

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: B. KAPNICK  
Justice

PART 39

COUNTY OF NASSAU

INDEX NO. 401279/09

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 001

MOTION CAL. NO. \_\_\_\_\_

- v -

METROPOLITAN TRANSPORTATION AUTHORITY

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE WITH  
ACCOMPANYING MEMORANDUM DECISION**

Settle ORDER

Dated: 12/22/10

[Signature]

**BARBARA R. KAPNICK** J.S.C.  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IA PART 39**

-----x  
COUNTY OF NASSAU,

Plaintiff,

-against-

METROPOLITAN TRANSPORTATION AUTHORITY,  
LONG ISLAND RAIL ROAD COMPANY, and  
METROPOLITAN SUBURBAN BUS AUTHORITY,

Defendant.  
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**DECISION**

Index No. 401279/09  
Motion Seq. No. 001

**BARBARA R. KAPNICK, J.:**

This action arises out of: (i) an agreement which was entered into by plaintiff County of Nassau (the "County") and defendants Metropolitan Transportation Authority (the "MTA" or the "Authority"), Long Island Rail Road Company ("LIRR"), a public benefit corporation subsidiary of the MTA, and Metropolitan Suburban Bus Authority ("LI Bus"), another public benefit corporation subsidiary of the MTA, on or about December 30, 2006 (the "1996 Agreement"); and (ii) an agreement which was entered into by the MTA and LIRR on or about May 1, 1999 (the "1999 Agreement").

*1996 Agreement*

In the 1996 Agreement,

(i) the MTA agreed "to pay to the County an amount not to exceed \$51,000,000, which amount may be treated by the County as an offset against amounts due from the County under the LI Bus Lease

for operations of LI Bus omnibus fixed route and paratransit services or, in the sole discretion of the Authority, to be paid to the County, in whole or in part, for use by the County for any lawful County purpose for the County's 1996 and 1997 fiscal years"; and

(ii) the County agreed "to provide the aggregate principal amount of up to \$102,000,000 to the Authority for capital costs incurred or to be incurred by the Authority, LI Bus or LIRR on account of one or more mass transportation projects (payments made by the County to the Authority, LIRR or LI Bus shall be referred to herein individually as a 'Project Contribution' and collectively as 'Project Contributions')." "

Under the 1996 Agreement, the application of the Project Contributions was to "provide the Authority with increased capital funding without further burdening the revenues, including fare receipts, of the operating subsidiaries." The County agreed that each Project Contribution to be paid by the County would "equal two times the amount of each Grant to be paid by the Authority."

The Nassau County Executive was specifically authorized by the Nassau County Legislature, pursuant to Local Law No. 15-1996 and Ordinance No. 334-1996, to enter into the 1996 Agreement. The Agreement was signed by 1) an Authorized Signatory of the

MTA, 2) the General Counsel of the MTA (who "[a]pproved as to form"), 3) an Authorized Signatory of the LIRR, 4) the County Attorney (who "[a]pproved as to form"), 5) an Authorized Signatory of LI Bus, 6) the Deputy County Comptroller (who "[a]pproved" it), and the Deputy County Executive.<sup>1</sup>

#### *1999 Agreement*

In the 1999 Agreement,

(i) the MTA agreed "to pay to the County an amount not to exceed \$70,000,000, which amount may be paid to the County, in whole or in part, for use by the County for any lawful County purpose;" and

(ii) the County agreed "to provide the aggregate principal amount of \$140,000,000 to the Authority for capital costs incurred or to be incurred by the Authority or LIRR in connection with the purchase of rolling stock (such payments shall be referred to herein individually as a 'Project Contribution' and collectively as 'Project Contributions')." "

As was the case with the 1996 Agreement, the County agreed that each Project Contribution to be paid by the County would "equal two times the amount of each Grant to be paid by the Authority."

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<sup>1</sup> The Authorized Signatory on behalf of the MTA, LIRR and LI Bus was the same person.

The 1999 Agreement, like the 1996 Agreement, was authorized by the Nassau County Legislature. The Agreement was signed by 1) the Executive Director of the MTA, 2) the General Counsel of the MTA (who "[a]pproved as to form" and also signed on behalf of the LIRR), 3) the County Attorney (who "[a]pproved as Per Charter"), 4) the Deputy County Executive and 5) the Deputy County Comptroller (who "[a]pproved: as to form").

*The instant action*

This action was commenced in the Supreme Court, Nassau County in 2001, but was transferred (without opposition) to this Court by Order of the Hon. Thomas A. Adams dated April 29, 2009, based on the fact that the MTA maintains its principal office in New York County. See, CPLR 505(a).

