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STATE OF MINNESOTA
IN COURT OF APPEALS
C4-98-618

Country Joe, Inc., et al.,
Appellants,

vs.

City of Eagan,
Respondent.

Filed October 13, 1998
Affirmed
Amundson, Judge
Concurring specially, Kalitowski, Judge

Dakota County District Court
File No. C2-94-9530

Wood R. Foster Jr., Thomas H. Goodman, Anthony Gleekel, Jordan M. Lewis, Siegel, Brill, Greupner, Duffy & Foster, P. A., 1300 Washington Square, 100 Washington Avenue South, Minneapolis, MN 55401 (for appellants)

Clifford M. Greene, John M. Baker, Sarah L. Brew, Greene Espel, P.L.L.P., 333 South Seventh Street, Suite 1700, Minneapolis, MN 55402; and

James F. Sheldon, Michael G. Dougherty, Severson, Sheldon, Dougherty & Moldena, 600 Midway National Bank Building,

7300 West 147th Street, Apple Valley, MN 55124 (for respondent)

Considered and decided by Kalitowski, Presiding Judge, Amundson, Judge, and Holtan, Judge. *

U N P U B L I S H E D O P I N I O N

AMUNDSON , Judge

Appellants challenge the district court's grant of summary judgment in favor of the respondent city in the matter of damages. The damages sought stem from the supreme court's earlier decision that the city's imposition of a road unit connection charge was actually an illegal tax. The district court found no statutory remedy, and that appellants had not properly sought relief through mandamus or declaratory judgment. Appellants argue that because the supreme court found that the city had levied an illegal tax, it is no tax at all, and they are entitled to damages in their current action. Alternatively, they argue that they paid the charge under duress, which should dictate recovery even absent statutory provision. There is no statutory provision for recovery; there is no compelling evidence of duress. We affirm.

FACTS

Appellants Country Joe, Inc., et al., are a group of building contractors. Respondent City of Eagan (city) imposed a road unit connection charge as a condition for the issuance of all building permits within the city. Appellants brought suit against the city, arguing that the city's road unit charge was illegal and seeking a refund for those who had paid the charge. The suit was ultimately taken to the Minnesota Supreme Court, which held that the road unit charge was illegal because there was no statutory authorization for its collection. ***Country Joe, Inc. v. City of Eagan*** , 560 N.W.2d 681 (Minn. 1997)(***Country Joe I***).

The district court was to decide the matter of damages: appellants sought a refund of those unauthorized charges they had paid. Both parties moved for summary judgment. The district court granted the city's motion and denied appellants' motion, stating that appellants had no basis for recovery. This appeal followed.

D E C I S I O N

"On an appeal from summary judgment, we ask two

questions: (1) whether there are any genuine issues of material fact and (2) whether the lower courts erred in their application of the law." ***State by Cooper v. French*** , 460 N. W.2d 2, 4 (Minn. 1990). Here, both parties agree that there is no question of fact. Appellants argue that the district court erred in its application of law.

I. Classification as "Tax"

Appellants argue that the district court erred in classifying the road unit charge as a tax and, therefore, also erred in finding that only under a statutory remedy could they recover damages.

At the district court level, appellants argued that the charge be seen as a "revenue measure," rather than as a tax. The district court held that there is no meaningful difference between a revenue measure and a tax. ***See Barron v. City of Minneapolis*** , 212 Minn. 566, 570-01, 4 N.W.2d 622, 624 (1942) (a fee with a revenue-raising purpose is essentially a tax).

Appellants also argued that because the supreme court found that the charge was an illegal tax, it cannot be considered a tax at all. The district court decided that for purposes of legal definition, the charge is nevertheless a tax, albeit an illegal one. We agree. The supreme court repeatedly referred to the charge as a tax, and there is no reason, despite its illegality, to consider it otherwise for these purposes.

The classification of the charge as a tax has implications for appellants' recovery. "In Minnesota, the right to claim a refund of taxes voluntarily paid in error is governed by statute." ***Acton Constr. Co. v. Commissioner of Revenue*** , 391 N.W.2d 828, 832 (Minn. 1986). However, no statute exists governing any refund of an unauthorized tax in Minnesota. While this seems curious, any lacunae in the system must be addressed by the legislature.

II. Duress

Appellants further argue that they have a legal remedy for recovery because they paid the charge under duress. Duress offers an exception to the rule that taxes voluntarily paid cannot be recovered other than by statute. To overcome the presumption of voluntariness, however, there must be the element of coercion in the tax's collection. ***Horn v. City of Minneapolis*** , 182 Minn. 172, 177, 234 N.W. 289, 291 (1930). As ***Horn*** explains:

> The rule is that, where an illegal demand is made upon a person, and the law furnishes him adequate protection against it, or gives him an adequate remedy in the premises, if he pays what is demanded, instead of taking the protection the law gives him or the remedy which it furnishes, he must be held to have made a voluntary payment. But although there be a legal remedy, if his situation or the situation of his property is such that the legal remedy would not be adequate to protect him from irreparable prejudice, and the circumstances are such as to operate as a stress or coercion upon him to comply with the illegal demand, the payment is involuntary.

Id .

The district court found that appellants had access to legal remedies to which ***Horn*** referred, "Caselaw makes clear that a person faced with an illegal demand has two legal avenues available: mandamus and declaratory judgment," citing ***Crystal Green v. City of Crystal*** , 421 N.W.2d 393, 394 (Minn. App. 1988), ***review denied*** (Minn. May 25, 1988).

Here, appellants argue that because the charge was a condition for the issuance of building permits, and because they are builders by trade, they were forced by financial imperative to pay the charge. They argue that they would have been irreparably prejudiced by severe building delays had they not paid the charge. There was, however, no evidence presented of undue consequences of the failure to pay the charge. Appellants also contend that they would have also experienced costly delays had they sought legal remedies prior to paying the charge. The law, however, does not acknowledge such concerns. "[T]he limitation of alternatives imposed by one's own financial problems does not constitute duress." ***Bond v. Charlson*** , 374 N.W.2d 423, 428 (Minn. 1985).

Crystal Green makes clear that payment of a charge without first seeking relief through mandamus or declaratory judgment demonstrates a lack of duress or coercion. 421 N. W.2d 394. Here, appellants paid the fee voluntarily and not under a demonstrated duress, which would provide an exception to the requirement of a statutory provision for recovery.

It is nonetheless troubling that appellants, who have gone through extensive litigation establishing the illegality of the

tax, are now rewarded for their quest with no recovery of the wrongfully collected monies. That these individual appellants are unable to recover the unjustly levied tax, is a glaring insufficiency of statutory law. These individual appellants are unable to recover the unjustly levied tax. Citizens are forced to bear the consequences of municipal iniquity and the possibility of local larceny. It is with regret that we find ourselves forced to conclude that the law here allows no recovery for appellants. We have some understanding of Flannery O'Connor's Mr. Shiftlet, who said:

> 'It didn't satisfy me at all.'
> 'It satisfied the law,' the old woman said sharply.
> 'The law,' Mr. Shiftlet said and spit. "It's the law that don't satisfy me.' (1)

The legislature might well revisit this statute to prevent such injustices in the future.

Affirmed .

KALITOWSKI , Judge (concurring specially)

I concur only in the result.

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

1. Flannery O'Connor, "The Life You Save May Be Your Own," in *Complete Stories* 145, 153 (1971).