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STATE OF MICHIGAN
IN THE SUPREME COURT

TEDDY 23, LLC, a Michigan limited liability company, and MICHIGAN TAX CREDIT FINANCE, LLC, a Michigan limited liability company d/b/a MICHIGAN PRODUCTION CAPITAL,

Plaintiffs/Appellants,

v

MICHIGAN FILM OFFICE and MICHIGAN DEPARTMENT OF TREASURY,

Defendants/Appellees.
_____/

Supreme Court Nos. 153420 & 153421

Court of Appeals Nos. 323299 & 323424

Ingham Circuit Court No. 14-702-AA & Court of Claims No. 14-39-MT

MICHIGAN DEPARTMENT OF TREASURY'S SUPPLEMENTAL BRIEF

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Dated: January 18, 2017

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STATUTES INVOLVED

MCL 205.22 (1)

A taxpayer aggrieved by an assessment, decision, or order of the department may appeal the contested portion of the assessment, decision, or order to the tax tribunal within 60 days, or to the court of claims within 90 days after the assessment, decision, or order. The uncontested portion of an assessment, order, or decision shall be paid as a prerequisite to appeal.

MCL 600.6419

(1) Except as provided in sections 6421 and 6440, the jurisdiction of the court of claims, as conferred upon it by this chapter, is exclusive. All actions initiated in the court of claims shall be filed in the court of appeals. The state administrative board is vested with discretionary authority upon the advice of the attorney general to hear, consider, determine, and allow any claim against the state in an amount less than $1,000.00. Any claim so allowed by the state administrative board shall be paid in the same manner as judgments are paid under section 6458 upon certification of the allowed claim by the secretary of the state administrative board to the clerk of the court of claims. Except as otherwise provided in this section, the court has the following power and jurisdiction:

> **(a)** To hear and determine any claim or demand, statutory or constitutional, liquidated or unliquidated, ex contractu or ex delicto, or any demand for monetary, equitable, or declaratory relief or any demand for an extraordinary writ against the state or any of its departments or officers notwithstanding another law that confers jurisdiction of the case in the circuit court.
>
> . . . .

(5) This chapter does not deprive the circuit court of exclusive jurisdiction over appeals from the district court and administrative agencies as authorized by law.

> . . . .

MCL 600.631

An appeal shall lie from any order, decision, or opinion of any state board, commission, or agency, authorized under the laws of this state to promulgate rules from which an appeal or other judicial review has not otherwise been provided for by law, to the circuit court of the county of which the appellant is a resident or to the circuit court of Ingham county, which court shall have and exercise jurisdiction with respect thereto as in nonjury cases. Such appeals shall be made in accordance with the rules of the Supreme Court.

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INTRODUCTION

In an order dated December 7, 2016, this Court asked the parties to file supplemental briefs addressing: (1) whether the Court of Claims had jurisdiction over plaintiffs' claim under MCL 600.6419(1)(a); and (2) whether MCL 600.631 created exclusive jurisdiction over plaintiff's claim in the circuit court, including whether the denial of the postproduction certificate of completion was a "decision . . . of [a] state board, commission, or agency, authorized under the laws of this state to promulgate rules from which an appeal or other judicial review has not otherwise been provided for by law."

The issue of jurisdiction rests on whether the statutes distinguish a "claim" from an "appeal." They do. Jurisdiction over a "claim" rests exclusively with the Court of Claims. Jurisdiction over an "appeal" in this matter rests exclusively with the circuit court. The issue, simply stated, is that MCL 600.631 confers jurisdiction upon the circuit court for "appeals" from agency decisions. But MCL 600.6419(1)(a) confers exclusive jurisdiction on the Court of Claims over "claims." If an "appeal" is just one form of a "claim," then the jurisdiction conferred upon the circuit court to hear an "appeal" would be nullified by the exclusive jurisdiction of the court of claims to hear "claims." But the conflict is resolved by MCL 600.6419(5), which provides a carve-out from the exclusive jurisdiction of the Court of Claims specifically for appeals from administrative agencies. Those appeals are *exclusively* within the jurisdiction of the circuit court. The appeal of Teddy 23 and the Lender from a decision of the Michigan Film Office falls squarely within the exclusive jurisdiction of the circuit court as carved out by MCL 600.6419(5).

