

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D12932
Y/cb

_____AD3d_____

Argued - November 20, 2006

THOMAS A. ADAMS, J.P.
DAVID S. RITTER
STEVEN W. FISHER
JOSEPH COVELLO, JJ.

2005-07659

DECISION & ORDER

New York Telephone Company, respondent,
v Supervisor of Town of Oyster Bay, et al.,
appellants, et al., defendant
(and a third-party action).
(Action No. 1)

(Index No. 12185/98)

New York Telephone Company, respondent, v
Supervisor of Town of Oyster Bay, et al., appellants,
et al., defendant.
(Action No. 2)

(Index No. 11519/99)

Anthony J. LaMarca, P.C., Syosset, N.Y., for appellants.

Cullen and Dykman, LLP, Garden City, N.Y. (Peter J. Mastaglio, Karen I. Levin,
Robert J. Sorge, and Jo-Ellen P. Holbrook of counsel), for respondent.

In two related actions for a judgment declaring that the imposition of ad valorem levies for garbage and refuse services against certain properties owned by the plaintiff is invalid, enjoining the continued imposition of such levies, and refunding of money paid as ad valorem levies for garbage and refuse services between 1992 and 1999, the defendants Supervisor of Town of Oyster Bay, Town

December 5, 2006

Page 1.

NEW YORK TELEPHONE COMPANY v SUPERVISOR OF
TOWN OF OYSTER BAY

of Oyster Bay, Town of Oyster Bay Solid Waste Disposal District, Town Board of the Town of Oyster Bay as Commissioners of Town of Oyster Bay Solid Waste Disposal District, Board of Commissioners and Commissioners of Town of Oyster Bay Solid Waste Disposal District, Receiver of Taxes of the Town of Oyster Bay, and Controller of the Town of Oyster Bay appeal from so much of a judgment of the Supreme Court, Nassau County (Martin, J.), entered June 22, 2005, as, upon an order of the same court entered December 26, 2002, granting the plaintiff's motion for summary judgment, in effect, declared that the imposition of ad valorem levies for solid waste disposal services against certain properties owned by the plaintiff is invalid and illegal, enjoined the continued imposition of those levies, and is in favor of the plaintiff and against the defendants Town of Oyster Bay Solid Waste Disposal District and Town Board of the Town of Oyster Bay as Commissioners of Town of Oyster Bay Solid Waste Disposal District in the total sum of \$650,891.80.

Motion by the plaintiff to dismiss the appeal, in effect, on the ground that the issues on appeal could have been raised on a prior appeal from an order of the same court entered December 26, 2002, which was determined by decision and order of this court dated April 12, 2004 (*see New York Tel. Co. v Supervisor of Town of Oyster Bay*, 6 AD3d 511, *affd* 4 NY3d 387). By decision and order on motion of this court dated March 27, 2006, the motion to dismiss the appeal was held in abeyance and was referred to the Justices hearing the appeal for determination upon the argument or submission thereof.

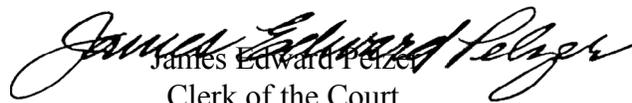
Upon the papers filed in support of the motion, the papers filed in opposition thereto, and upon the argument of the appeal, it is,

ORDERED that the motion is granted and the appeal is dismissed, with costs to the plaintiff.

Since the issues raised by the appellants herein could have been raised on a prior appeal, they waived appellate review of those issues (*see Young v Tseng*, 23 AD3d 552).

ADAMS, J.P., RITTER, FISHER and COVELLO, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court