and water utilities and income from investments shall be applied to the purposes thereof, in accordance with the budget appropriations, including the payment

¹⁶ *ISB Sales Co v Dave’s Cakes*, 258 Mich App 520, 526; 672 NW2d 181 (2003).

¹⁷ *Id.* at 526-527.

¹⁸ The City’s Brief, p 8 (quoting *City of Detroit v Walker*, 445 Mich 682, 691; 520 NW2d 135, 139 (1994)).

of bonds outstanding or which may be issued for the purposes of such utilities and the interest thereon. The net income shall be determined by deducting from the receipts from operations and income from investments all expenses incurred and charges made or allowed for and on behalf of such utility in accordance with budget appropriations, or by appropriate action under authority of section 9 of this chapter, and after the setting aside of moneys for the payment of principal and interest on indebtedness in accordance with any ordinance or resolution authorizing such indebtedness. *Up to 50% of the annual net income of the board may be appropriated by the council to the general purposes of the city. All such net income which is not so appropriated shall be placed in proper accounts or funds of the city which shall be established as reserves for future operations, replacement, extension, or improvement of such utilities. Nothing herein contained shall be interpreted to limit the power of the council to place, for any year, in such accounts or funds a larger percentage than 50% of such net income to the purposes of such utilities, in the event that such appropriation shall be requested by the board of public service [works] and be approved by seven members of the council.*

The foregoing limitation of 50% of such net income which may be appropriated by the council for general purposes may be increased in any year by and with the consent of the board of public service [works], and the consent of seven members of the council.

Such funds so established as reserves for the purposes of the utilities may be invested and reinvested by the city auditor as the board of public service [works] shall direct, by and with the approval of the council, in such investments as are authorized by law for investment by fiduciaries. Said funds may be used for the purposes of such utilities upon the recommendation of the board of public service [works], by and with the consent of the council.

The electors of the city may, by a 3/5 vote of the qualified electors voting on such proposal at a regular or special election, approve an appropriation of more than 50% of the net income for any year for general purposes, or may approve the placing of more than 50% of the net income for any year in the reserve accounts or funds as above provided for the purposes of such utilities, or may approve for other municipal purposes the use of such accumulated and unallocated accounts or funds as have been established.

Plaintiff argues that the City made transfers from its Electric Fund exceeding 50% of the net income of the Electric Fund, thus violating Section 12.16 of the Charter. In contrast, the City argues that this argument fails as a matter of law because “the Charter explicitly authorizes the City to do exactly what Plaintiff alleges it has done.”¹⁹ This Court agrees. As the City accurately points out, the second paragraph of Section 12.16 plainly states the following:

The foregoing limitation of 50% of such net income which may be appropriated by the council for general purposes may be increased in any year by and with the consent of the board of public service [works], and the consent of seven members of the council.²⁰

Plaintiff counters that without voter approval, Section 12.16 of the Charter does not authorize the City to “transfer more than the budgeted net income of the Electric Fund for the general purposes of the City”²¹ However, as the City correctly contends, the plain language of the Section 12.16 of the Charter does not state this, and plaintiff’s interpretation of it is incorrect:

The plain language of §12.16 reveals that both (1) HBPW and Council, and (2) the voters, have independent authority to appropriate more than 50% of net income. This authority is coextensive. Critically, Paragraph 4 of §12.16 does not say the voters may “exclusively” vote to appropriate “more than 100% of net income,” “greater than net income,” or “in excess of net income.” Per Paragraph 4, an appropriation from the electric utility fund of more than 50% of net income could be approved by the voters. But an appropriation of more than 50% of net income could also be approved by the City Council and HBPW. Nothing about paragraph 2 of §12.16 constrains the voters’ authority under Paragraph 4 of the section and nothing about Paragraph 4 constrains the authority of HBPW and seven Council members in Paragraph 2. Paragraphs 2 and 4 serve different purposes, but can accomplish the same thing – i.e., they authorize the increase of the limitation on appropriations.²²

The plain language of the Section 12.16 of the Charter “unambiguously provides HBPW and Council with the authority to increase the amount of the appropriation made from the electric

¹⁹ The City’s Brief, p 9.