As both the Court of Claims and Court of Appeals correctly observed, this case involves an appeal of a decision of the Michigan Film Office denying Teddy 23 and Lender a post-production certificate of completion. Treasury concurs with the supplemental brief of the Michigan Film Office that the Michigan Film Office is an agency that made a final decision affecting a private person's claim for the certificate that was quasi-judicial in nature. Accordingly, Teddy 23 and Lender had a direct right to appeal the Film Office decision under article 6, § 28 of Michigan's 1963 Constitution. Section 631 of the Revised Judicature Act (RJA) supports this direct right to appeal because the Film Office is a state agency authorized to promulgate rules and because no other judicial review has been provided for by law. Accordingly, Treasury also concurs with the Film Office that MCL 600.631 created exclusive jurisdiction over plaintiff's appeal of its decision in the circuit court. Treasury likewise concurs with the Film Office's analysis and conclusion that MCL 600.6419(1)(a) does not vest the Court of Claims with original jurisdiction over an appeal from a Film Office decision, as recognized by MCL 600.6419(5).

Teddy 23 and Lender maintain throughout their application that the Film Office and the Department of Treasury are one and the same and that their "claim" is, in fact, an appeal of a Treasury decision. But this characterization is inaccurate for the reasons set forth in Treasury's brief in opposition; the "claim" in this case is in fact an appeal of a Film Office decision.

The Michigan Film Office is independent of Treasury and had the sole statutory authority to grant or deny a certificate of post-production completion to

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Teddy 23. There is no appeal from a Treasury decision because there was no Treasury decision. The Revenue Act confers jurisdiction over appeals from Treasury assessments, decisions, or orders on either the Court of Claims or the Michigan Tax Tribunal, at the taxpayer's option, provided that the filing is perfected under MCL 205.22. Unlike appeals of Treasury decisions that are authorized by the Revenue Act, appeals of decisions made by the Michigan Film Office have no statutory authorization except that granted under MCL 600.631 and made exclusive under MCL 600.6419(5).

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ARGUMENT

I. The Court of Claims Act does not confer jurisdiction upon the Court of Claims over an appeal.

The Court of Claims has jurisdiction over "claims" under the Court of Claims Act. Appeals are not a subset of "claims." To have an appeal heard in the Court of Claims, the jurisdiction must be conferred on the court through some other authorizing statute. For instance, in the case of taxpayer appeals of a Treasury decision, the Court of Claims jurisdiction is conferred by the Revenue Act, MCL 205.22. But in the instant matter, Treasury made no decision. The statutory authority for granting or denying a post-production certificate of completion rested entirely with the Michigan Film Office under MCL 208.1455(8).

In the case *Taylor v Auditor General*, this Court described the history and limited jurisdiction of the Court of Claims:

> The court of claims is a court of legislative creation. It came about in this way: the Constitution of 1908, in article 6, § 20, provided that the board of State auditors "*shall examine and adjust all claims against the State not otherwise provided for by general law*." In 1929, the State administrative board, which had been created in 1921, was "*vested with discretionary power and authority to hear, consider and determine claims presented to said board against the State of Michigan*, arising from or by reason of negligence, malfeasance or misfeasance of any State officer, employee, * * * and to allow same and order payment thereof."
>
> . . . .
>
> It derives its powers only from the legislative act of its creation and does not possess the broad and inherent powers of a constitutional court of general jurisdiction. [*Taylor*, 360 Mich 146, 149–150 (1960), disapproved of on other grounds, *Parkwood Ltd Dividend Hous Ass'n v State Hous Dev Auth*, 468 Mich 763, 768 (2003) (internal citations omitted and emphasis added).]

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The composition and jurisdiction of the Court of Claims under the Court of Claims Act has changed by virtue of legislative action throughout the years, and most recently by Public Act 164 of 2013. Prior to PA 164, MCL 600.6419(1) provided:

> (1) Except as provided in sections 6419a and 6440, the jurisdiction of the court of claims, as conferred upon it by this chapter, *shall be exclusive*. The statue administrative board is hereby vested with discretionary authority upon the advice of the attorney general to hear, consider, determine, and allow any claim against the state in an amount less than $1,000.00. Any claim so allowed by the state administrative board shall be paid in the same manner as judgments are paid under section 6458 upon certification of the allowed claim by the secretary of the state administrative board to the clerk of the court of claims. The court has power and jurisdiction:
>
>> (a) To hear and determine all claims and demands, liquidated and unliquidated, ex contractu or ex delicto against the state and any of its departments. [MCL 600.6419(1), as amended by Public Act 212 of 1984) (emphasis added).]

