SUPREME COURT
MAR 2003
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STATE OF MICHIGAN
IN THE SUPREME COURT
ON APPEAL FROM THE COURT OF APPEALS
Cooper, PJ and Sawyer and Owens, JJ

PARKWOOD LIMITED DIVIDEND HOUSING ASSOCIATION,

Plaintiff-Appellee,

v

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY,

Defendant-Appellant.

Supreme Court No. 120410

Court of Appeals No. 218433

Wayne County Circuit Court
Case No. 98-839763-CK
Hon. Kathleen MacDonald

/ CONSOLIDATED WITH

PARKWOOD LIMITED DIVIDEND HOUSING ASSOCIATION,

Plaintiff-Appellee/
Cross-Appellant,

v

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY,

Defendant-Appellant/
Cross-Appellee.

/

Supreme Court No. 120411

Court of Appeals No. 229448

Court of Claims
Case No. 99-17226-C30
Hon. Lawrence Glazer

REPLY BRIEF ON APPEAL – APPELLANT
ORAL ARGUMENT REQUESTED

MICHAEL A. COX
Attorney General
Thomas L. Casey (P24215)
Solicitor General
Counsel of Record
P.O. Box 30212
Lansing, MI 48909
(517) 373-1124

Terrence P. Grady (P14248)
Matthew H. Rick (P44299)
Assistant Attorneys General
Attorneys for Defendant-Appellant
One Michigan Ave. #400
P.O. Box 30217
Lansing, MI 48909
(517) 373-1130

Carl H. von Ende (P21867)
Frederick A. Acomb (P44523)
Robert E. Gilbert (P13973)
MILLER, CANFIELD, PADDOCK AND STONE, PLC
Co-Counsel for Defendant-Appellant
Special Assistant Attorneys General
150 W. Jefferson, Suite 2500
Detroit, MI 48226-4415
(313) 963-6420

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TABLE OF CONTENTS

INDEX OF AUTHORITIES ii

ARGUMENT 1

I. Parkwood Misapplies the Doctrine of Strict Construction As Applied to the State's Sovereign Immunity from Suit 1

II. Parkwood Erroneously Interprets the Court of Claims Act 2

A. Prior to its amendment in 1984, the court of claims act conferred exclusive jurisdiction to the court of claims over all claims *ex contractu* and *ex delicto* against the state, regardless of the type of relief sought. 2

B. The 1984 amendments left intact this exclusive grant of jurisdiction, which clearly covers the contractual claims advanced by Parkwood. 3

C. The 1984 amendments added to the court of claims' jurisdiction, by investing it – along with the circuit courts – with concurrent jurisdiction over demands other than those *ex contractu* and *ex delicto*. 3

D. By giving circuit courts concurrent jurisdiction over demands against the state other than those *ex contractu* and *ex delicto*, the 1984 amendments did not diminish the exclusive jurisdiction of the court of claims over claims *ex contractu* and *ex delicto*. 4

E. If "history" is to be any guide, it supports MSHDA's reading of the act. 5

III. The Sentence From *Silverman* On Which Parkwood Relies Is Not the Holding of that Case 6

CONCLUSION 7

INDEX OF AUTHORITIES

CASES

Greenfield Const Co v Michigan Dep't of State Hwys, 402 Mich 172; 261 NW2d 718 (1978) 1-2, 5-6

Roberts v Auto-Owners Ins Co, 422 Mich 594; 374 NW2d 905 (1985) 7

Silverman v Univ of Michigan Bd of Regents, 445 Mich 209; 516 NW2d 54 (1994) 1, 6-8

STATUTES

MCL 600.605 5

MCL 600.6419 3-4

MCL 600.6419(1) 4, 6

MCL 600.6419(1)(a) 2-4, 6

MCL 600.6419(4) 5-6

MCL 600.6419a 3-6

Parkwood inverts the rule of strict construction applicable to the state's sovereign immunity from suit, arguing that it means that the *jurisdiction* of the court of claims must be strictly construed, when it really means that any legislative *waiver* of state suit immunity must be strictly construed. Parkwood attempts to circumvent the language of the court of claims act, arguing that the 1984 amendments fundamentally altered the meaning of the act's central provisions, which the legislature left untouched, and resorting to "history" and other secondary interpretive devices. Finally, although Parkwood places heavy reliance upon a single sentence from *Silverman v Univ of Michigan Bd of Regents*, 445 Mich 209; 516 NW2d 54 (1994), that sentence was not, as Parkwood claims, the decision's "holding." The decision's holding supports MSHDA's position. *See* MSHDA's opening brief at 19-23.

