

Court of Appeals, State of Michigan

ORDER

Platt Convenience Inc v City of Ann Arbor

Docket No. 359013

Michael J. Kelly
Presiding Judge

Jane E. Markey

James Robert Redford
Judges

Defendant City's request for summary dismissal under MCR 2.116(C)(6) is DENIED. The prior pending Washtenaw Circuit Court action and the instant original putative class action to enforce the Headlee Amendment do not involve the "same parties" for purposes of MCR 2.116(C)(6). *Fast Air, Inc v Knight*, 235 Mich App 541, 544; 599 NW2d 489 (1999). It is clear from the documents supplied by the City that Platt Convenience, Inc., is not a named individual or representative plaintiff in the Washtenaw Circuit Court action; rather, Platt Convenience, Inc., is an unnamed member of a proposed but uncertified class. It is also clear that only the representative plaintiff in a class action may litigate the rights of the many and choose the remedy. 59 Am Jur 2d, Parties, § 49, pp 490-491. Thus, as an unnamed member of a proposed but uncertified class, Platt Convenience, Inc., has no rights to control the Washtenaw Circuit Court proceedings. Under the circumstances, Platt Convenience, Inc., is not the same party as the individual and representative plaintiffs in the pending Washtenaw Circuit Court action for purposes of the MCR 2.116(C)(6).

Defendant City's request for summary dismissal under MCR 2.116(C)(8) also is DENIED. If the stormwater drainage charge at issue in this case is a user fee rather than a tax, as the City asserts, then it is not subject to the Headlee Amendment, *Bolt v City of Lansing*, 459 Mich 152, 159; 587 NW2d 264 (1998), regardless of whether it was preauthorized by the 1956 Ann Arbor City Charter. If the drainage charge is a tax, however, as plaintiff alleges, then it is subject to the restrictions of § 31 of the Headlee Amendment unless the tax was preauthorized by city charter. Const 1963, art 9, § 31; *Gottesman v City of Harper Woods*, ___ Mich ___; ___ NW2d ___ (2021) [Docket No. 160806]. It is evident from the charter language that the 1956 Charter did not authorize a utility charge that constitutes a tax; it authorized only utility charges that constitute a user fee. Whether the City's stormwater drainage charge is a tax or a permissible user fee has yet to be determined.


This Court DIRECTS that this original action shall proceed to a full hearing on the merits. MCR 7.206(E)(3)(c).

To prepare for the hearing, this Court REFERS this original action, and the motion to certify class, to the Honorable Carol Kuhnke, Chief Judge of the Washtenaw Circuit Court, under MCR 7.206(E)(3)(d); MCL 600.308a(5), for the purpose of selecting a judge of the Washtenaw Circuit Court who shall serve as the special master in these proceedings. The special master shall direct the parties' discovery, resolve all issues concerning discovery, receive proofs and arguments of law, report factual findings for review by this Court, and make such other determinations as are necessary to facilitate this Court's resolution of the factual and legal matters raised by the parties. This order is not intended to limit

the parties' or the special master's options regarding the manner in which they or the special master may proceed. The proceedings before the special master shall proceed as expeditiously as due consideration of the circuit court's dockets, facts and issues of law requires. MCR 7.206(E)(3)(d). The parties shall file with this Court copies of all pleadings and documents filed with the special master. Any costs associated with the transcription of proofs, oral argument or the rulings of the special master shall be initially paid by plaintiff.

The special master's findings of fact and other determinations shall be made in a written report to be filed with this Court. Transcripts of the proceedings before the special master, as well as the documentary record of the proceedings, shall be transmitted to this Court within 28 days after the filing of the special master's report. The parties shall have 21 days from the filing of the special master's report in which to file their respective objections to the report of the special master. The objections shall be accompanied by a supporting brief that complies with MCR 7.212, and exhibits. Answers to the objections made by opposing parties shall be filed within 21 days of the filing of the objections.

Remanded for proceedings consistent with this order. We retain jurisdiction.



Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

April 1, 2022

Date



Chief Clerk