SUPREME JUDICIAL COURT OF MASSACHUSETTS

Locator Services Group, Ltd. v. Treasurer & Receiver General

443 Mass. 837 (2005) · Decided April 11, 2005

SUMMARY

The Massachusetts Supreme Judicial Court interpreted G. L. c. 79, § 7D, governing the investment of unclaimed eminent domain awards by the Treasurer. The court held that the Treasurer must invest the awards in statutorily specified vehicles and remit all interest actually earned, but that the statute does not impose a fiduciary or prudent-investor duty. The court granted Locator Services partial summary judgment on liability for interest actually earned, rejected its fiduciary-duty claim, and remanded issues concerning the amount of interest, pre-1993 investments, and limitations tolling.

CASE DETAILS

COURT	Supreme Judicial Court of Massachusetts
WRITING FOR THE COURT	Cowin, J.
JURISDICTION	Massachusetts
DECIDED	April 11, 2005
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Treasurer appealed interlocutorily from the denial of his motion for summary judgment, invoking the doctrine of present execution based on sovereign immunity, and also obtained a report under Mass. R. Civ. P. 64. The Appeals Court consolidated the matters, and the Supreme Judicial Court transferred them on its own motion.
STANDARD OF REVIEW	Summary judgment is reviewed de novo to determine whether, viewing the evidence in the light most favorable to the nonmoving party, all material facts are established and the moving party is entitled to judgment as a matter of law. A motion to strike an affidavit submitted in opposition to summary judgment is reviewed for admissibility and whether the affidavit creates a genuine issue of material fact.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Treasurer & Receiver General v. Locator Services Group, Ltd.

TOPICS

statutory interpretation · summary judgment · civil procedure · remedies · trusts

PRACTICE AREAS

Massachusetts eminent domain · statutory interpretation · government liability · civil procedure · summary judgment · remedies

QUESTIONS PRESENTED

1. Whether G. L. c. 79, § 7D requires the Treasurer to invest unclaimed eminent-domain awards in one or more of the statutorily specified investment vehicles and remit all interest actually earned.
2. Whether § 7D imposes a fiduciary, quasi-fiduciary, or prudent-investor duty on the Treasurer.
3. Whether mandamus and damages are available under G. L. c. 79, § 10A for an alleged violation of § 7D.
4. What statute of limitations applies to a § 10A action seeking additional interest, and when the limitations period begins to run.
5. Whether a factual dispute existed concerning an alleged oral tolling agreement.
6. Whether the Sawyer affidavit was properly considered in opposition to summary judgment, including whether portions were hearsay or improperly contradicted prior discovery responses.
7. Whether Locator Services had standing to pursue the claims on behalf of the claimants.

HOLDINGS

1. Section 7D requires the Treasurer to invest unclaimed eminent-domain awards in one or more of the investment vehicles specified in the statute and to remit to the persons entitled all interest actually earned on those investments. The Treasurer may not satisfy the statute by paying only simple interest if the investments actually earned more, whether through simple or compound interest.
2. Locator Services was entitled to partial summary judgment on the Treasurer's liability for all interest actually earned on the investments after 1993; the amount of interest actually earned and any resulting damages remained factual issues for trial.
3. The issue whether the Treasurer invested the awards as required by § 7D before 1993 was a factual issue for trial. If the Treasurer failed to invest the funds in a permissible vehicle, or if the actual investment could not be determined, damages would be measured by the interest that would have been earned in the lowest-yielding permissible investment vehicle.
4. G. L. c. 79, § 7D does not impose a fiduciary, quasi-fiduciary, or prudent-investor duty on the Treasurer. Summary judgment was therefore properly entered for the Treasurer on count II.
5. An accounting could be ordered as necessary to determine damages on the statutory-interest claim, even though the Treasurer owed no fiduciary duty. Count III was remanded only for assessment of damages under count I.
6. Mandamus relief under G. L. c. 79, § 10A is available to enforce the Treasurer's nondiscretionary duties to invest the awards in a statutorily permitted vehicle and remit all interest actually earned, even though the Treasurer retains discretion to choose among the permitted vehicles.

7. Sovereign immunity did not bar the action because G. L. c. 79, § 10A expressly authorizes mandamus relief and damages for violations of § 7D.
8. A three-year statute of limitations applies to actions under § 10A seeking additional interest under § 7D, and the period begins when the claimants receive the allegedly insufficient interest payments.
9. Conflicting evidence created a genuine issue of material fact concerning whether the parties entered into an oral tolling agreement and, if so, whether Locator Services later revoked it. The issue was remanded for trial.
10. The affidavit was properly considered because its additional detail did not contradict earlier statements, and much of the testimony concerned party-opponent admissions or operative verbal conduct rather than inadmissible hearsay. Paragraph 19, which recounted a later conversation with Borden, was hearsay and should be struck.
11. Locator Services had standing because its contingent-fee agreements created an economic interest and the powers of attorney established its authority to sue on behalf of the claimants.

KEY QUOTATIONS

> *"We hold that G. L. c. 79, § 7D, which governs the Treasurer's obligation to invest unclaimed eminent domain awards for the benefit of unknown claimants, requires the Treasurer to invest the awards in one or more of the investment vehicles specified in the statute and to remit to those entitled all interest actually earned on those investments."* (at 839)

> *"The statutory list, while extraordinarily broad, is exclusive. Moreover, while the Legislature indicated no preference or directive to guide the Treasurer in his choice among the several named investment vehicles, the use of the term "shall" in the statute indicates that the duty to invest the funds in one or more of the vehicles is mandatory."* (at 847)

> *"Contrary to Locator Services's assertions, we hold that § 7D imposes no such "prudent investor" fiduciary duty."* (at 852)

> *"We hold that the three-year limitations period should ran from the time the claimants were paid the allegedly insufficient interest on their awards."* (at 861)

FACTUAL BACKGROUND

The Massachusetts Highway Department and Department of Environmental Management issued 103 eminent-domain award checks for property taken between 1956 and 1995. Because the awards remained unclaimed for more than sixty days, they were placed under the Treasurer's control and invested under G. L. c. 79, § 7D. After Locator Services located the claimants and obtained payment of the principal awards, the Treasurer paid simple interest calculated using an average annual yield, while Locator Services claimed that the claimants were entitled to all interest actually earned, including any compound interest.