All of Parkwood's arguments are without merit. The Court should apply the plain and unambiguous language of the court of claims act, find that the court of claims had exclusive jurisdiction over Parkwood's claims, and reverse the opinion of the court of appeals.

ARGUMENT

I. Parkwood Misapplies the Doctrine of Strict Construction As Applied to the State's Sovereign Immunity from Suit

In *Greenfield*, a plurality of the Court confirmed that "a state cannot be sued without its consent, granted by a legislative enactment." *Greenfield Const Co v Michigan Dep't of State Hwys*, 402 Mich 172, 193; 261 NW2d 718 (1978) (Ryan, J, with Coleman and Fitzgerald, JJ, concurring). It noted that a state is not subject to suit unless there has been a "[l]egislative waiver of a state's suit immunity." *Id.* It stated that "the Court of Claims Act stands as the state's controlling legislative expression of waiver of the state's sovereign immunity" from suit. *Id* at 195. And it made clear that "a statutory relinquishment of common law sovereign immunity from suit must be *strictly construed*." *Id* at 197 (emphasis added).

Although Parkwood acknowledges the foregoing (*see* Parkwood's brief at 16-17), it argues that *Greenfield* stands for the proposition that the *jurisdiction* of the court of claims should be strictly construed. Parkwood has it backwards. *Greenfield* stands for the proposition that any legislative *waiver* of the state's sovereign immunity from suit must be strictly construed, and this requires an expansive interpretation of the court of claims' jurisdiction over claims filed against the state.

II. Parkwood Erroneously Interprets the Court of Claims Act

Parkwood's interpretation of the act takes the tail (i.e., the 1984 amendments to the act) and tries to make it wag the dog – i.e., the rest of the act, including its central grant of "exclusive" jurisdiction to the court of claims over "all claims and demands, liquidated and unliquidated, ex contractu and ex delicto, against the state...." MCL 600.6419(1)(a).

In an effort to support this interpretation, Parkwood asks the Court to look beyond the language chosen by the legislature, and instead use "history" and an assortment of other secondary interpretive devices in order to divine the legislature's subjective intent.

There is no need for any of this. The only thing that is needed is the plain language of the act itself. The following analysis gives logical and harmonious meaning to every word of the act.

A. Prior to its amendment in 1984, the court of claims act conferred exclusive jurisdiction to the court of claims over all claims *ex contractu* and *ex delicto* against the state, regardless of the type of relief sought.

Prior to the legislature's 1984 amendments to the act, subsection 6419(1)(a) broadly granted "exclusive" jurisdiction to the court of claims over "***all*** claims and demands, liquidated and unliquidated, ex contractu and ex delicto, against the state...." (Emphasis added.) This language did not exclude claims and demands, *ex contractu* or *ex delicto*, which happened to seek equitable or declaratory relief.

B. **The 1984 amendments left intact this exclusive grant of jurisdiction, which clearly covers the contractual claims advanced by Parkwood.**

Importantly, when the legislature made the 1984 amendments, it did not amend the word "all" to exclude claims or demands, *ex contractu* or *ex delicto*, which happen to seek equitable or declaratory relief. MCL 600.6419(1)(a). Rather, it left subsection (a) of section 6419(1) wholly untouched.

In the case at bar, Parkwood repeatedly alleges that its claim against the state is contractual. Appendix at 67a, ¶ 15; Appendix at 74a, ¶ 15; Appendix at 79a, ¶ 15. Accordingly, even if Parkwood were seeking nothing more than declaratory relief – a notion that is demonstrably false (*see* MSHDA's opening brief at 12-13) – the fact that its claim is contractual brings it solely within the exclusive jurisdiction of the court of claims.[1]

Because Parkwood has brought what it says is a contractual claim, there is no need to address the 1984 amendments to the act. Nevertheless, since Parkwood's brief misinterprets those amendments, we address them in the sections that follow.

