

Matter of Pall Corp. v Board of Assessors

2004 NY Slip Op 30230(U)

April 29, 2004

Supreme Court, Nassau County

Docket Number: 0350-01/

Judge: Edward G. McCabe

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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: **HON. EDWARD G. MCCABE**
Justice

TRIAL/IAS PART 2
NASSAU COUNTY

In the Matter of Pall Corp.

INDEX NO. 2001/400350

Petitioner,

CALENDAR NO. 2001/T0682

v.

MOTION SUBMISSION
DATE: March 3, 2004

The Board of Assessors and the Board of Assessment
Review of the County of Nassau,

MOTION SEQUENCE NO. 001

Respondents.

X

The following papers were read on this application:

Order to Show Cause.....1

Affirmation in Opposition on behalf of the
Petitioner, Pall Corp.2

Memorandum of Law on behalf of Petitioner
Pall Corp.3

Affirmation in Opposition on behalf of the County
of Nassau and Respondents.....4

Reply Affidavit.....5

[* 2]

The Port Washington Union Free School District (hereinafter the "School District") submits an application for leave to intervene within the above-entitled tax certiorari proceeding and further grant the School District a permanent injunction enjoining and restraining the Petitioner and the Respondents from enforcing the terms of a certain tax certiorari order and judgment entered September 9, 2002. The School District bases its' application on the grounds they did not receive notice of the Petition or have an opportunity to intervene, pursuant to Article 7 of the Real Property Tax Law, as a third-party beneficiary to a Payment in Lieu of Taxes Agreement (hereinafter "PILOT Agreement") entered into between Pall Corp. and the Nassau County Industrial Development Agency. The PILOT Agreement provides for Pall Corp. to receive tax credits against future payments in lieu of taxes, in the event of a real estate assessment reduction. (See paragraph 5, pages 5-6 of the PILOT Agreement). The PILOT Agreement specifically states the Company shall not be entitled to receive a refund in the event of an assessment reduction. According to the School District's Assistant Superintendent for Business, the enforcement of the subject tax certiorari order is expected to result in a \$680,136.40 shortfall to the School District's budget.

In the alternative, the School District requests a permanent injunction enjoining and restraining the enforcement of the subject tax certiorari order on the grounds it violates the "no-charge-back" provision of the Nassau County Administrative Code, Section 6-26.0(b)(3) (c), which relieves school districts from liability for tax refunds and places monetary liability for the same on the County (with the exception of the City of Glen Cove, which collects and enforces its own school taxes). It is the School District's position that such an order would serve to bar the enforcement of this tax certiorari order against it.

The Petitioner, Pall Corp., opposes the application, claiming the School District was not required to receive notice of the proceeding under R.P.T.L. §708(3) because Nassau County exempted school districts from the service requirements by virtue of being a "special assessing unit", as defined in Article 18 of the R.P.T.L. The Petitioner also cites Section 6-17.3 of the Nassau County Administrative Code (hereinafter "NCAC") which clearly states "Notwithstanding the provisions of any other general or special law to the contrary, it shall not be necessary to deliver a copy of said Petition or notice to the clerk of any school district." The Court agrees that the School District was not entitled to notice of the subject tax certiorari proceeding, according to existing legislation applicable to school districts located in Nassau County.

In addition to the foregoing arguments, County Respondents oppose the School District's application on the grounds that a.) the motion is untimely; b.) injunctive relief is inappropriate where the actual relief sought by the School District is for a money judgment; and c.) the School District is seeking to overturn a legally enforceable contract of which it knew, or should have known about for several years.

In support of its' application, the School District urges the Court to apply the notice provisions of RPTL Section 708 (3) irrespective of NCAC 6-17.3, because the School District may suffer an adverse financial impact by a reduction in the assessed value of the subject property. In response, the Petitioner argues the School District's interest in this proceeding does not involve its' purported liability to pay tax certiorari refunds, but rather their objection to the PILOT credits granted to Petitioner, as a result of the assessment reductions and the consequential financial impact on the School District.

In Vantage Petroleum v. Board of Assessment Review of the Town of Babylon et al., and the Board of Education, Lindenhurst Union Free School District No. 4, 91 A.D. 2d 1037, 458 N.Y.S.2d 632 (Second Dept., 1983), the Appellate Division upheld the Suffolk County Supreme Court's denial of the Lindenhurst School District's motion for leave to intervene, finding intervention was not warranted where there was no direct financial interest in the outcome of the proceeding. The Court rejected the School District's contention that since the tax assessment affected their tax funding, they had a direct financial interest in the outcome of the proceeding. The Court took note of the fact that school districts in Suffolk County were no longer liable for school tax refunds as a result of tax certiorari proceedings. The Court therefore found the motion to intervene "based solely on the speculative theory that a reduction in the assessed value of Petitioner's property may result in the underevaluation of the property and a decrease in the school district's tax base, must be rejected." This decision was unanimously affirmed by the Court of Appeals. See Vantage, supra., at 61 N.Y.2d 695, 472 N.Y.S. 2d 603 (1984).