There is no real dispute that the MTA spent \$94,640,687.65 on mass transportation capital projects undertaken for the benefit of Nassau County pursuant to the 1996 Agreement, in reliance on Nassau County's contractual obligations and representations. According to the MTA, the County has only paid \$81,004,005.53, leaving a balance of duly submitted requisitions totaling \$13,636,682.12 that the County has refused to pay.<sup>2</sup>

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<sup>2</sup> There is also no dispute that the County has disbursed the entire \$140 million out of the MTA Projects Fund with respect to the 1999 Agreement.

The County's Complaint alleges that the MTA misrepresented the nature of the funding under the 1996 and 1999 Agreements for the purpose of inducing the County to enter into these Agreements and to avoid the statutory limitations placed upon its power and/or authority to make loans for non-transportation purposes.

Specifically, the Complaint alleges that when making the 1996 and 1999 Agreements, the MTA acted unlawfully and in excess of the grant of power and/or authority under Title 11 of the Public Authorities Law, which provides that

[t]he purposes of the authority shall be the continuance, further development and improvement of commuter transportation and other services related thereto within the metropolitan commuter transportation district, including but not limited to such transportation by railroad, omnibus, marine and air, in accordance with the provisions of this title.

Public Authorities Law § 1264(1).

The Complaint seeks a judgment:

(a) declaring the 1996 Agreement to be illegal, void and unenforceable;

(b) setting aside and/or rescinding the 1996 Agreement as illegal, void and unenforceable;

(c) declaring the 1999 Agreement to be illegal, void and unenforceable;

(d) setting aside and/or rescinding the 1999 Agreement as illegal, void and unenforceable; and

(e) awarding plaintiff the costs and disbursements of this action and attorneys' fees.

The defendants, on the other hand, contend that both the 1996 and 1999 Agreements constitute legal, valid and binding agreements duly authorized and within the power of the Authorities. They claim that the MTA had the corporate right, power and authority to execute and deliver the funds in exchange for the County's commitment to make the Project Contributions, and that the County has (a) failed or refused to withdraw funds from the MTA Projects Fund to pay the outstanding requisitions submitted by the MTA in accordance with the 1996 Agreement, and (b) wrongfully diverted monies from the MTA Projects Fund without authority or notice to the MTA and used those monies to fund County Operations, rather than to reimburse the MTA for capital projects undertaken pursuant to the 1996 Agreement.

The County concedes that it essentially abandoned this lawsuit and took no action to prosecute its claims after the Complaint was filed by outside counsel in 2001.<sup>3</sup>

Defendants eventually filed an Answer on or about October 31, 2008 in which the MTA asserted counterclaims for: (i) breach of contract (first counterclaim); (ii) conversion (second counterclaim); (iii) promissory estoppel (third counterclaim); (iv) unjust enrichment (fourth counterclaim); (v) violation of fiduciary duty (fifth counterclaim); and (vi) a declaratory judgment regarding the 1996 Agreement (sixth counterclaim), seeking:

(a) damages in an amount not less than \$13,636,682;

(b) injunctive relief, ordering the County to provide the MTA a full, complete and accurate accounting of the MTA Projects Fund including, but not limited to, the date and amount of all Project Contributions made by the County; the date and amount of all disbursements from the MTA Projects Fund to MTA, LIRR or LI Bus; and the date, amount, purpose, and authorization of any other withdrawal made from the MTA Projects Fund;

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<sup>3</sup> The defendants submitted an undated Stipulation in which the parties agreed to hold defendants' application for a change of venue in abeyance while the parties attempted to "agree upon a procedure to be employed ... in this case." Defendants' time to answer or otherwise move with respect to plaintiffs' Complaint was also extended.

(c) injunctive relief, ordering the County to promptly disburse to the MTA from the MTA Projects Fund or from some other source funds sufficient to pay all outstanding requisitions that the MTA has submitted pursuant to the 1996 Agreement;

(d) pursuant to CPLR 3001, declaring that pursuant to the 1996 Agreement, the MTA, LIRR or LI Bus are authorized to undertake additional mass transportation capital projects and to be paid up to \$7.36 million by the County either by disbursements from the MTA Projects Fund or from some other source;

(e) awarding the MTA pre-and post-judgment interest on the damages caused to MTA; and

(f) awarding MTA the costs and disbursements of this action and attorneys' fees.

Defendants now move for an order pursuant to CPLR 3212:

(1) dismissing the County's Complaint in its entirety;

(2) awarding defendants compensatory damages in an amount not less than \$13,636,682.12; and

(3) granting the injunctive and declaratory relief sought in defendants' Answer.