C. **The 1984 amendments added to the court of claims' jurisdiction, by investing it – along with the circuit courts – with concurrent jurisdiction over demands other than those *ex contractu* and *ex delicto*.**

In 1984, the legislature enacted section 6419a, which gave the court of claims additional – albeit concurrent – jurisdiction over any demand for equitable relief and any demand for declaratory relief that is ancillary to a claim filed pursuant to section 6419:

> *In addition to* the powers and jurisdiction conferred upon the court of claims *by section 6419*, the court of claims has *concurrent*

[1] Although irrelevant to this jurisdictional analysis, Parkwood's efforts to support its argument that its complaint doesn't claim monetary relief ("[t]he suggestion of crediting the funds against the loan balance when Parkwood prepays the loan is simply a convenience," Parkwood's brief at 29) contradict its pleadings and other court filings. (*See* MSHDA's opening brief at 12-13.) Even if this were not the case, with a contractual claim such as Parkwood's, it doesn't make any jurisdictional difference whether the plaintiff asks for the money, asks to use the money, or asks to be told that it owns the money.

> jurisdiction of *any* demand for equitable relief and *any* demand for a declaratory judgment when *ancillary* to a claim filed *pursuant to section 6419.*

MCL 600.6419a (emphasis added.)

Parkwood asks the Court to believe that the "in addition" language created an *exception* to the jurisdiction already granted in subsection 6419(1)(a) over "all claims and demands ... *ex contractu* and *ex delicto* against the state." But section 6419a says precisely the opposite. The words "in addition ... to section 6419" mean that section 6419a *added* to the jurisdiction that the legislature had already given the court of claims in subsection 6419(1)(a).

Furthermore, because subsection 6419(1)(a) already granted the court of claims jurisdiction over "***all*** claims and demands ... *ex contractu* and *ex delicto*," it logically follows that section 6419a granted the court of claims additional, but concurrent, jurisdiction over "any" demand for equitable or declaratory relief that is ***not*** *ex contractu* or *ex delicto* – provided it is "ancillary" to *another* claim or demand that ***is*** *ex contractu* or *ex delicto*.

D. By giving circuit courts concurrent jurisdiction over demands against the state other than those *ex contractu* and *ex delicto*, the 1984 amendments did not diminish the exclusive jurisdiction of the court of claims over claims *ex contractu* and *ex delicto*.

The legislature made it clear that this additional grant of concurrent ancillary jurisdiction was an exception to the court of claims' exclusive jurisdiction "as conferred upon it ***by this chapter***." MCL 600.6491(1) (emphasis added). The legislature's choice of the word "chapter" is important. Parkwood argues that the "exception" to the court of claims' exclusive jurisdiction made by the 1984 amendment necessarily invaded and diminished the court of claims' core jurisdiction over "all claims and demands ... *ex contractu* and *ex delicto*" as conferred by subsection 6419(1)(a). But the legislature didn't say that the amendment's exception to exclusivity applied only to *subsection 6419(1)(a)*. Instead, it said that the exception was to the

court of claims' jurisdiction under the "*chapter*," *which includes section 6419a.* This makes perfect sense. The 1984 amendments conferred added jurisdiction to the court of claims over demands that were neither *ex contractu* nor *ex delicto*. But since that *added* jurisdiction was shared with the circuit courts, an exception to the exclusive jurisdiction of the court of claims' jurisdiction under the *chapter* was created.

The legislature reinforced the concurrent nature of the added jurisdiction by stating in section 6419a that the additional jurisdiction to the court of claims "is not intended to be exclusive of the jurisdiction of the circuit court over demands for declaratory and equitable relief conferred by section 605," and, somewhat repetitively, by amending subsection 6419(4) to state that "[t]his chapter shall not deprive the circuit court of this state of jurisdiction over ... proceedings for equitable or declaratory relief." Of course, neither section 605 (which the legislature did *not* amend), nor any other legislative or constitutional provision, grants circuit courts any form of jurisdiction over *ex contractu* or *ex delicto* claims against the state. To suggest otherwise would run afoul of the Court's admonition that "a statutory relinquishment of common law sovereign immunity from suit must be strictly construed." *Greenfield*, *supra*, at 197.

E. <u>If "history" is to be any guide, it supports MSHDA's reading of the act.</u>

In 1978, all six of the Supreme Court justices participating in the *Greenfield* decision held that the circuit courts do *not* possess jurisdiction over declaratory actions against the state.[2]

[2] *Greenfield*, *supra*, at 198 ("the circuit court was without jurisdiction to entertain the complaint for declaratory relief" against the state) (Ryan, J, with Coleman and Fitzgerald, JJ, concurring); *id* at 199 (same) (Coleman, J, concurring); *id* at 202-03 ("[s]ince this action for a declaratory judgment asserts a claim against a department of state government, it cannot be maintained in the circuit court") (Levin, J, with Kavanaugh, J, concurring in part and dissenting in part); *id* at 231 ("[w]ith respect to citizen suit against an agency of government for a declaratory judgment, ... the circuit court has no jurisdiction") (Williams, J, to reverse).