Similarly, in the Matter of Sperry Rand Corp. v. Board of Assessors of the County of Nassau, 77 A.D.2d 822, 430 N.Y.S.2d 1023 (Second Dept., 1980), the Appellate Division upheld Special Term's decision which determined that the legitimate interest that school districts have in their tax base, when preparing budgets, was not a ground for intervention in a proceeding to review a tax assessment, pursuant to Article 7 of the Real Property Tax Law. The Court in the Sperry Rand case denied a Nassau County school district's motion to intervene, as the district could not be held liable for the issuance of a tax refund. The Court further referenced section 6-17.3 of the NCAC as having relieved the Petitioner from the obligation to deliver a copy of the tax certiorari petition to the clerk of the school district. A motion for leave to appeal this decision to the Court of Appeals was dismissed. See 52 N.Y.2d 702 (1981).

While there is case law which permits school districts to intervene in a proceeding pursuant to Article 7 of the Real Property Tax Law, they have been limited to circumstances where the school district is exposed to potential liability for the direct issuance of a tax refund. Cases which have arisen in counties where the school districts have been legislatively relieved of the responsibility for the direct payment of a tax refund, have resulted in the denial of their applications for leave to intervene in these proceedings on the basis that their financial interest in the outcome of the proceeding is not a direct one and thus, they are not indispensable parties to the proceeding. See Vantage, supra.; Sperry Rand, supra.; In the Matter of Newbany Corp. v. Board of Assessors, et al. 153 A.D. 2d 696; 545 N.Y.S. 2d 272, (Second Dept. 1989) and In the Matter of Bowery Savings Bank v. Board of Assessors, 153 A.D. 2d 679, 545 N.Y.S. 2d 178 (Second Dept. 1989).

The School District cites RPTL §712 in support of their application for leave to intervene “as of right”, pursuant to CPLR section 1012(a) (1). This Court rejects such contention on the basis that Nassau County is a special assessing unit which is exempt from the application of this provision [RPTL §712, par. 2-a], as well as the service on school district requirements set forth in Article 7, Section 708 of the RPTL. The School District’s argument that it qualifies for intervention as of right, pursuant to CPLR 1012(a) (2), claiming its’ interests were not adequately represented or protected by the Petitioner or by the County, is equally rejected. This Court has no reason to believe the County neglected to use its best efforts to protect and preserve the tax base of property located in Nassau County when defending their interests in the underlying tax certiorari proceeding. The School District’s unsupported statement in this regard is unpersuasive. See In the Matter of James A. Pier v. Board of Assessment Review of the Town of Niskayuna, 158 Misc. 2d 732, 601 N.Y.S. 2d 413 (1993). The School District’s final argument for intervention as of right is based upon their claim that the tax certiorari proceeding involves the disposition of property and that the District may be adversely affected by the judgment pursuant to CPLR 1012(a)(3). This Court disagrees. The instant proceeding involves a challenge to the assessed value of the Petitioner’s property and the Courts of this State have repeatedly determined that intervention in these proceedings is limited to those school districts who remain liable for the direct issuance of tax refunds and not to those school districts which have been legislatively relieved of the responsibility for issuing tax refunds, in the event of an assessment reduction. This Court finds the School District has failed to satisfy the requirements for intervention as of right under CPLR 1012. With respect to CPLR 1013, the Court cannot ignore existing case law denying intervention in similar circumstances, nor can it ignore the fact that the instant proceeding concluded prior to this application and that the Petitioner has substantially relied upon the court-ordered assessment reductions in finalizing annual corporate returns and issuing dividends to its’ shareholders.

Accordingly, based upon the foregoing, it is hereby

ORDERED, that the portion of the School District’s application for leave to intervene, pursuant to Article 7 of the Real Property Tax Law, is denied; and it is further

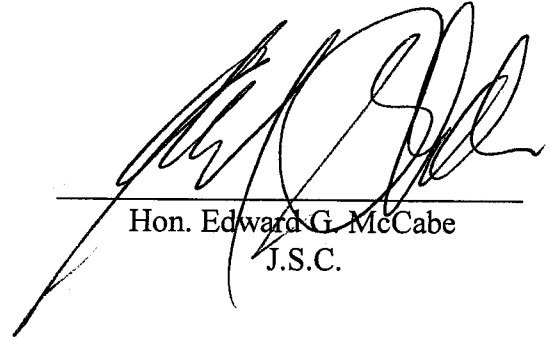
ORDERED, that the portion of the School District’s application for a permanent injunction enjoining and restraining the Petitioner and the Respondents from enforcing the terms of the subject tax certiorari order against the School District on the grounds that the terms of said order violate the “no-charge-back” provision of the Nassau County Administrative Code, section 6-26.0 (b) (3) (c), is denied, without prejudice to the commencement of a separate action. The School District has no standing to raise this issue in the context of the instant tax certiorari proceeding, as the School District is neither a party to this action, nor has it been granted leave to intervene. In addition, the requested interpretation of NCAC section 6-26.0 (b)(3)(c) is unrelated to the instant proceeding, which challenges the assessed valuation of the Petitioner’s property. The issue raised is one between the School District and the County of Nassau. It does not involve a common question of law or fact, as required by CPLR section 602(a) and notably all parties to the subject tax certiorari proceeding oppose the School District’s application for the joinder of this separate claim; and it is further

ORDERED, that the application is, in all other respects, denied.

