Hall v Nassau County
2024 NY Slip Op 34987(U)
February 2, 2024
Supreme Court, Nassau County
Docket Number: Index No. 609994/2023
Judge: Lisa A. Cairo
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

PRESENT: HON. LISA A. CAIRO, J.S.C.

----------X **WAYNE J. HALL, REINA HERNANDEZ, FLORIDALMA PORTILLO, individually and on behalf of all others similarly situated,**	**TRIAL/IAS PART 25** **DECISION AND ORDER ON MOTION**
Plaintiff(s),	**INDEX No. 609994/2023**
-against-	**Motion Seq. No. 1, 2**
NASSAU COUNTY, DEPARTMENT OF ASSESSMENT OF NASSAU COUNTY, ASSESSMENT REVIEW COMMISSION OF NASSAU COUNTY, and DOES 1-25,	**XXX**
Defendant(s). ----------X	

The following papers were read on this motion	DOCS NUMBERED
Notice of Motion, Affidavits, Affirmations, Exhibits, Memos.....	13-27
Opposition Papers.....	65-89
Reply Papers.....	130-132

Defendants Nassau County (the "County"), Department of Assessment of Nassau County ("DOA"), Assessment Review Commission of Nassau County ("ARC"), and DOES 1-25 (collectively, "Defendants") move by notice of motion for an order dismissing this action pursuant to CPLR 3211(a)(2) and 3211(a)(7). Plaintiffs Wayne J. Hall, Reina Hernandez, and Floridalma Portillo oppose the motion.

BACKGROUND

Plaintiffs commenced this action individually and on behalf of others similarly situated seeking declaratory, monetary, and injunctive relief on behalf of owners of residential properties in "nonwhite" census tract communities in Nassau County based upon allegedly irrational and discriminatory policies and procedures in the property tax system. These policies and procedures, it is alleged, resulted in shifting the property tax burden from wealthier, "white" communities in Nassau County to lower income, "nonwhite" communities. In particular, the complaint asserts that since the expiration of a consent order of *Coleman v. Seldin et al.*, Index No. 97-30380, in 2010, the Defendants have failed to utilize current market values in tax assessments and have

forced lower-income communities to subsidize the property taxes of wealthy homeowners whose assessed property values have been "frozen" for years and are now divorced from reality. Plaintiffs assert that these significant, racially disparate impacts in tax assessments were intentional.

The complaint explains that the Department of Assessment of Nassau County (DOA) is an administrative agency of Nassau County that is responsible for developing fair and equitable assessments for all residential and commercial properties on an annual basis. The Assessment Review Commission (ARC) is an independent agency that is responsible for all applications seeking assessment corrections by reviewing and reducing the assessment if it is excessive. The ARC also maintains the online appeal system "Assessment Review On the Web" (AROW), which is said to have been based on outdated information and incorrectly informed property owners that their challenges would fail. In addition to the "freeze" in assessed property values, pursuant to a "Settlement Policy" that became effective around October of 2011, the Defendants routinely negotiated and settled claims at discounted assessment rates, which were unscientific and unrelated to market value. Plaintiffs assert that secrecy around the reduction system "deprived owners of the ability to pursue a grievance" and disproportionately affected putative class members who are "less likely to take the chance of losing a grievance proceeding and retaining a tax firm." In any event, Plaintiffs assert that complete relief was never available to putative class members because any reduction following assessment review was limited to the specific filer in the specific year and did not protect the class as a whole.

The proposed class here is defined as "All persons who owned residential property at any time from 2010 through the present that was located in a "census tract" (as defined by the US Census Bureau) in Nassau County in which most residents were nonwhite during any year when said persons owned that property." With respect to the individual Plaintiffs, the complaint asserts that each Plaintiff has been a residential property owner in the Village of Hempstead since before 2010. Nothing more is said of the individual Plaintiffs.

The complaint asserts 14 causes of action and seeks declaratory relief together with a court-supervised order requiring Defendants to conduct annual scientific assessments of all residential property, injunctive, compensatory, and restitutionary relief.

DISCUSSION

By this motion, Defendants argue that each cause of action fails to state a claim on which relief can be granted.[1] The court does not reach the viability of the causes of action in the complaint because the Defendants' leading argument, raising lack of standing of the individual Plaintiffs, is dispositive.

For purposes of CPLR 3211 motions, the court must accept as true the factual allegations of the complaint and all inferences favorable to Plaintiffs that reasonably arise from those allegations. (*See Lucker v. Bayside Cemetery*, 114 AD3d 162 [1st Dept 2013]). A party must satisfy the threshold burden of "establishing both an injury-in-fact and that the asserted injury is within the zone of interests sought to be protected by the statute violated." (*Frankel v. JP Morgan*

[1] The court notes that some of the causes of action in the instant proceeding mirror those raised in the *Coleman* litigation.

Chase & Co, 193 AD3d 689 [2d Dept 2021] [quotations omitted]). "Injury-in-fact" is understood as an actual stake in the matter to be adjudicated, so as to ensure that the party has some concrete interest in prosecuting the action. (*See Lucker v. Bayside Cemetery*, 114 AD3d at 169]). Significantly, "[t]he procedural device of a class action may not be used to bootstrap a plaintiff into standing which is otherwise lacking." (*Frankel*, 193 AD3d at 921).

As noted above, the court makes no comment with regard to the allegations concerning the property tax assessment system. However, the complaint on its face is insufficient to allege standing of the individual Plaintiffs. Nothing is said of their property values, tax burden, over or underpayment, or whether they have utilized the grievance procedure and to what result. (*See e.g. Matter of Silverman v. Town of Huntington*, 202 AD3d 966 [2d Dept 2018] [Article 78 petitioner seeking reduction of assessed value required to prove market value of her own property]). No affidavits from these individuals are offered in opposition to the motion. Defendants point out that the individual Plaintiffs have, in the past, successfully grieved their property taxes. Plaintiffs do not dispute this fact but argue that it is irrelevant as the use of the grievance procedure in some years could not possibly have made these Plaintiffs whole in all years, and in any event, the grievance system itself is discriminatorily skewed.

Nonetheless, absent any allegation of negative impact of the property tax assessment system on the individual Plaintiffs, the court cannot simply presume that they personally have suffered an injury. In this regard, the court notes that the complaint in the *Coleman* litigation, seeking only declaratory and injunctive relief, detailed the *Coleman* plaintiff's alleged overassessments based on the then-prevailing assessment system. The instant complaint, by contrast, jumps to class allegations yet seeks monetary damages. Moreover, without allegations setting forth an injury in fact, serious questions about whether these individuals could satisfy the requirements of commonality and typicality for class representation purposes under CPLR Article 9 are raised.

For these reasons, it is hereby

ORDERED, that Defendants' motion to dismiss (MS 1) is **granted**; and it is further

ORDERED, that in light of the foregoing, Plaintiffs' motion to transfer venue pursuant to CPLR 510(2) (MS 2) is **denied** as moot.

Dated: Mineola, NY
February 2, 2024

ENTER:

HON. LISA A. CAIRO, J. S. C.

ENTERED
Feb 02 2024
NASSAU COUNTY
COUNTY CLERK'S OFFICE