

NOV 16 2012

STATE OF MICHIGAN

IN THE 30TH CIRCUIT COURT FOR THE COUNTY OF INGHAM

ASSOCIATED BUILDERS
AND CONTRACTORS

Plaintiff,

v

CITY OF LANSING,

Defendant.

OPINION AND ORDER

HON. CLINTON CANADY III

Docket No.: 12-406-CZ

At a session of said Court held in the City of
Lansing, County of Ingham, State of Michigan,
This 14th day of November, 2012

**PRESENT: The Honorable Clinton Canady III
30th Circuit Court Judge**

This matter is before the Court on Plaintiff's *Motion for Summary Disposition* pursuant to MCR 2.116(C)(10). Plaintiff is challenging Defendant's Prevailing Wage and Benefit Standards Ordinance and Living Wage Ordinance on the grounds that the regulation of third-party wage and benefit rates is a matter of state, not municipal concern, which has been established by binding Michigan precedent.

A hearing on this matter was held on the record October 31, 2012. At the conclusion of oral argument by the parties, the Court determined that further review and consideration was necessary due to the complex issues involved in this case. Thus, the Court informed the parties that this matter would be taken under advisement.

This Court having received all supporting documents and correspondence; having heard oral arguments; and being fully apprised of the issues, states the following:

FINDINGS OF FACT

Plaintiff is a Michigan non-profit corporation of several employers in the construction industry such as subcontractors, general contractors, builders and suppliers. Defendant is a "body corporate" municipality established pursuant to the Home Rule Act (MCL § 117.1). Defendant has promulgated the Prevailing Wage and Benefit Standards Ordinance and the Living Wage Ordinance, which require contractors awarded construction contracts with Lansing to pay wage and fringe benefits to their employees at levels determined by Defendant.

Plaintiff initiated this action against Defendant by filing a Complaint on April 16, 2012 seeking declaratory and injunctive relief. On August 23, 2012, Plaintiff filed its Motion for Summary Disposition pursuant to MCR 2.116(C)(10). Defendant filed a response on October 8, 2012 and requested Summary Disposition in favor of Defendant pursuant to MCR 2.116(C)(1)(2).

CONCLUSIONS OF LAW

Standard of Review

Pursuant to MCR 2.116(C)(10), a motion for summary disposition is proper when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. In evaluating a motion for summary disposition on ground that there is no genuine issue of fact, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, in the light most favorable to the party opposing the motion.

¹Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law.² Litigant's mere pledge to establish an issue of fact at trial cannot survive summary disposition under court rule applicable when there is no genuine issue of material fact; the court rule plainly requires the adverse party to set forth specific facts at the time of the motion showing a genuine issue for trial.³

Also, under MCR 2.116(C)(I)(2), if it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party.

Analysis

This court is inclined to grant Plaintiff's motion for summary disposition. Michigan precedent, regardless of age, is still considered to be binding unless or until it is overruled by the Michigan Supreme Court. At this time, the Court will only address Defendant's Prevailing Wage and Benefit Standards Ordinance because the Living Wage Ordinance was never enacted and is therefore not at issue here.

Plaintiff claims that Defendant's ordinances unlawfully regulate the payment of wage and fringe benefit rates that Plaintiff's contractor pay to their employees working on city construction projects. Under the Michigan Supreme Court case *Lennane v. City of Detroit*, a municipality lacks the authority to regulate the level of wages and benefits provided by private businesses to its employees.⁴ The Court held that the regulation of third-party wage and benefit rates is a matter of state, not municipal concern. Plaintiff claims that, not only do Defendant's Prevailing

¹ *Maiden v Rozwood*, 461 Mich 109; 597 NW2d 817 (1999)

² *Id.*

³ *Id.*

⁴ *Lennane v City of Detroit*, 225 Mich 631; 196 NW 399 (1923)

Wage and Benefit Standards Ordinance seek to regulate wages, which is a state concern, but it also requires that contractors provide certain fringe benefit rates to employees working on municipal contracts. Therefore, the ordinance directly contradicts the precedent set by *Lennane*.

Plaintiff further argues Defendant does not have the authority to regulate third-party wages because the Michigan Home Rule Act (MCL 117.4J(3)), under which Defendant was established, states that:

For the exercise of all municipal powers in the management and control of municipal property and in the administration of the municipal government, whether such powers be expressly enumerated or not; for any act to advance the interests of the city, the good government and prosperity of the municipality and its inhabitants and through its regularly constituted authority to pass all laws and ordinances *relating to its municipal concerns subject to the constitution and general laws of this state.* (emphasis added)

Additionally, Plaintiff argues that the 1963 Michigan Constitution, Article VII, § 22, does not give Defendant the authority to regulate third-party wages, as it states:

Under general laws the electors of each city and village shall have the power and authority to frame, adopt and amend its charter, and to amend an existing charter of the city or village heretofore granted or enacted by the legislature for the government of the city or village. Each such city and village shall have power to adopt resolutions and ordinances *relating to its municipal concerns*, property and government, subject to the constitution and law. No enumeration of powers granted to cities and villages in this constitution shall limit or restrict the general grant of authority conferred by this section. (emphasis added)

P asserts that, according to the Home Rule Act and the Michigan Constitution, a municipality can adopt ordinances "relating to its municipal concerns." *Lennane* held that the regulation of third-party wages is a matter of state, not municipal concern.