This constitutes the decision and order of this Court.

ENTER:

Dated: April 29, 2004
Mineola, NY



Hon. Edward G. McCabe
J.S.C.

ENTERED

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**NASSAU COUNTY
COUNTY CLERK'S OFFICE**

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61 N.Y.2d 695, *; 460 N.E.2d 1088, **;
472 N.Y.S.2d 603, ***; 1984 N.Y. LEXIS 4007

Vantage Petroleum, Bay Isle Oil Co., Inc., Bay Isle Oil Corp., Respondent, v. Board of Assessment Review of the Town of Babylon et al., Respondents. Board of Education, Lindenhurst Union Free School District No. 4, Town of Babylon, Appellant

[NO NUMBER IN ORIGINAL]

Court of Appeals of New York

61 N.Y.2d 695; 460 N.E.2d 1088; 472 N.Y.S.2d 603; 1984 N.Y. LEXIS 4007

December 15, 1983, Argued January 10, 1984, Decided

PRIOR HISTORY:

Appeal, by permission of the Appellate Division of the Supreme Court in the Second Judicial Department, from an order of that court, entered January 24, 1983, which affirmed an order of the Supreme Court at Special Term (William R. Geiler, J.), entered in Suffolk County, denying appellant board of education's motion for leave to intervene. The following question was certified by the Appellate Division: "Was the order of this court dated January 24, 1983 properly made?"

Petitioner brought the instant tax certiorari proceeding against the assessing authorities of the Town of Babylon after they denied its application to reduce the assessment on its property; in accordance with subdivision 3 of section 708 of the Real Property Tax Law, notice of the proceeding was mailed to the clerk of the Lindenhurst Union Free School District No. 4, since the subject property lay within that district. The board of education then moved to intervene as a party respondent alleging that it was the recipient of two thirds of the tax revenue derived from the assessment in issue and that the necessity for intervention was demonstrated by the multitude of similar proceedings in the district.

Special Term concluded that the school district had no right to intervene since tax refunds resulting from a final order in a tax review proceeding were no longer payable by a school district in Suffolk County (see L 1980, ch 837), but were paid by the county and charged back to the town. The Appellate Division concluded that pursuant to chapter 837 of the Laws of 1980, a Suffolk County school district is no longer liable for refunds of the school portion of the property tax that is owed a petitioner as a result of tax certiorari proceedings instituted pursuant to article 7 of the Real Property Tax Law; that the Legislature's failure to relieve petitioners in such article 7 proceedings of the duty to give Suffolk County school districts notice of tax certiorari proceedings pursuant to section 708 of the Real Property Tax Law was merely an oversight and did not indicate a legislative intent to allow intervention by said school districts in such proceedings, and that, therefore, the board of education's attempt to intervene, based solely on the speculative theory that a reduction in the assessment of petitioner's property may result in an undervaluation of the property and a decrease in the school district's tax base, must be rejected.

Vantage of Petroleum v Board of Assessment Review, 91 AD2d 1037.

DISPOSITION: Order affirmed, etc.

CORE TERMS: school district, memorandum, exercise of discretion, abuse of discretion, value of property, succeeding year, assessed value, reasons stated, matter of law, res judicata, permission, intervene, taxation, fixing, certiorari proceeding

COUNSEL: Eugene L. Wishod for appellant.

Laureen Cronin for petitioner-respondent.

Lou Lewis for Shoreham-Wading River School District, *amicus curiae*.

JUDGES: Chief Judge Cooke and Judges Jasen, Jones, Wachtler, Meyer, Simons and Kaye concur in

OPINION: [*697] [1088] [***603] OPINION OF THE COURT**

Memorandum.

The order of the Appellate Division should be affirmed, with costs, and the question certified answered in the affirmative.

[*604]** The appeal raises the question whether a board of education in the County of Suffolk may intervene in a tax certiorari proceeding involving property within the district. To the extent that the application sought intervention by permission under **[**1089]** CPLR 1013, the exercise of discretion by the courts below is, absent an abuse of discretion as a matter of law, not here present, beyond our review (Patron v Patron, 40 NY2d 582). To the extent that intervention **[*698]** as of right was sought under CPLR 1012 (subd [a], par 2), we affirm for the reasons stated in the Appellate Division memorandum (**91 AD2d 1037**) to which we add only that whether movant will be bound by the judgment within the meaning of that subdivision is determined by its *res judicata* effect (Matter of Unitarian Universalist Church v Shorten, 64 Misc 2d 851, 854, vacated on other grounds 64 Misc 2d 1027; Lesser v West Albany Warehouses, 17 Misc 2d 461; Sutphen Estates v United States, 342 U.S. 19, 21) and that a judgment fixing the value of property for taxation in one year may be evidence of its assessed value for a succeeding year but is not *res judicata* (Matter of Woolworth Co. v Tax Comm., 20 NY2d 561, 567; People ex rel. Hilton v Fahrenkopf, 279 NY 49, 52-53).

Order affirmed, etc.

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