PROCEDURAL HISTORY

Locator Services sued under G. L. c. 79, § 10A, seeking mandamus and damages for allegedly insufficient interest paid on 103 unclaimed eminent-domain awards held and invested by the Treasurer. The Superior Court denied the Treasurer's summary-judgment motion and motion to strike Locator Services's affidavit. The Supreme Judicial Court affirmed the denial of summary judgment as to the statutory-interest claim, entered partial summary judgment for Locator Services on liability for interest actually earned, vacated summary judgment as to the fiduciary-duty claim and directed judgment for the Treasurer on that count, remanded damages and limitations issues, and affirmed in part and reversed in part the ruling on the affidavit.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Enter partial summary judgment for Locator Services on the Treasurer's liability for all interest actually earned; conduct a trial or other proceedings to determine the amount of interest actually earned after 1993, whether the Treasurer invested the awards before 1993, and any resulting damages; apply the three-year limitations period and resolve whether an enforceable tolling agreement existed or was revoked; treat count III only as a request for an accounting necessary to assess damages under count I; enter summary judgment for the Treasurer on count II; and strike paragraph 19 of the Sawyer affidavit while considering the remainder of the affidavit.

CASES CITED

- Greater Lawrence Sanitary Dist. v. North Andover, 439 Mass. 16, 20-21 (2003)
- Augat, Inc. v. Liberty Mut. Ins. Co., 410 Mass. 117, 120 (1991)
- Commonwealth v. One 1987 Mercury Cougar Auto., 413 Mass. 534, 536 (1992)
- Golub v. Milpo, Inc., 402 Mass. 397, 400 (1988)
- Gurley v. Commonwealth, 363 Mass. 595, 598 (1973)
- Bronstein v. Prudential Ins. Co., 390 Mass. 701, 704 (1984)
- Hashimi v. Kalil, 388 Mass. 607, 610 (1983)
- Coupounas v. Madden, 401 Mass. 125, 131-132 (1987)
- Shapiro v. Bailen, 293 Mass. 121, 123-124 (1936)
- Treasurer & Receiver Gen. v. John Hancock Mut. Life Ins. Co., 388 Mass. 410, 412-413 (1983)
- Perseus of N.E., MA, Inc. v. Commonwealth, 429 Mass. 163, 168 (1999)
- Berish v. Bornstein, 437 Mass. 252, 269 n.29 (2002)
- Patsos v. First Albany Corp., 433 Mass. 323, 333-334 (2001)
- Demoulas v. Demoulas, 424 Mass. 501, 504-505, 517 (1997)
- Merola v. Exergen Corp., 423 Mass. 461, 464 (1996)
- Matter of Pressman, 421 Mass. 514, 518 (1995)
- Zimmerman v. Bogoff, 402 Mass. 650, 660 (1988)
- Chelsea Indus., Inc. v. Gaffney, 389 Mass. 1, 11 (1983)
- Chase v. Pevear, 383 Mass. 350, 362-364 (1981)
- Ng Bros. Constr. v. Cranney, 436 Mass. 638, 642, 647-648 (2002)

- Mullen Lumber Co. v. Lore, 404 Mass. 750, 752 (1989)
- United Feature Syndicate, Inc. v. Miller Features Syndicate, Inc., 216 F. Supp. 2d 198, 218 (S.D.N.Y. 2002)
- Penato v. George, 52 A.D.2d 939, 942 (N.Y. App. Div. 1976)
- Channel Fish Co. v. Boston Fish Mkt. Corp., 359 Mass. 185, 187 (1971)
- Matter of McKnight, 406 Mass. 787, 792 (1990)
- Eldredge v. Selectmen of Brewster, 18 Mass. App. Ct. 502, 504 (1984)
- Lopes v. Commonwealth, 442 Mass. 170, 175-176 (2004)
- Woodbridge v. Worcester State Hosp., 384 Mass. 38, 42 (1981)
- Bain v. Springfield, 424 Mass. 758, 762-764 (1997)
- Nantucket v. Beinecke, 379 Mass. 345, 348 (1979)
- Kargman v. Commissioner of Revenue, 389 Mass. 784, 788 (1983)
- Trust Ins. Co. v. Commissioner of Ins., 48 Mass. App. Ct. 617, 625 (2000)
- Wong v. University of Mass., 438 Mass. 29, 35 & n.15 (2002)
- Demoulas v. Demoulas, 424 Mass. 501, 517 (1997)
- Berkshire Mut. Ins. Co. v. Burbank, 422 Mass. 659, 661 (1996)
- Lyons v. Nutt, 436 Mass. 244, 249 (2002)
- Madsen v. Erwin, 395 Mass. 715, 721 (1985)
- Nile v. Nile, 432 Mass. 390, 402 (2000)
- Zucco v. Kane, 439 Mass. 503, 507-508 (2003)
- Berman v. Linnane, 424 Mass. 867, 873 (1997), S.C. 434 Mass. 301 (2001)
- Commonwealth v. McLaughlin, 431 Mass. 241, 246 (2000)