²⁰ *Id.* (emphasis added by the City).

²¹ Plaintiff’s Response, p 6.

²² The City’s Reply Brief, p 2.

utility's fund for general purposes."²³ Accordingly, Count I of plaintiff's Complaint is dismissed as a matter of law.

b. Unjust Enrichment – Violation of MCL § 141.121

A fact that is not in dispute in this case is that the City issued revenue bonds to finance its new electric generation facility, the Holland Energy Park; thus, the City's electrical rates are subject to the Michigan Revenue Bond Act (RBA). Section 21 of the RBA, MCL 141.121, states the following in pertinent part (emphasis added):

(1) Rates for services furnished by a public improvement shall be fixed before the issuance of the bonds. The rates shall be *sufficient* to provide for all the following:

(a) The payment of the expenses of administration and operation and the expenses for the maintenance of the public improvement as may be necessary to preserve the public improvement in good repair and working order.

(b) The payment of the interest on and the principal of bonds payable from the public improvements when the bonds become due and payable.

(c) The creation of any reserve for the bonds as required in the ordinance.

(d) Other expenditures and funds for the public improvement as the ordinance may require.

(2) The rates shall be fixed and revised by the governing body of the borrower so as to produce the amount described in subsection (1). The borrower shall covenant and agree in the ordinance authorizing the issuance of the bonds and on the face of each bond to maintain at all times the rates for services furnished by the public improvement sufficient to provide for the amount described in subsection (1). Rates pledged for the payment of bonds that are fixed and established pursuant to a contract or lease shall not be subject to revision or change, except in the manner provided in the lease or contract.

²³ The City's Response in Opposition to Plaintiff's (C)(10) Motion, p 3.

Plaintiff argues that subparts (a) through (d) above “require municipalities that are subject to the RBA to use funds garnered by municipal utility rates *only to support the utility itself*.”²⁴ Plaintiff further argues that the possibility of “surpluses” is not found in the RBA. In contrast, the City argues that the word *only* is not in MCL 141.121; “[i]nstead, the word ‘sufficient’ is used, reflecting the Legislature’s intent that a municipality secure enough funding to meet the requirements in MCL 141.121(1)(a)-(d).”²⁵ This Court agrees. In addition, this Court agrees with the City’s contention that “[n]othing in [MCL 141.121] suggests that the Legislature intended the RBA to ‘only’ authorize rates ‘to support the electric utility itself,’ or to prohibit additional uses of electrical charge revenues, as Plaintiff claims.” Accordingly, this Court finds that the plain language of the RBA does not limit what the City’s utility rates may fund, contrary to plaintiff’s argument.

Plaintiff next argues that the City’s rates are unreasonable under the RBA because it charges its customers for their use of electricity plus an additional amount unrelated to use, which the City then transfers to its General Fund. While the RBA does not address reasonableness, plaintiff cites two Michigan Court of Appeals cases for support. First, *Mapleview Estates v City of Brown*, 258 Mich App 412; 671 NW2d 572 (2003) concludes that charges authorized under the RBA (tap-in fees, connection charges, etc.) must be reasonable. However, plaintiff fails to show how this makes the City’s rates unreasonable under the RBA. Second, in *Metro Homes, Inc v Warren*, 19 Mich App 664, 671, n 5; 173 NW2d 230 (1969), the court cited an earlier Court of Appeals decision while discussing the nature of rates authorized by the RBA: “[t]he rates, of course, must be based upon use and not special benefit or other similar criteria, unless special assessment proceedings are accepted.”²⁶ Again, this Court fails to see how this case makes the City’s rates unreasonable under the RBA.

Plaintiff next claims that “even if the RBA [MCL 141.122 and MCL 141.126] authorized the City to transfer ‘surplus’ revenues, the Complaint alleges that, during the relevant fiscal years, there was no ‘surplus’ to transfer.”²⁷ However, plaintiff’s Complaint does not contain this

²⁴ Plaintiff’s Response, p 9 (emphasis added).

²⁵ The City’s Reply, p 3.