After *Greenfield* was decided, the legislature addressed two jurisdictional questions when it enacted the 1984 amendments to the act: (1) whether the court of claims should have jurisdiction over *all* declaratory and equitable actions against the state, including those without any nexus to claims or demands *ex contractu* or *ex delicto*; and (2) if the answer to the first question is "yes," whether that jurisdiction should be exclusive, thereby precluding the circuit courts from exercising jurisdiction over equitable and declaratory actions that are ***not*** *ex contractu* or *ex delicto.*

Section 6419a answered the first question with a qualified "yes." Section 6419a gave the court of claims additional concurrent jurisdiction over "*any* demand for equitable relief and *any* demand for a declaratory judgment." (Emphasis added.) At the same time, however, the section made clear that this additional court of claims jurisdiction over demands that are ***not*** *ex contractu* or *ex delicto* must be ancillary to claims that ***are***. Moreover, section 6419a answered the second question by making clear that the circuit courts were to possess concurrent jurisdiction over declaratory and equitable actions with no nexus to a claim *ex contractu* or *ex delicto.* The legislature reinforced the concurrent nature of the added jurisdiction by amending subsections 6419(1) and (4) in the manner described above.

This reasoned reading of the legislative language permits a harmonious interpretation of the entire act that preserves the meaning of all of its words, including the central operative words of subsection 6419(1)(a), which the legislature left untouched.

III. The Sentence From *Silverman* On Which Parkwood Relies is Not the Holding of that Case

Parkwood argues that it has followed the sentence in *Silverman* that "[a] complaint seeking only equitable or declaratory relief must be filed in the circuit court." *See* Parkwood's brief at 21-22, quoting *Silverman, supra,* at 217. But neither that sentence, nor any other portion

of the opinion, addressed the central issue presented in the case at bar – i.e., whether the court of claims has jurisdiction over a claim *ex contractu* against the state, whether or not the plaintiff purports to seek declaratory relief (or, in Parkwood's case, legal relief phrased in the language of declaratory relief). For the reasons set forth in MSHDA's briefs, the court of claims has exclusive jurisdiction to decide such claims.

Moreover, it is not accurate to state, as Parkwood does, that *Silverman* "held" that "[a] complaint seeking only equitable or declaratory relief must be filed in the circuit court." (Parkwood's brief at 21.) The *Silverman* Court did not apply this sentence to the facts of the case before it. Since the plaintiff sought more than declaratory or equitable relief, there was no need for it to do so. Accordingly, the sentence was not the "holding" of *Silverman.* Indeed, as the Court observed in *Roberts v Auto Owners Ins Co*, 422 Mich 594, 597-98; 374 NW2d 905 (1985), it is a "well-settled rule that statements concerning a principle of law not essential to determination of the case are obiter dictum and lack the force of an adjudication." As we explained in our opening brief, the holding of *Silverman* was that a plaintiff cannot circumvent the exclusive jurisdiction of the court of claims by artfully wording its complaint. *See* MSHDA's brief at 19-23.

CONCLUSION

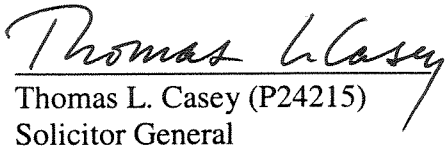
Parkwood inverts the rule of strict construction applicable to the state's sovereign immunity from suit, arguing that it means that the *jurisdiction* of the court of claims must be strictly construed, when it really means that any legislative *waiver* of state suit immunity must be strictly construed. Parkwood attempts to circumvent the language of the court of claims act, arguing that the 1984 amendments fundamentally altered the meaning of the act's central provisions, which the legislature left untouched, and resorting to "history" and other secondary

interpretive devices. Finally, although Parkwood places heavy reliance upon a single sentence from *Silverman*, that sentence was not, as Parkwood claims, the decision's "holding." The decision's holding supports MSHDA's position.

The plain and unambiguous language of the court of claims act reveals that the court of claims had exclusive jurisdiction and that the circuit court had no jurisdiction. The Court should reverse the decision of the court of appeals.

Respectfully submitted,

MICHAEL A. COX
Attorney General



Thomas L. Casey (P24215)
Solicitor General
Counsel of Record

Carl H. von Ende (P21867)
Special Assistant Attorney General

Dated: February 19, 2003

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