

MSC Opinion: Dept. of Agriculture v. Appletree Marketing, LLC

11. March 2010

On Wednesday, March 10, 2010, the Michigan Supreme Court issued its opinion in the case of *Department of Agriculture and Michigan Apple Committee v. Appletree Marketing, LLC and Steven Kropf*, No. 137552, in a unanimous opinion authored by Justice Young. In *Appletree*, the Court considered two issues of jurisprudential significance: (1) whether the plaintiffs could simultaneously pursue claims against the defendants for alleged violations of the Agricultural Commodities Market Act (“ACMA”), MCL 290.651, et. seq., and for common law and statutory conversion; and, (2) whether plaintiffs could pursue claims for common law and statutory conversion against Appletree’s principal, Steven Kropf. The Court reversed the Court of Appeals opinion and concluded that the ACMA does not supersede claims of statutory conversion or abrogate claims of common law conversion, and therefore plaintiffs were entitled to pursue those claims. The Court further held that Steven Kropf could be held personally liable for any intentional torts he committed in the operation of his business. A copy of the Court’s opinion can be found [here](#).

The ACMA allowed for the establishment of marketing programs for a wide variety of Michigan agricultural products. Pursuant to that directive, the Michigan apple producers created the Michigan Apple Committee (the “Committee”). The Committee is funded through assessments placed in the purchase price charged the apple distributors. These funds are held in trust by the distributors and remitted to the Committee on a periodic basis.

Appletree Marketing, L.L.C. (“Appletree”) was an apple distributor. Its sole member was Steven Kropf, who also managed the business. Appletree collected assessments in 2004 and 2005 but failed to remit payments to the Committee. Instead, Appletree used the money to pay its own debts. It later declared bankruptcy.

In accordance with the requirements of ACMA, when Appletree failed to remit the assessed funds, the Committee filed a written complaint with the Department of Agriculture. Following an investigation, and in light of Appletree’s continued refusal to pay, the Department filed a complaint in the Kent County Circuit Court seeking damages from Appletree and Mr. Kropf for a violation of the ACMA, statutory conversion, and common law conversion.

Appletree consented to a \$55,000 judgment to settle the plaintiffs’ conversion claims. However, the defendants filed a motion for summary disposition on the plaintiffs’ conversion claims against Appletree and all claims against Mr. Kropf. Appletree asserted that the ACMA provided the exclusive remedy for failure to remit assessed funds to the Committee. The trial court agreed and dismissed plaintiffs’ conversion claims. Mr. Kropf argued that he could

not be held personally liable for any of plaintiffs' claims as any tortious activity was done in the course of business. The trial court agreed. The Court of Appeals affirmed the trial court's ruling regarding both defendants.

On May 7, 2009, the Michigan Supreme Court granted plaintiffs' application for leave to appeal. The order granting leave to appeal can be found [here](#). The Court concluded that the ACMA does not provide the exclusive remedy for defendants' failure to remit payment of funds. The statute does not displace other statutory and common law causes of action, including the two conversion claims plead in this case. In reaching this conclusion, the Court distinguished its holding in *Monroe Beverage Co., Inc. v. Stroh Brewery Co.*, 454 Mich. 41; 559 N.W.2d (1997). In *Monroe*, the Court held that a plaintiff could not pursue a common law negligence claim against the defendant because the Liquor Control Act provided the exclusive remedy for defendant's failure to transfer distribution rights to plaintiff. The *Appletree* Court noted that in *Monroe*, there was no preexisting civil action for the claimed wrongful conduct. In the instant case, however, both the common law and statutory claims for conversion existed well before ACMA's enactment. *Monroe* does not eliminate preexisting duties, rights and remedies. Therefore, the Court concluded that the ACMA did not preempt or abrogate either the statutory or common law claim of conversion.

The Court also reversed the Court of Appeals' decision regarding Mr. Kropf's personal liability. The Court noted that Michigan law has long provided that corporate officials may be held personally liable for tortious acts done in the course of business. If the facts in this case ultimately prove statutory or common law conversion, Kropf may be held personally liable.

This case was remanded to the Kent County Circuit Court for further proceedings consistent with the Court's ruling.