²⁶ *Smith v Township of Norton*, 2 Mich App 17; 138 NW2d 522 (1965) (quoting Chermak, *The Law of Revenue Bonds* (1954), pp 162, 200.

²⁷ Plaintiff’s Response, p 11.

argument, and ““a party is bound by their pleadings, and it is not permissible to litigate issues or claims that were not raised in the complaint.””²⁸ The City accurately asserts that “[t]he actual language in MCL 141.122 illustrates the Legislature’s intent to secure ‘necessary’ and ‘sufficient’ funding to maintain and operate the public improvement in good repair and working order, and to pay the principal and interest on bonds issued in connection with the public improvement”²⁹

MCL 141.122 states the following (emphasis added):

Sec. 22. (1) In the authorizing ordinance the governing body of the borrower shall provide that the revenues of the public improvement be accounted for separately from the other funds and accounts of the borrower in the following order of recorded priority:

(a) After provision for the payment for the next succeeding period of all current expenses of administration and operation and the current expenses for that period for maintenance *as may be necessary* to preserve the public improvement in good repair and working order.

(b) There shall be next set aside a sum *sufficient* to provide for the payment of the principal of and the interest upon all bonds payable from those revenues, as and when the bonds become due and payable. This account shall be designated ‘bond and interest redemption account.’ In the event that the revenues of any operating year over and above those necessary for the operation and maintenance expenses shall be insufficient to pay the principal of and interest on the bonds maturing in any operating year, then an additional amount sufficient to pay the principal and interest shall be set aside out of the revenues of the next succeeding operating year, after provision for the expenses of operation and maintenance. In respect to the allocation and use of money in the bond and interest redemption account, due recognition shall be given as to priority rights, if any, between different issues or series of outstanding bonds. The public corporation may provide by ordinance that a reasonable excess amount shall be set aside in the bond and interest redemption account from time to time so as to produce and provide a reserve to meet any possible future deficiencies.

²⁸ The City’s Reply, p 4.

²⁹ *Id.*

(c) Next there shall be set aside, in the manner and priority provided by the ordinance, the sum or sums necessary for the additional accounts as may be required.

(2) Revenues remaining, after satisfaction of subsection (1), at the end of any operating year shall be considered surplus and shall be disposed of by the governing body as provided in this act.

Regarding MCL 141.126, its plain language confirms that “the governing body has broad discretion to use the ‘surplus’ as it sees fit. Here, the RBA not only confirms that the governing body may elect to transfer a surplus (as framed by the RBA) to other accounts benefiting the public improvement, but also states that the governing body may elect to ‘use [the surplus] for the purpose or purposes *as the governing body may determine to be for the best interests of the borrower* [i.e., the City].”³⁰ MCL 141.126 states the following:

Sec. 26. Any money remaining in the accounts for of the public improvement at the end of any operating year, which under the provisions of section 22 shall be considered surplus, may be transferred to other accounts of the public improvement or may be used for the purpose or purposes *as the governing body may determine to be for the best interests of the borrower*, unless some other disposition shall have been made in the ordinance authorizing the issuance of bonds under this act. In the event that money of the public improvement is insufficient to provide for the current expenses of the operation and maintenance account or the bond and interest redemption account, any money or securities in other accounts of the public improvement shall be transferred first to the operation and maintenance account and second to the bond and interest redemption account to the extent of any deficits in those accounts.

Accordingly, the City’s transfers are lawful under the Michigan Revenue Bond Act, and Count II of plaintiff’s Complaint is dismissed as a matter of law.

c. Unjust Enrichment – Unreasonable Utility Rates

This unjust enrichment claim alleges that the City’s municipal rates are unreasonable based on common-law ratemaking principles. The City first asserts that this claim fails as a matter of law because Michigan precedent demonstrates that municipal rates are presumed reasonable.³¹

³⁰ The City’s Reply, p 4 (quoting MCL 141.126) (emphasis added).

³¹ The City’s Brief, p 15.

