

New York Telephone Co. v Town of N. Hempstead

2008 NY Slip Op 33608(U)

November 20, 2008

Supreme Court, Nassau County

Docket Number: 012192/98

Judge: Daniel Martin

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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DANIEL MARTIN
Acting Supreme Court Justice

TRIAL/IAS, PART 31
NASSAU COUNTY

NEW YORK TELEPHONE COMPANY.

Plaintiff.

Index No.: 012192/98
Sequence No.: 008

- against -

SUPERVISOR OF TOWN OF NORTH HEMPSTEAD, TOWN OF NORTH HEMPSTEAD, NEW CASSEL GARBAGE DISTRICT; ALBERTSON, SEARINGTOWN, AND HERRICKS GARBAGE DISTRICT ; ROSLYN HEIGHTS GARBAGE DISTRICT; PORT WASHINGTON GARBAGE DISTRICT; CARLE PLACE GARBAGE DISTRICT, FLORAL PARK CENTER GARBAGE DISTRICT; GLENWOOD/GLEN HEAD SANITARY DISTRICT; NEW HYDE PARK/GCP GARBAGE DISTRICT; TOWN BOARD OF THE TOWN OF NORTH HEMPSTEAD, AS COMMISSIONERS OF: NEW CASSEL GARBAGE DISTRICT, ALBERTSON, SEARINGTOWN, and HERRICKS GARBAGE DISTRICT, ROSLYN HEIGHTS GARBAGE DISTRICT, PORT WASHINGTON GARBAGE DISTRICT, CARLE PLACE GARBAGE DISTRICT, FLORAL PARK CENTER GARBAGE DISTRICT, GLENWOOD/GLEN HEAD SANITARY DISTRICT, and NEW HYDE PARK/GCP GARBAGE DISTRICT; BOARDS OF COMMISSIONERS AND COMMISSIONERS OF: NEW CASSEL GARBAGE DISTRICT, ALBERTSON, SEARINGTOWN, and HERRICKS GARBAGE DISTRICT, ROSLYN HEIGHTS GARBAGE DISTRICT, PORT WASHINGTON GARBAGE DISTRICT, CARLE PLACE GARBAGE DISTRICT, FLORAL PARK CENTER GARBAGE DISTRICT, GLENWOOD/GLEN HEAD SANITARY DISTRICT, and NEW HYDE PARK/GCP GARBAGE DISTRICT; RECEIVER OF TAXES OF THE TOWN OF NORTH HEMPSTEAD, and CONTROLLER OF THE TOWN OF NORTH HEMPSTEAD.

Defendants.

SUPERVISOR OF TOWN OF NORTH HEMPSTEAD, TOWN OF NORTH HEMPSTEAD, NEW CASSEL GARBAGE DISTRICT; ALBERTSON, SEARINGTOWN, AND HERRICKS GARBAGE DISTRICT ; ROSLYN HEIGHTS GARBAGE DISTRICT; PORT WASHINGTON GARBAGE DISTRICT; CARLE PLACE GARBAGE DISTRICT, FLORAL PARK CENTER GARBAGE DISTRICT; GLENWOOD/GLEN HEAD SANITARY DISTRICT; NEW HYDE PARK/GCP GARBAGE DISTRICT; TOWN BOARD OF THE TOWN OF NORTH HEMPSTEAD, AS COMMISSIONERS OF: NEW CASSEL GARBAGE DISTRICT, ALBERTSON, SEARINGTOWN, and HERRICKS GARBAGE DISTRICT, ROSLYN HEIGHTS GARBAGE DISTRICT, PORT WASHINGTON GARBAGE DISTRICT, CARLE PLACE GARBAGE DISTRICT, FLORAL PARK CENTER GARBAGE DISTRICT, GLENWOOD/GLEN HEAD SANITARY DISTRICT, and NEW HYDE PARK/GCP GARBAGE DISTRICT; BOARDS OF COMMISSIONERS AND COMMISSIONERS OF: NEW CASSEL GARBAGE DISTRICT, ALBERTSON, SEARINGTOWN, and HERRICKS GARBAGE DISTRICT, ROSLYN HEIGHTS GARBAGE DISTRICT, PORT WASHINGTON GARBAGE DISTRICT, CARLE PLACE GARBAGE DISTRICT, FLORAL PARK CENTER GARBAGE DISTRICT, GLENWOOD/GLEN HEAD SANITARY DISTRICT, and NEW HYDE PARK/GCP GARBAGE DISTRICT; RECEIVER OF TAXES OF THE TOWN OF NORTH HEMPSTEAD,

Third-Party Action

and CONTROLLER OF THE TOWN OF NORTH HEMPSTEAD.

Third-Party Plaintiffs.

- against -

THE COUNTY OF NASSAU, THE NASSAU COUNTY BOARD OF ASSESSORS, THE NASSAU COUNTY BOARD OF ASSESSMENT REVIEW, THE ASSESSMENT REVIEW COMMISSION OF THE COUNTY OF NASSAU AND THE NASSAU COUNTY ASSESSOR.

Third-Party Defendants.

The following named papers have been read on this motion:

	Papers Numbered
Notice of Motion and Affidavits Annexed	X
Order to Show Cause and Affidavits Annexed	
Answering Affidavits	X
Replying Affidavits	X

Upon reading the papers submitted and due deliberation having been had herein, defendants/third-party plaintiffs Town of North Hempstead, New Cassel Garbage District, Albertson, Seasingtown and Herricks Garbage District, Roslyn Garbage District, Port Washington Garbage District, Carle Place Garbage District, Glenwood Garbage District, Manhasset Garbage District and New Hyde Park/Garden City/Floral Park Centre Garbage District (hereinafter collectively "Town") motion for summary judgment on their third-party complaint against third-party defendants County of Nassau, Nassau County Board of Assessors, Nassau County Board of Assessment Review and the Assessment Review Commission of the County of Nassau (hereinafter collectively "County") is denied.