Plaintiff also contends that, despite Defendant's assertions, the fact that *Lennane's* holding was based on the 1908 rather than the 1963 Michigan Constitution does not render *Lennane* obsolete. The only practical difference between the 1908 and 1963 constitutional

provisions is that the 1963 version broadened the scope of interpretation courts use to analyze the scope of municipal powers. However, the fact that municipalities can only pass regulations relating to their municipal concerns remains unchanged; the 1963 Constitution did not broaden the definition of “municipal concerns” to include the regulation of third-party wages.

Defendant argues that *Lennane* should not be used as binding precedent by this Court because the *Lennane* decision was based on the 1908, not the 1963 Constitution; as a result, *Lennane* is no longer good law. To support its claim, Defendant cites the court’s statements in *Rudolph v. Guardian Protective Services, Inc.*, in which the Court of Appeals stated that *Lennane* is no longer good law.⁵ The court stated *Lennane* is obsolete because the foundations on which the Supreme Court decided *Lennane* are no longer the same, as the decision was based on the 1908 Constitution.⁶ Although the *Rudolph* court chose to follow *Lennane* and declare that the city of Detroit could not enact an ordinance regulating wages, it stated that “in light of the changes in Michigan's legal landscape since 1923 pertaining to municipalities' police powers, we respectfully urge our Supreme Court to revisit *Lennane* and reconsider whether the rule therein continues to have a place in today's jurisprudence.”⁷ Defendant also argues that this Court should not follow the holding in *Rudolph* because the ordinance at issue in that case was a living wage ordinance, not a prevailing wage ordinance.

Defendant also argues that the Michigan Constitution and Home Rule Act can and should be interpreted in a way to provide a home rule city, like Defendant, the authority to regulate third-party employee wages. Specifically, Defendant contends that, under the Home Rule Act, municipalities have powers whether they are “expressly enumerated or not, for any act to

⁵ *Rudolph v. Guardian Protective Services, Inc.*, 2009 WL 3013587.

⁶ *Id.* at 3

⁷ *Id.*

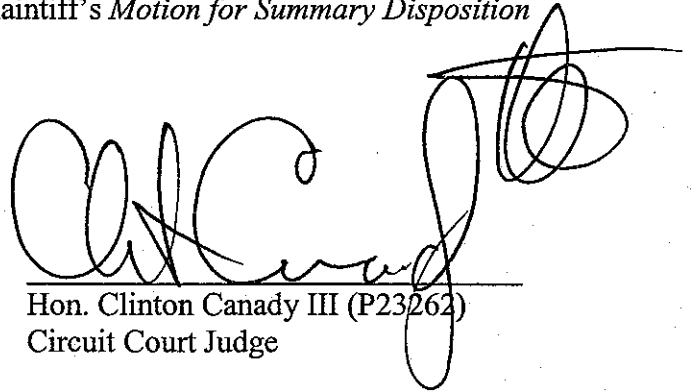
advance the interests of the city, the good government and prosperity of the municipality and its inhabitants.”

Despite Defendant’s compelling arguments regarding *Lennane*’s archaic nature, this Court is bound to follow the precedent set by the Michigan Supreme Court in *Lennane* because, as the Court of Appeals in *Rudolph* noted, the Michigan Supreme Court has not overturned the decision. Therefore, applying the standard set by *Lennane*, this Court must find that a municipality does not have the authority to regulate third-party wages. Because Defendant’s Prevailing Wage and Benefit Standards Ordinance exceed such authority under *Lennane*, there is no genuine issue of material fact, and Plaintiff is entitled to judgment as a matter of law.

THEREFORE, IT IS ORDERED that Plaintiff’s *Motion for Summary Disposition* under MCR 2.116(C)(10) is hereby **GRANTED**.

IT IS SO ORDERED.

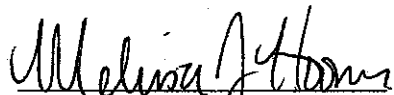
IT IS FURTHER ORDERED that in compliance with MCR 2.602(A)(3), this Court finds that this decision resolves the last pending claims and closes the case.



Hon. Clinton Canady III (P23262)
Circuit Court Judge

PROOF OF SERVICE

I hereby certify I served a copy of the above Order upon Plaintiff and Defendant by placing the Order in sealed envelopes addressed to attorney for Plaintiff and the attorney for Defendant and deposited for mailing with the United States Mail at Lansing, Michigan, on November 14, 2012.



Melissa J. Hoover (P75921)
Law Clerk