No. 10
Regional Economic Community Action Program, Inc.,
Appellant,
v.
Enlarged City School District of Middletown,
Respondent.

James G. Sweeney, for appellant.
Daniel Petigrow, for respondent.
New York State School Boards Association, Inc., amicus curiae.

PIGOTT, J.:

In this appeal, we are asked to determine the statute of limitations governing a taxpayer's claim against a school district for money had and received arising from an erroneous assessment of school taxes and when such claim accrues. We hold

that Education Law § 3813 (2-b)'s one-year statute of limitations applies and that the claim for money had and received accrues when the taxes are paid.

Regional Economic Community Action Program, Inc. (RECAP) is a tax-exempt charitable organization and owner of properties in the City of Middletown that provide housing for participants in RECAP's "Community Re-Entry Program." In February 2004, the City rejected RECAP's Real Property Tax Law § 420-a application for a charitable tax exemption, and assessed taxes against the properties accordingly. These assessments, by virtue of their inclusion on the City's final tax rolls, became part of the tax roll adopted by the Enlarged City School District of Middletown (the District).

In June 2004, without giving notice to the District, RECAP commenced a CPLR article 78 proceeding against the City, challenging the legality of the assessments. During the pendency of that proceeding, RECAP paid both city and school taxes for the years 2003-2004 through 2007-2008. According to RECAP, it included a letter with those payments stating that it was paying its taxes to the City "under protest." In March 2008, this Court concluded that RECAP was entitled to the exemption (see Matter of Adult Home at Erie Sta., Inc. v Assessor & Bd. of Assessment Review of City of Middletown, 10 NY3d 205, 212, 217 [2008]), and it thereafter recovered the property taxes it had paid the City.

In January 2009, RECAP demanded that the District

refund RECAP's tax payments for the 2003-2004 through 2007-2008 tax years. Upon the District's refusal, RECAP commenced this action in April 2009 asserting a claim for money had and received, seeking over $142,000. Both parties moved for summary judgment, the District asserting, among other things, that RECAP's cause of action was time-barred under Education Law § 3813 (2-b).

Supreme Court granted the District's cross motion, holding that RECAP failed to comply with § 3813's notice of claim and one-year statute of limitations provisions (see Education Law § 3813 [1]; [2-b]). The Appellate Division affirmed on a different ground, holding that although RECAP may have submitted a letter with its tax payments to the City stating that such payments were "under protest," that letter referred to City tax payments alone, not those made to the District (79 AD3d 723 [2d Dept 2010]). We affirm, solely on the statute of limitations ground adopted by Supreme Court.

We reject RECAP's contention that its claim for money had and received is governed by a six-year statute of limitations. To be sure, a taxpayer may recover taxes paid pursuant to a wrongful assessment under that theory and, because such a claim is premised "upon a contractual obligation or liability, express or implied in law or fact," it is generally governed by a six-year statute of limitations (Matter of First Natl. City Bank v City of N.Y. Fin. Admin., 36 NY2d 87, 93

[1975]; see also Diefenthaler v Mayor, 111 NY 331, 337-338 [1888]). That limitation period is inapplicable here, however, because RECAP seeks recovery against a school district, which is entitled to rely on Education Law § 3813 (2-b).

According to § 3813 (2-b) – which governs non-tort claims against school districts – "notwithstanding any other provision of law providing a longer period of time in which to commence an action or special proceeding, no such action or special proceeding shall be commenced against [a school district] . . . more than one year after the cause of action arose . . ." (emphasis supplied). The plain language of § 3813 (2-b) refutes RECAP's claim that the longer six-year statute of limitations governs. Therefore, RECAP had one year from the date the cause of action arose within which to bring its claim.

RECAP asserts that its entire claim accrued in March 2009 – when the District refused to issue a refund – relying on Education Law § 3813 (1), which states that "[i]n the case of an action or special proceeding for monies due arising out of contract, accrual of such claim shall be deemed to have occurred as of the date payment for the amount claimed was denied." That provision is inapplicable to this type of claim.

In 1992, the Legislature amended § 3813 (1) by adding the "accrual" language to clarify the accrual date for filing a notice of claim as a precondition to a suit brought against a school district by a party in a contractual relationship with the

district (see Mem in Support, Bill Jacket, L 1992, ch 387; see also Education Law § 3813 [1]). But RECAP and the District do not have a contractual relationship. Although a cause of action for money had and received is an action based on an implied contract, this designation is "a misnomer because it is not an action founded on a contract at all; it is an obligation which the law creates in the absence of an agreement when one party possesses money that in equity and good conscience he ought not to retain and that belongs to another" (Parsa v State of New York, 64 NY2d 143, 148 [1984] citing Miller v Schloss, 218 NY 400, 406-407 [1916]). Because § 3813 (1) addresses notice of claim requirements for parties who have a contractual relationship with the school district, RECAP's § 3813 (1) accrual date argument is without merit.

We conclude that RECAP's cause of action for money had and received accrued when it paid the taxes (see First Natl. City Bank, 36 NY2d at 93). Even assuming RECAP's last payment was made "under protest" in October 2007, as RECAP claims, RECAP did not commence this action until April 2009, outside the one-year statute of limitations, rendering RECAP's claim time-barred.[1] Accordingly, the order of the Appellate Division should be affirmed, with costs.

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[1] Given our holding, we need not address RECAP's contentions that RECAP paid the school taxes "under protest" or that RECAP complied with § 3813 (1)'s notice of claim requirements.

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Order affirmed, with costs. Opinion by Judge Pigott. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith and Jones concur.

Decided February 16, 2012