STATE OF MICHIGAN

COURT OF APPEALS

CITY OF MONROE,

Plaintiff-Appellee,

v

MBT FINANCIAL CORP., INC., MONROE BANK & TRUST,

Defendants-Appellants.

UNPUBLISHED
June 15, 2004

No. 246128
Monroe Circuit Court
LC No. 02-014835-CZ

Before: Schuette, P.J., and Bandstra and Cooper, JJ.

PER CURIAM.

Defendants appeal as of right the trial court order granting summary disposition and awarding a judgment in the amount of $36,318.90 plus interest and costs in favor of plaintiff. We affirm.

Defendants first argue that the trial court improperly determined that plaintiff's subsequent tax liens took priority over defendants' prior security interest under the General Property Tax Act (GPTA). We review de novo a trial court's decision to grant a motion for summary disposition. *First Public Corp v Parfet*, 468 Mich 101, 104; 658 NW2d 477 (2003). We review a motion for summary disposition based on MCR 2.116(C)(10) to determine whether a genuine issue of material fact exists that would prevent entering judgment in favor of the moving party as a matter of law. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998). When deciding a motion for summary disposition, we consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in the light most favorable to the nonmoving party. *Id*.

Additionally, we review questions of statutory interpretation de novo. *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29, 32; 658 NW2d 139 (2003). "[T]he primary goal of statutory interpretation is to give effect to the intent of the Legislature." *In re MCI Telecommunications Complaint*, 460 Mich 396, 411; 596 NW2d 164 (1999). "The first step in that determination is to review the language of the statute itself." *Id*. "If the statute is unambiguous on its face, the Legislature will be presumed to have intended the meaning expressed, and judicial construction is neither required nor permissible." *Id*.

MCL 211.40 provides, in pertinent part:

> *Notwithstanding any provisions in the charter of any city or village to the contrary*, all taxes become a debt due to the township, city, village, or county from the owner or person otherwise assessed on the tax day provided for in sections 2 and 13. . . . *All personal taxes levied or assessed for state, county, village, or township taxes are also a first lien, prior, superior, and paramount, on all personal property of the persons assessed on December 1, on a day provided for by the charter of a city or village, or on the day provided for in section 40a.* The lien for those amounts, and for all interest and charges on those amounts, shall continue until paid. *The tax liens take precedence over all other claims, encumbrances, and liens on that personal property, whether created by chattel mortgage, title retaining contract, execution, any final process of a court, attachment, replevin, judgment, or otherwise*. A transfer of personal property assessed for taxes does not divest or destroy the lien, except where the personal property is actually sold in the regular course of retail trade. *The personal property taxes levied or assessed by any city or village are a first lien, prior, superior, and paramount to any other claims, liens, or encumbrances of any kind upon the personal property assessed as provided in this act, any provisions in the charter of cities or villages to the contrary notwithstanding.* [Emphasis added.]

Because the plain language of MCL 211.40 is unambiguous and provides that "tax liens take precedence over *all* other claims, encumbrances, and liens," we conclude that the Legislature intended the term "all" to be expansive so as to eliminate the need for courts to determine whether tax liens take priority over competing claims depending on whether the competing claims arose before or after the tax liens. In construing a statute, we are obligated to review the words of the statute and give the words used their plain and ordinary meanings. *Stone v Michigan*, 467 Mich 288, 291; 651 NW2d 64 (2002). The Legislature is presumed to have intended the meaning it plainly expressed. *Pohutski v Allen Park*, 465 Mich 675, 683; 641 NW2d 219 (2002). Further, under the terms expressed in the statute, plaintiff's personal property tax liens were not extinguished because defendants did not obtain AMT's property in the regular course of retail trade. Therefore, the trial court properly concluded that under MCL 211.40, plaintiff's tax liens had priority over defendants' prior security interest, despite the fact that such liens arose after defendants' security interest.

Next, defendants argue that MCL 211.107 precluded plaintiff from claiming that its tax liens had priority over defendants' prior security interest, because MCL 211.107 provides that the GPTA is only applicable to municipalities as long as the GPTA is not inconsistent with a municipality's charter. We disagree. MCL 211.107(1) provides:

> The requirements of this act relating to the amount and imposition of interest, penalties, collection or administration fees, the procedures for collection of taxes, and the enforcement of tax liens are applicable to all cities and villages *if not inconsistent with their respective charters* or an ordinance enacted pursuant to their respective charters. [Emphasis added.]

The pertinent language in Monroe Charter, § 146 provides:

> . . . [A]nd all personal taxes shall also be a lien on all personal property of each person so assessed from and after the second Monday in May of each year, *and*

> *shall take precedence of any sale, assessment, chattel mortgage, levy or other lien on such personal property executed or made after said second Monday in May,* except where such property is actually sold in the regular course of trade. [Emphasis added.]

Defendants correctly assert that MCL 211.07 provides that if a conflict exists between the GPTA and a city charter, the charter governs. *Booker v Detroit*, 469 Mich 887; 668 NW2d 623 (2003). However, we find that MCL 211.107 did not preclude plaintiff from claiming that its tax liens had priority over defendants' prior security interest under MCL 211.40, because MCL 211.40 and Monroe Charter, § 146 are not inconsistent with each other, and can be read together. Although the city charter indisputably provides that a tax lien has priority over a subsequent competing claim, we find that there is no inconsistency between the city charter and MCL 211.40. Because the city charter is silent regarding the priority scheme between a tax lien and a pre-existing competing claim, the city charter does not contain limiting language that a tax lien only has priority over subsequent competing claims, and the city charter and MCL 211.40 are complementary provisions.

Further, MCL 211.40 specifically provides that it controls notwithstanding a conflict with a city charter. The pertinent provision in MCL 211.40 provides:

> *Notwithstanding any provisions in the charter of any city or village to the contrary* . . . . The personal property taxes levied or assessed by any city or village are a first lien, prior, superior, and paramount to any other claims, liens, or encumbrances of any kind upon the personal property assessed as provided in this act, *any provisions in the charter of cities or villages to the contrary notwithstanding*. [Emphasis added.]

Therefore, the trial court properly granted plaintiff's motion for summary disposition and determined that plaintiff's tax liens had priority over defendants' prior security interest.

In light of our conclusion that MCL 211.40 unambiguously provides that plaintiff's tax liens have priority over defendants' prior security interest, we need not address defendants' remaining arguments, which they raise for the first time on appeal, regarding the effect of 1994 PA 80 on the pre-1994 version of the statute and case law interpreting the pre-1994 version of the statute, particularly *Michigan Nat'l Bank v Auburn Hills*, 193 Mich App 109, 114; 483 NW2d 436 (1992). An appellate court is obligated only to review issues that are properly raised and preserved, and an appellate court need not address issues first raised on appeal. *Blackwell v Citizens Ins Co of America*, 457 Mich 662, 673-674; 579 NW2d 889 (1998).

We affirm.

/s/ Bill Schuette
/s/ Richard A. Bandstra
/s/ Jessica R. Cooper