

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

999

CA 02-01505

PRESENT: GREEN, J.P., HURLBUTT, GORSKI, LAWTON, AND HAYES, JJ.

MOHAWK GROUP, L.P., MAIN SENECA CORPORATION, AND
VIOLET REALTY, INC., PLAINTIFFS-APPELLANTS,

V

MEMORANDUM AND ORDER

TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY AND
THE UNILAND PARTNERSHIP OF DELAWARE, L.P.,
DEFENDANTS-RESPONDENTS.

MAGAVERN, MAGAVERN & GRIMM, L.L.P., BUFFALO (JAMES L. MAGAVERN OF
COUNSEL), FOR PLAINTIFFS-APPELLANTS.

WILLIAM M. MURRAY, AMHERST, FOR DEFENDANT-RESPONDENT TOWN OF AMHERST
INDUSTRIAL DEVELOPMENT AGENCY.

PHILLIPS, LYTTLE, HITCHCOCK, BLAINE & HUBER LLP, BUFFALO (EDWARD S.
BLOOMBERG OF COUNSEL), FOR DEFENDANT-RESPONDENT THE UNILAND
PARTNERSHIP OF DELAWARE, L.P.

Appeal from an order of Supreme Court, Erie County (Glownia, J.),
entered December 5, 2001, which denied plaintiffs' motion for summary
judgment on the complaint.

It is hereby ORDERED that the order so appealed from be and the
same hereby is unanimously modified on the law by granting plaintiffs'
motion in part and granting judgment as follows:

IT IS ADJUDGED AND DECLARED that the second floor
of the office building known as 500 Corporate Parkway is and
has been from its inception fully subject to real property
taxes, sales tax on the construction materials, and mortgage
recording taxes

and by directing defendant The Uniland Partnership of Delaware, L.P.
to pay defendant Town of Amherst Industrial Development Agency, for
remittance to the respective taxing authorities, the taxes
attributable or allocable to the second floor of the office building
known as 500 Corporate Parkway, with interest and as modified the
order is affirmed without costs, and the matter is remitted to Supreme
Court, Erie County, for further proceedings in accordance with the
following Memorandum: Plaintiffs commenced this action seeking, inter
alia, judgment declaring that an office building, known as 500
Corporate Parkway (Building), located in the Town of Amherst is and
has been from its inception fully subject to real property taxes,

sales tax on the construction materials, and mortgage recording taxes. In March 1998 defendant Town of Amherst Industrial Development Agency (AIDA) adopted a resolution approving the construction and funding of the Building, which was sponsored by defendant The Uniland Partnership of Delaware, L.P. (Uniland). On March 6, 2000, AIDA adopted a resolution to convey the second floor of the Building to Uniland, and shortly thereafter did so by quitclaim deed. Uniland then leased the second floor of the Building to Entercom Communications Corporation (Entercom), which relocated its offices from throughout the City of Buffalo to the Building.

Supreme Court erred in denying in its entirety plaintiffs' motion for summary judgment on the complaint and, instead, should have granted that part of the motion with respect to the second floor of the Building. Plaintiffs established that AIDA violated the anti-pirating provisions contained in General Municipal Law § 862 (1) by providing financial assistance for the Building, which resulted in Entercom removing its facility "from one area of the state to another area of the state" (*id.*; see *Matter of Main Seneca Corp. v Town of Amherst Indus. Dev. Agency*, 100 NY2d 246, 251, *affg* 248 AD2d 930, 292 AD2d 812). Although the second floor of the Building is now fully taxable by virtue of the conveyance to Uniland, the real property taxes, sales tax on the construction materials, and mortgage recording taxes attributable to the second floor previously were avoided, based upon AIDA's approval of the construction of the building. Uniland must therefore pay AIDA, for remittance to the respective taxing authorities, the taxes attributable or allocable to the second floor of the Building and avoided to date because of AIDA's financial assistance to the Building, with interest (see *id.* at 252). Contrary to plaintiffs' contention, "Uniland is not required to pay all of the taxes that it avoided upon AIDA's approval of the office building," but rather only that portion of the taxes allocable to the second floor (*Matter of Main Seneca Corp.*, 292 AD2d at 813).

Defendants failed to preserve for our review their further contention that the complaint is time-barred and, in any event, that contention is lacking in merit. This declaratory judgment action is governed by the four-month statute of limitations for CPLR article 78 proceedings (see *Town of Webster v Village of Webster*, 280 AD2d 931, 933; see generally *Press v County of Monroe*, 50 NY2d 695, 701-704; *Solnick v Whalen*, 49 NY2d 224, 229-230). The statute began to run on March 6, 2000, the date on which AIDA adopted the resolution to convey the second floor of the Building to Uniland so that Uniland could then lease that portion of the Building to Entercom. Plaintiffs commenced this action on June 30, 2000, within the four-month statute of limitations (see CPLR 217 [1]). Contrary to defendants' contention, the statute did not begin to run in March 1998, when AIDA adopted the resolution approving the construction and funding of the Building.

We have considered the remaining contentions of the parties and conclude that they are without merit. We therefore modify the order by granting plaintiffs' motion in part and granting judgment declaring that the second floor of the Building is and has been from its inception fully subject to real property taxes, sales tax on the

construction materials, and mortgage recording taxes. We further modify the order by directing Uniland to pay AIDA, for remittance to the respective taxing authorities, the taxes attributable or allocable to the second floor of the Building, with interest, and we remit the matter to Supreme Court, Erie County, to calculate that amount.

Entered: October 2, 2003

JOANN M. WAHL
Clerk of the Court