Plaintiff New York Telephone in the instant matter sought a declaratory judgment that certain ad-valorem taxes assessed against what are known as "massed properties" of plaintiff's are unconstitutional and void and further directing refunds of payments made on such taxes. The court granted plaintiff herein summary judgment by short form order dated November 12, 2003. A trial was held on the issue of the amounts of refunds and a judgment entered which declared said taxes unconstitutional and void and further found the Town liable to plaintiffs in the amount of \$647,657.16 plus interest representing the back taxes owed to plaintiff. Defendant Town maintains a third-party action against the County in which it seeks a judgment directing that the County is liable for payments to the Town. Defendant/third party plaintiffs now move for summary judgment on their third-party complaint.

In moving for summary judgment defendants/third party plaintiffs must demonstrate that there are no issues of fact which preclude summary judgment by the tender of evidence in admissible form. Zuckerman v. City of New York, 49 N.Y.2d 557 (1980). In order to oppose the motion third-party defendant must demonstrate a triable issue of fact through admissible evidence. Id.

The Town first asserts that pursuant to the procedure in place in the Nassau County Administrative Code, where an error or illegality is discovered in the County Assessment Roll, the County Legislature is responsible for cancellation of the error or illegality and refunds for same must be made by the County as same is a "county charge."

Section 6-24.0 of the Code provides:

"Upon the verified petition to the Board of Supervisors [it should be noted that same has been replaced by the County Legislature] by a majority of the Board of Assessors:

4. That any property subject to taxation has been assessed erroneously or illegally, for either the County Assessment roll or for the school district assessment roll, the Board Supervisors [read Legislature] shall cancel on such roll such assessment and the tax or assessment for benefit on such property."

Section 6-26(c) of the Code provides:

"Notwithstanding any provisions of this chapter, or any other general or special law to the contrary, any deficiency existing or hereafter arising from a decrease in an assessment or tax under subdivisions one, four and seven of section 6-24.0 or 6-12 or 5-72 of the code, or by reason of exemptions or reductions of assessments shall be a county charge."

Reading the plain language of the above cited sections of the County Administrative Code, the court finds same to be inapplicable to the instant matter. Said section unambiguously provides that where an erroneously or illegally assessed piece of property is found to be improperly assessed upon a petition to the legislature by the Board of Assessors, that the legislature is to cancel that assessment on the tax roll and the tax itself on the property. In the instant matter there is no indication that plaintiff herein or the Board of Assessors sought to correct the assessment against the property by a petition to the Legislature by the Board of Assessors. The instant matter is a judicial action in which plaintiff seeks to have declared unconstitutional the levied taxes. Pursuant to Real Property Tax Law §726(1)(b) where, as here, tax refunds are sought in judicial proceedings "[s]o much of any tax or other levy, including interest thereon, as shall be refunded which was imposed for city, town, village or special district purposes shall be charged to such city, town, village or special district."

Even were this an administrative proceeding to have the subject ad valorem taxes declared unconstitutional and for refunds thereon, Real Property Tax Law §556(6) provides that in administrative proceedings to correct the tax rolls and for refunds thereon, "[t]he amount of any tax refunded pursuant to this section shall be a charge upon each municipal corporation or special district to the extent of any such municipal corporation or special district taxes that were so refunded." This section conflicts with Administrative Code §6-26 set forth above. Real Property Tax Law §559(2) provides that "[p]rovisions of all general, local, or other laws which are inconsistent with the provisions of this title shall be inapplicable to municipal corporations to

[* 4]
which this title applies but if not inconsistent shall apply to such municipal corporation.”

As the sections of the Administrative Code upon which the Town relies are inconsistent with Real Property Tax Law §556(6), the court finds that same is inapplicable to the Town and the County herein. The court also finds unavailing the Town’s position that the County should be required to pay the refunds based upon Real Property Tax Law §523-b which authorized the County of Nassau to have its own body for assessment review instead of that provided for by Real Property Tax Law §523 which requires each local government to have board of assessment review. Such to this court is not authority for the County to maintain an administrative code that conflicts with the other provisions of the Real Property Tax Law on the issue of who is responsible for refunds. While the Town takes the position that it has always been the practice that refunds are always paid by the County, same does not explain the statutory requirements set forth above, which provide that the Town is responsible for the refunds under the circumstances of this matter.

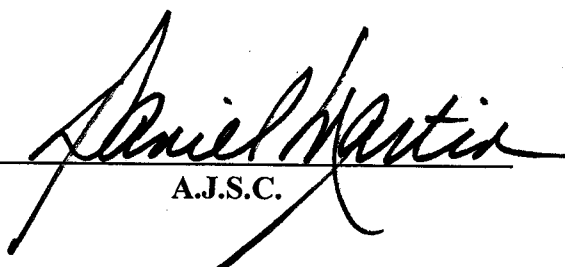
The court further finds inconsistent the Town’s general position herein. The Town seems to assert that its districts were entitled to impose these levies and reap the financial benefits of same, refunds of said taxes, however, should be made by an entity which does not benefit from the levies, the County. Defendants/third party plaintiffs cite this court to no authority which would indicate that this position is equitable.

Accordingly, based upon the foregoing, the motion for summary judgment is denied.

Further, the court having found that defendants/third-party plaintiffs’ alleged cause of action has no merit, the court, pursuant to its authority under CPLR 3212(b) searches the record and grants the County defendants summary judgment. It is therefore directed that the third-party complaint is dismissed.

So Ordered.

Dated: November 20, 2008


A.J.S.C.

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DEC 01 2008
NASSAU COUNTY
COUNTY CLERK'S OFFICE