PA 164 changed the structure of the Court of Claims as well as the claims and demands over which the Court of Claims has jurisdiction to hear. PA 164 amended paragraph (1)(a), enlarging the scope of the Court of Claims' jurisdiction over claims and demands against the State to include: statutory and constitutional claims against the state, and "any demand for monetary, equitable, or declaratory relief or any demand for an extraordinary writ against the state."

Teddy 23 and the Lender filed an appeal of a Michigan Film Office decision in the Court of Claims. They incorrectly assert that they were appealing a Treasury decision and that their appeal is authorized by the Revenue Act MCL 205.22. But it was in fact an appeal of a decision of the Michigan Film Office, an agency that is

independent of the Treasury. Therefore, the issue is not whether the Court of Claims has jurisdiction by way of the Revenue Act but rather, whether MCL 600.6419(1)(a) confers jurisdiction upon the Court of Claims over a Michigan Film Office decision. It does not.

The answer turns on whether an "appeal" can be interpreted to be a "claim." The principal goal of statutory construction is to ascertain and give effect to the intent of the Legislature. *Frankenmuth Mut Ins Co v Marlette Homes, Inc*, 456 Mich 511, 515 (1998). The first criterion in determining intent is the specific language of the statute. *In re MCI Telecommunications Complaint*, 460 Mich 396, 411 (1999). If the plain and ordinary meaning of the language is clear, then judicial construction is normally neither necessary nor permitted. *Id.* Moreover, parts of the same act must be construed harmoniously to effectuate the Legislature's intent, *Macomb Co Prosecutor v Murphy*, 464 Mich 149, 159 (2001), and statutes from different acts but which relate to the same subject or share a common purpose are *in pari materia* and must be read together as one law even if they contain no reference to one another and were enacted on different dates. *State Treasurer v Schuster*, 456 Mich 408, 417 (1998). Courts may consult dictionary definitions to give words not defined by statute their common and ordinary meaning. *Krohn v Home-Owners Ins C*o, 490 Mich 145, 156 (2011) (citations omitted).

The terms "claim," "demand," and "appeal" are not defined in the Court of Claims Act. The fact that the Legislature used the term "appeals" in paragraph (5) but not in paragraph (1)(a) evidences that it understood the terms and recognized

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an "appeal" as a distinct and separate type of legal action from a "claim" or "demand." Further, the language in paragraph (5) refers to appeals "*from* the district court and administrative agencies," further distinguishing the type of legal action from an original action. Thus, based on the plain language of the statute, the Legislature did not intend for appeals to be included in the general grant of original jurisdiction outlined in § 6419(1)(a).

To the extent necessary, this conclusion is also supported by the dictionary definitions of these terms. An "appeal" is defined as "a proceeding undertaken to have a decision reconsidered by a higher authority; esp. the submission of a lower court's or agency's decision to a higher court for review and possible reversal." *Black's Law Dictionary* (8th ed). The most relevant meaning of "claim" is a demand for money, property, or a legal remedy to which one asserts a right; esp the part of the complaint in a civil action specifying what relief the plaintiff asks for." *Id.* "Demand" is defined as "the assertion of a legal or procedural right." *Id.* These words have different meanings, and those different meanings must be given effect.

CONCLUSION AND RELIEF REQUESTED

Had the "claim" at issue been an appeal of a Treasury assessment, decision, or order, which it was not, the Revenue Act would have conferred jurisdiction upon either the Michigan Tax Tribunal or the Court of Claims. But Teddy 23 and Lender challenge a decision of the Michigan Film Office.

Treasury concurs with the Michigan Film Office that Teddy 23 and Lender had a right to appeal the denial of their application for a post-production certificate

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of completion under article 6, § 28 of the Michigan Constitution. But that appeal could only be filed in the circuit court pursuant to MCL 600.631. The circuit court's exclusive jurisdiction over plaintiffs' appeal is explicitly recognized in paragraph (5) of § 6419 of the Court of Claims Act and implicitly recognized in the plain language of paragraph (1) of § 6419 of the Court of Claims Act.

Respectfully submitted,

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Dated: January 18, 2017

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