

Roslyn Union Free School Dist. v Barkan

2008 NY Slip Op 33625(U)

March 27, 2008

Sup Ct, Nassau County

Docket Number: 5946/2005

Judge: R. Bruce Cozzens, Jr.

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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

PRESENT: HON. R. BRUCE COZZENS, JR.
Justice.

TRIAL/IAS PART 8
NASSAU COUNTY

ROSLYN UNION FREE SCHOOL DISTRICT,

Plaintiff(s),

-against-

MICHAEL BARKAN, ASENATH ANDERSON, KAREN BODNER, WILLIAM COSTIGAN, MARY ANN COMBS, CAROL MARGARITIS, RONNA NIEDERMAN, PATRICIA SCHISSEL, ALVIN SILVERMAN, and ELLEN SIEGEL, sued individually, as well as in their official capacities as current or former members of the Roslyn Union Free School District Board of Education

Defendant(s).

MOTION #001
INDEX#5946/2005
MOTION DATE:
November 9, 2007

The following papers read on this motion:

Notice of Motion.....	1
Briefs: Plaintiff's.....	1
Defendant's.....	2

Upon the foregoing papers, it is ordered that the defendant Carol Margaritis' motion pursuant to CPLR 3211(a)(5) and (7) for dismissal of the claim set forth in the Verified Complaint is determined as hereinafter set forth.

The plaintiff, Roslyn Union Free School District, commenced this suit alleging six different causes of action. The first cause of action, breach of fiduciary duty, is based on notion that the Board Members held a position of good faith, trust and loyalty and that the breach of this duty caused significant harm to the School District. The second cause of action is negligence, based on the view that the Board Members owed a duty of care to the School District and that the Board's negligence resulted in the exacerbation of the theft and scandal to

the School District. The third cause of action is declaratory judgment. The fourth cause of action against the Board is accounting, because the Board repeatedly breached their fiduciary duty, and duties of good faith, loyalty, and fair dealing, by misappropriating, stealing, converting, looting and wasting the School District's assets. As such the School District is entitled to an accounting by the Board of funds that were expended for the benefit of the board from 1998 to 2004. The fifth cause of action, unjust enrichment, is based on the reasoning that the payments made by the Board with the School District's funds, which were intended to be used for administering and maintaining the School District, allowed the Board Members to gain a benefit that they should not have obtained, thus constituting unjust enrichment. Finally, the sixth cause of action is constructive trust. The School District entrusted the board with the authority to manage the financial operations of the School District and the Board wrongfully took advantage of this power when one or more Board Members came into possession of the property that belonged to the School District, and should not have retained.

In support of the motion for dismissal, the defendant Margaritis maintains that the first three causes of action are time-barred by a three-year statute of limitations. The defendant contends that when a cause of action, seeking money damages, is based on a breach of fiduciary duty the statute of limitations begins to run at the time of the alleged breach. The defendant stepped down from the board in June 2001, which would constitute the last possible time the defendant could have breached her fiduciary duty, and therefore, in order to avoid being time-barred the School District had to bring this claim against Margaritis no later than June 2004. This action was commenced in April 2005 long after the statute of limitations had run. Similarly, based on the same reasoning, pursuant to CPLR 214(4), the negligence cause of action against Margaritis is time-barred. The statute of limitations for a negligence claim is three years and the last possible time the defendant could have committed a negligent act as a Board Member was in June 2001 when she stepped down as a Board Member. The third cause of action of declaratory judgment is also time-barred on the grounds that, while a declaratory judgment cause of action has a six-year statute of limitations, it should only be employed when it is absolutely necessary and is not admissible to evade a shorter statute of limitations is applicable a law claim. With regard to the fourth through sixth causes of action, the defendant contends that the plaintiff fails to state a claim against Margaritis. On the fourth cause of action, the accounting claim, the defendant argues that there is no allegation in the complaint that the defendant came into possession of any money or property belonging to the School District. Additionally, because it is not alleged that Margaritis come into possession of any money or property of the School District, there is no cause of action based on unjust enrichment. Margaritis was not unjustly enriched with money or property that is against equity and good conscious for her to retain. Finally, the defendant contends that there is no allegation that there was any promise by Margaritis or any transfer to her of School District property.

In opposition of the motion, the plaintiff contends that the first three causes of action against Margaritis are not time-barred because the appropriate statute of limitations is six years and not three years. The plaintiff claims that the three-year statute of limitations of CPLR 214

does not apply and rather the six-year statute of limitations of CPLR 213 applies. Under CPLR 213(7), the School District constitutes a "corporation" and thus is entitled to a six-year statute of limitations. Furthermore, the plaintiff argues that the School District is a political subdivision of the "state" and therefore is entitled to the six-year statute of limitations available under CPLR 213(5). Furthermore, the plaintiff contends that even if the three-year statute of limitations is applicable, all of the claims against the defendant should be equitably tolled under the doctrine of equitable estoppel on the grounds that the acts and omissions by the Board led to the concealment of their improper conduct. Finally, the plaintiff argues that the Verified Complaint does in fact state causes of action for accounting, unjust enrichment, and constructive trust. When looking at the Verified Complaint in its totality and looking at the fiduciary relationship the school board had with the school district, the causes of accounting, unjust enrichment and constructive trust all state causes of action.