However, the presumption of reasonableness “is just that—a presumption—and it can be overcome by the plaintiff with a showing of sufficient **evidence** to the contrary.”³² The Michigan Court of Appeals provides an instructive summary on this principle:

‘Michigan courts have long recognized the principle that municipal utility rates are presumptively reasonable. This presumption exists because courts of law are ill-equipped to deal with the complex, technical processes required to evaluate the various cost factors and various methods of weighing those factors required in rate-making. However, the presumption of reasonableness may be overcome by a proper showing of evidence. The burden of proof is on the plaintiff to show that any given rate or ratemaking practice is unreasonable.’³³

Plaintiff argues that “if the fees for a particular service consistently generate revenue exceeding the costs for the service, the reasonableness of the fee for that service would be suspect.”³⁴ In contrast, the City argues that there is nothing in the Charter or the RBA that prevents it from generating revenue that exceeds the cost of providing utilities. In other words, “[t]here can be nothing unjust about the City’s conduct when the challenged appropriations are permitted by the City’s Charter and by the RBA.”³⁵ This Court agrees.

The City also argues that plaintiff fails to identify any standard or authority for reasonableness.³⁶ That is, plaintiff erroneously alleges that the City’s rates are unreasonable because she says so, which cannot support an actionable or viable claim. In sum, “[b]ecause Plaintiff’s freestanding ‘unreasonable rates’ claim fails to allege that the City has violated any

³² *Id.* (citing *Shaw v city of Dearborn*, 329 Mich App 640, 655; 944 NW3d 153 (2019) (emphasis by the City)).

³³ *Brunet v City of Rochester Hills*, unpublished case of the Court of Appeals, Issued December 2, 2021 (No. 354110) (2021 WL 5750616 at *7) (quoting *Trahey v City of Inkster*, 311 Mich App 582, 594; 876 NW2d 582 (2015) (cleaned up)).

³⁴ Plaintiff’s Response, p 17 (quoting *Mich Ass’n of Home Builders v City of Troy*, 504 Mich 204, 220; 934 NW2d 713 (2019) (quotation and emphasis omitted)).

³⁵ The City’s Reply, p 5.

³⁶ In its brief, the City cites *Brunet v City of Rochester Hills*, unpublished case of the Court of Appeals, Issued December 2, 2021 (No. 354110) (2021 WL 5750616), where the court cites multiple published Court of Appeals cases that stand for the principle that reasonableness must identify with a statute, contractual provision, or ordinance. See *Trahey v City of Inkster*, 311 Mich App 582, 594; 876 NW2d 582 (2015); *City of Novi v City of Detroit*, 433 Mich 414, 419; 446 NW2d 118 (1989); *City of Plymouth v City of Detroit*, 423 Mich 106, 111; 377 NW2d 689 (1985); *Meridian Twp v City of East Lansing*, 342 Mich 734, 748; 71 NW2d 234 (1955).

cognizable standard of ‘reasonableness,’ Plaintiff may not sustain a claim that the City was unjustly enriched by the electric utility transfers to the City for general purposes.”³⁷ Accordingly, this Court finds that plaintiff has not alleged anything in her Complaint that could rebut the presumption of reasonableness of the City’s municipal rates and thus has not stated a viable claim in Count III.

IV. Conclusion

For the reasons stated above, this Court finds that the City’s motion for summary disposition pursuant to MCR 2.116(C)(8) is GRANTED. Accordingly, Plaintiff’s partial motion for summary disposition pursuant to MCR 2.116(C)(10) is DENIED.³⁸

It is so ordered.

8/29/25
Date



Hon. Karen Miedema

THIS IS THE FINAL ORDER THAT CLOSES THE CASE

³⁷ The City’s Reply. P 19

³⁸ Even if this Court decided to deny the City’s motion for summary disposition pursuant to MCR 2.116(C)(8) regarding Count I of plaintiff’s Complaint, it would have nevertheless denied plaintiff’s partial motion for summary disposition pursuant to MCR 2.116(C)(10) regarding Count I. This Court agrees with the City that without appropriate discovery, plaintiff’s (C)(10) motion would be premature. *Davis v City of Detroit*, 269 Mich App 376, 379; 711 NW2d 462 (2006).