

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

D21191
C/kmg

_____AD3d_____

Argued - November 3, 2008

PETER B. SKELOS, J.P.
ROBERT A. LIFSON
FRED T. SANTUCCI
EDWARD D. CARNI, JJ.

2007-06543

DECISION & ORDER

Millennium Environmental, Inc., etc., appellant, v
City of Long Beach of State of New York, respondent.

(Index No. 8751/97)

Morgan Law Firm, P.C., Syracuse, N.Y. (William R. Morgan and Robert Louis Riley of counsel), for appellant.

Twomey, Latham, Shea, Kelley, Dubin & Quartararo, LLP, Riverhead, N.Y. (Bryan C. Van Cott of counsel), for respondent.

In an action for a judgment declaring, inter alia, that the defendant is obligated to pay the plaintiff certain disposal fees pursuant to a Solid Waste Disposal Agreement, the plaintiff appeals from a judgment of the Supreme Court, Nassau County (Warshawsky, J.), entered May 8, 2007, which, upon an order of the same court entered November 25, 2003, among other things, granting the defendant's cross motion for summary judgment on the issue of liability on its counterclaims, and authorizing it to assert such counterclaims as a setoff against the plaintiff's claims for unpaid disposal fees, declared, inter alia, that neither the plaintiff nor the defendant have any recovery against the other on their respective claims and counterclaims because the defendant's setoffs exceed the plaintiff's damages under its sixth cause of action for disposal fees under the Solid Waste Disposal Agreement and thus reduce the plaintiff's damages to zero.

ORDERED that the judgment is affirmed, with costs.

Most of the issues raised on this appeal were previously determined against the plaintiff on a prior appeal (*see Millennium Envntl., Inc. v City of Long Beach of State of N.Y.*, 35 AD3d 408). Reconsideration of those issues is barred by the doctrine of law of the case (*see State of New*

November 25, 2008

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York v Westchester Joint Water Works, 17 AD3d 665; *Wendy v Spector*, 305 AD2d 403; *MJD Constr. v Woodstock Lawn & Home Maintenance*, 299 AD2d 459).

The plaintiff's only remaining challenge, to the order of the Supreme Court entered November 25, 2003, granting the defendant's cross motion for summary judgment on the issue of liability on its counterclaims, was waived by its failure to assert in its verified reply to the counterclaims the defenses it now raises (*see* CPLR 3211[e], [a][1], [5], [6]).

SKELOS, J.P., LIFSON, SANTUCCI and CARNI, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court