In defendant's reply affirmation, the defendant argues that when dealing with causes of action based on fiduciary relationships, where there is no set statute of limitations and one way to determine the germane statute of limitations is by looking at the remedy sought. The defendant cites *Whitney Holdings v Giovotovsky*, 988 F.Supp 732, 741 (SDNY 1997). The defendant contends that the plaintiff is seeking money damages and that a claim seeking monetary damages based on breach of fiduciary duty is governed by a three-year statute of limitations.

In the instant matter, the court finds that the relevant causes of action are time-barred by the three-year statute of limitations. The first ground on which the plaintiff claims a six-year statute of limitations is applicable is CPLR 213(7). There is little to no relevant case law on the issue of whether CPLR 213(7) applies to a school's board of directors or municipal corporations. The cases used by the plaintiff to support the plaintiff's contentions all deal with the issue of whether it is appropriate for a non-profit organization to use the six-year statute of limitations of CPLR 213(7). While a school is a non-profit institution, a municipal corporation is not synonymous to a not for profit corporation. Since it is unclear whether CPLR 213(7) is proper in the instant matter, the court will look to the remedy sought by the plaintiff. "Although the plaintiff's allegations stated a cause of action, the three-year limitations period which applies when monetary damages are sought for breach of fiduciary duty barred him from recovering damages for any alleged breach which occurred more than three years prior to the commencement of th[e] action..." *Nathanson v Nathanson*, 799 NYS2d 83, 85 (2d Dept. 2005). The plaintiff's claim based on breach of fiduciary seeks money damages from Margaritis, therefore a three-year statute of limitations is applicable and ultimately time-barred because the claim was commenced in April of 2005 and Margaritis left the Board of directors in June of 2001.

The second ground on which the plaintiff claims a six-year statute of limitations is applicable is CPLR 213(5). CPLR 213(5) states that "an action by the state based upon the spoliation or other misappropriation of public property...." Citing *Van Tassell v Hill*, 285 A.D. 584 (4d Dept. 1944), the plaintiff argues that the School District is both a civil and

governmental subdivision of the State and as such, the action commenced by the School District is an action by the state under CPLR 213(5). The language in *Van Tassell* plainly indicates that a School District is a subdivision of the State, however, there is no indication that just because the court deemed a School District a subdivision of the state, means that this action brought by the School District is considered an action by the state. Nevertheless, this question does not need to be answered at this juncture. The language of CPLR 213(5) is patent that the action brought by the state must be based on the spoliation or misappropriation of public property, in order to be applicable. There is no claim that Margaritis was personally responsible spoliation or other misappropriation of public property. Negligence is not spoliation. Margaritis personally did not take any money or property from the School District. Therefore, CPLR 213(5) is inapplicable to Margaritis.

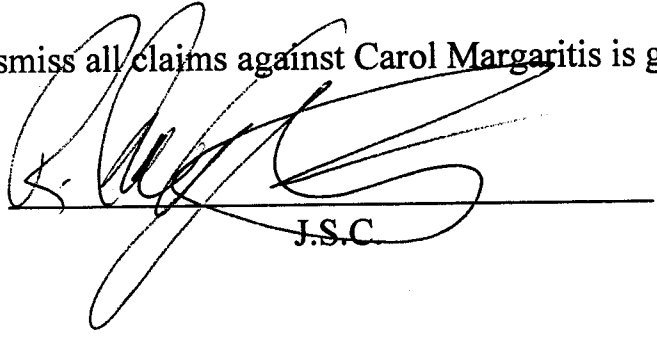
There are no grounds for the declaratory judgment cause of action. The other five causes of action carry valid statute of limitations and therefore the statutes of limitations delineated by the other causes of actions are appropriate. Additionally, when dealing with a declaratory judgment cause of action where there is no statute of limitations, the proper way to determine if a cause of action is time-barred is to look at the remedy sought by the plaintiff. In *Solnick v Whalen*, the court stated that "In order to determine therefore whether there is in fact a limitation prescribed for a particular declaratory judgment action it is necessary to examine the substance of the action to identify the relationship out of which the claim arises and the relief sought." 425 NYS 2d 68, 71. The plaintiff school district seeks money damages and the appropriate statute of limitations for money damages is three years.

With regard to the causes of action based on accounting, unjust enrichment, and constructive trust, they cannot stand against Margaritis. Margaritis never came into possession of any of the school district's money or property. These three causes of action are not applicable to Margaritis because she never personally came into possession of the school district's money or property to engage in accounting, unjust enrichment, or constructive trust. Margaritis did not come into possession of any of the money or property of the School District and cannot be personally liable for damages of monies she never possessed. Similarly, Margaritis cannot be unjustly enriched nor put in a position of constructive trust by monies she never possessed.

Finally, there are no grounds for equitable estoppel for the claims against Margaritis. There is no evidence offered to demonstrate that Margaritis was personally aware of the wrongdoings of other board members or that she aided in the concealment of such actions of certain board members.

As such, the defendant's motion to dismiss all claims against Carol Margaritis is granted.

Dated: MAR 27 2008



J.S.C.