That portion of the motion seeking to dismiss the Complaint is granted without any substantive opposition.<sup>4</sup>

The County, however, opposes that portion of the motion seeking summary judgment on the counterclaims on the grounds that: (a) the defendants have failed to prove compliance with a condition precedent to payment under the terms of the 1996 Agreement; (b) the defendants' counterclaims are barred by the applicable six-year Statute of Limitations; (c) even if defendants' claims are not barred in their entirety, the claims on the four requisitions submitted for payment in 2001 are barred by the Statute of Limitations; (d) the defendants' claims do not relate back to the date of the Summons and Complaint; (e) the defendants' requests for equitable relief are barred by the doctrine of laches; and (f) the parties to the 1996 Agreement agreed to have their dispute submitted to the Court pursuant to CPLR 3031 ("Simplified procedure for court determination of disputes-action without pleadings").

*Condition Precedent*

Section 2 of the 1996 Agreement provides, in relevant part, as follows:

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<sup>4</sup> The County concedes that there is no material disagreement with respect to the relevant facts.

Disbursements of the Project Contributions will take place within the following framework:

(a) The County shall not be under any obligation to make Project Contributions unless it has acquired a leasehold or other interest in the Projects to which the Project Contributions relate.

The County argues that the counterclaims must be dismissed because defendants have failed to tender any proof of the existence of any such leasehold agreements.

However, defendants have annexed to their Reply papers a fully executed Lease and Operating Agreement made as of February 1, 1997 between the County and LIRR, and a copy of the Lease and Operating Agreement between the County and LI Bus (the "LI Bus Lease") dated January 15, 1973.<sup>5</sup>

#### *Statute of Limitations*

The County next argues that the counterclaims are barred by the six-year Statute of Limitations, because the counterclaims were asserted more than six years after 2001, when the County repudiated the contract by bringing the instant action.

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<sup>5</sup> Pursuant to Section 2(b) of the 1996 Agreement, "[w]ith respect to any Projects relating to LI Bus, so long as the LI Bus Lease remains in full force and effect, no additional agreement shall be necessary."

Alternatively, the County argues that even if this Court finds that the counterclaims are not time-barred in their entirety (i.e., this Court determines that the commencement of this action did not constitute a repudiation of the 1996 Agreement), this Court must still find that defendants' counterclaims are time barred to the extent they seek to recover for payments totaling \$3,818,660.25, which were demanded in 2001 (and became due 21 days after those requisitions were submitted).

Pursuant to CPLR 203(d),

[a] defense or counterclaim is interposed when a pleading containing it is served. A defense or counterclaim is not barred if it was not barred at the time the claims asserted in the complaint were interposed, except that if the defense or counterclaim arose from the transactions, occurrences, or series of transactions or occurrences, upon which a claim asserted in the complaint depends, it is not barred to the extent of the demand in the complaint notwithstanding that it was barred at the time the claims asserted in the complaint were interposed.

Plaintiff argues that defendants cannot benefit from CPLR 203(d) because the counterclaims did not, according to the County, arise from the transactions or occurrences upon which the County's claim for declaratory relief is based. *See, Haller v 360 Riverside Owners Corp.*, 273 AD2d 52 (1<sup>st</sup> Dep't 2000).

Defendants, on the other hand, contend that the counterclaims arise precisely from the same transactions and occurrences, i.e., the 1996 Agreement.

However, this Court need not reach the issue of whether or not the counterclaims arise out of the same transactions, since it appears that none of the counterclaims were time barred in March 2001 when the County commenced the action.<sup>6</sup>

*Laches*

The County further argues that the counterclaims are barred by the doctrine of laches, i.e., defendants' delay, until 2008, in asserting the counterclaims was unreasonable.

Defendants indicate that they did not file the counterclaims on an earlier date because they had hoped to resolve this matter as part of a larger dispute.

Moreover, plaintiff has not made any showing of prejudice caused as a result of the delay.

*CPLR 3031*

Finally, the County opposes the motion on the ground that defendants failed to comply with Section 15 of the Lease and

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<sup>6</sup> In fact, it appears that the counterclaims were not even ripe in March 2001.

Operating Agreement (which is an appendix to the 1996 Agreement), which provides as follows:

Procedure in Event of Disputes. Any controversy or claim arising out of or in connection with this Agreement, or to the breach thereof, whether it be of fact, of law or both, shall be submitted to the Supreme Court of the State of New York, County of New York, for determination pursuant to the New York Simplified Procedure for Court Determination of Disputes, as provided in CPLR 3031 et seq. (or any successor statutory procedure thereto).

Defendants argue that this provision applies only to the Lease and Operating Agreement between the County and LIRR, and not to the entire 1996 Agreement.

Moreover, this Court finds that the County waived the benefit of this provision by failing to follow the procedures set forth in CPLR 3031 when the County commenced this action in 2001 by serving and filing a Summons and Complaint.

Accordingly, based on the papers submitted and the oral argument held on the record on August 2, 2010, defendants' motion for summary judgment dismissing plaintiff's Complaint and awarding judgment in favor of the MTA on its counterclaims is granted in its entirety.

Settle Order.

Date: December 22, 2010

  
Barbara R. Kapnick  
J.S.C.