ASC
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NO. 119777 (MICH APP 8-7-91)

STATE OF MICHIGAN

IN THE COURT OF APPEALS

MICHIGAN EMPLOYMENT SECURITY COMMISSION,

Plaintiff-Appellant,

v

ASC, INC.,

Defendant-Appellee.
_____/

Court of Appeals
No. 119777 (8-7-91)

Circuit Court Case
No. 86-618-019-AE

UNPUBLISHED

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OPINION

STATE OF MICHIGAN

COURT OF APPEALS

MICHIGAN EMPLOYMENT SECURITY COMMISSION,

Plaintiff-Appellant,

v

ASC, INC.,

Defendant-Appellee.

August 7, 1991

No. 119777

UNPUBLISHED

Before: Marilyn Kelly, P.J., and Holbrook, Jr., and Sullivan, JJ.

PER CURIAM.

The Michigan Employment Security Commission (MESC) appeals by right from a circuit court order determining the unemployment benefits contribution rate of defendant, ASC, Inc., for 1982. The circuit court affirmed the finding of the MESC Board of Review. The board had rejected MESC's ruling that ASC was formed through a simultaneous merger of two or more corporations within the meaning of § 22(e)(3) of the Michigan Employment Security Act (MESA). MCL 421.22(e)(3); MSA 17.524(e)(3). We affirm.

The salient facts of this case are not in dispute. Prior to June 1982, Wisco Corporation (Wisco) was a wholly owned subsidiary of Ultra International Inc. (Ultra), which was, in turn, a wholly owned subsidiary of American Sunroof Corporation (Sunroof). Heinz Prechter was the sole stockholder of Sunroof, and he was the sole director of all three corporations.

In 1982, Wisco's MESC contribution rate was 7.8 percent; American Sunroof's rate was of 5.5 percent. Apparently, without the application of a statutory provision limiting the yearly increases, both Wisco's and Sunroof's contribution rates would have been 9 percent. MCL 421.19(a)(6); MSA 17.518(a)(6). Ultra was not subject to MESA and had no contribution rate.

American Sunroof decided to consolidate operations due to economic hardship and dissolve Wisco and Ultra into their parents. Since the consolidated business would produce more than sunroofs, American Sunroof decided to name it "ASC, Inc." (ASC), instead of American Sunroof Corporation.

On June 23, 1982, Prechter exchanged Sunroof's stock for shares in ASC, and Sunroof became a wholly owned subsidiary of ASC. On the same day, he signed three separate consent resolutions providing that Wisco, Ultra and Sunroof be dissolved into their parent corporations as of the close of business on June 30, 1982.

Following the dissolution, MESC notified ASC that, as a successor corporation under § 22(e)(3) of MESA, its contribution rate had been calculated at 9 percent for the 1982 calendar year. MCL 421.22(e)(3); MSA 17.524(e)(3). ASC objected to the new rate. The MESC referee affirmed it. However, the board of review reversed on the ground that the transfers of the subsidiary corporations did not occur simultaneously within the meaning of § 22(e)(3). The MESC then appealed the decision to the Wayne County Circuit Court. The circuit court adopted the board of review's analysis. The circuit court further ruled that under § 22(e)(2), ASC should pay a 1982 contribution rate of 5.5 percent, the same rate that ASC's former subsidiary, Sunroof, had paid. MCL 421.22(e)(2); MSA 17.524(e)(2).

The question before us is whether the transfers in the instant case were "simultaneous" within the meaning of § 22(e)(3). If so, MESC was entitled to assign a new contribution rate to ASC in accordance with the provisions of § 22(e)(3). However, if the mergers were sequential, not simultaneous, ASC was entitled to the rate of its former subsidiary under § 22(e)(2).

Section 22(e)(3) provides in relevant part:

> Where transfers of businesses simultaneously involve 2 or more transferors and a single transferee who has no rate of contributions applicable immediately prior to the transfer date, such transferee shall be assigned a contribution rate beginning with the first day of the quarter in which the transfers occur based upon the rating account percentage determined by the transferred rating account balances and the total and insured payrolls properly allocable to the transferee .... [MCL 421.22(e)(3); MSA 17.524(e)(3). Emphasis added.]

Section 22(e)(2) states:

> A transferee or transferees, having no rate of contributions applicable immediately prior to the transfer date, shall, beginning with the first day of the quarter in which the transfer occurs, be assigned the same rate of contributions which was applicable to the transferor on the date of the transfer .... [MCL 421.22(e)(2); MSA 17.524(e)(2).]

The primary goal of judicial interpretation of statutes is to ascertain and give effect to legislative intent. Joy Management Co v City of Detroit, 176 Mich App 722, 730; 440 NW2d 654. The Legislature is presumed to have intended the meaning it plainly expressed. Frasier v Model Coverall Service, Inc, 182 Mich App 741, 744; 453 NW2d 301 (1990). Courts may not speculate as to the probable intent of the Legislature beyond the words expressed in the statute. Nat'l Exposition Co v Detroit, 169 Mich App 25, 29; 425 NW2d 497 (1988).

Unless defined in the statute, every word or phrase of a statute must be accorded its plain and ordinary meaning. MCL 8.3a; MSA 2.212(1). If the statute does not contain a glossary, we may consult dictionary definitions. Fenton Area Public Schools v Sorenson-Gross Construction Co, 124 Mich App 631, 639; 335 NW2d 221 (1983).

The MESA does not contain a definition of the word "simultaneous." However, Black's Law Dictionary (5th ed) defines simultaneous as "a word of comparison meaning that two or more occurrences or happenings are identical in time." Similarly, The Random House College Dictionary: Revised Edition (1988) defines simultaneous as "existing, occurring, or operating at the same time; concurrent."

We agree with the board of review and the circuit court that it was legally impossible for the transfers in this case to have occurred concurrently. If the assets of a subsidiary corporation are to be transferred to the parent corporation, the subsidiary and parent may not both dissolve at the same time. The parent must remain in existence in order to accept the subsidiary's assets. Only after a subsidiary has dissolved and the parent has accepted its assets, may that parent dissolve and transfer both its assets and its former subsidiary's assets to another corporation.

Thus, what occurred in the instant case is that Wisco first dissolved into Ultra, which then dissolved into Sunroof, which then dissolved into ASC. The transfers did not happen simultaneously; rather, they took place in quick succession at the close of business on June 30, 1982.

Plaintiff suggests that the Board and the circuit court's interpretation would render § 22(e)(3) nugatory, because there would be no situations where transfers could occur simultaneously. However, as pointed out by the circuit court, where there are no parent-subsidiary relationships, two or more corporations could merge into a third concurrently "as spokes merge into a hub." In the instant case, such a scenario did not occur; rather, there was a "vertical merger" where the transfers took place one after the other.

No simultaneous merger occurred in this case, and § 22(e)(3) does not apply. The circuit court correctly determined ASC's 1982 contribution rate under § 22(e)(2) by assigning Sunroof's 5.5 percent rate to ASC. MCL 421.21(e)(2); MSA 17.524(e)(2); also see MCL 421.21(e)(1)(a) and (b); MSA 17.524(e)(1)(a) and (b).

Affirmed.

/s/ Marilyn Kelly
/s/ Donald E. Holbrook, Jr.
/s/ Joseph B. Sullivan