

Mangano v Silver

2011 NY Slip Op 31975(U)

June 30, 2011

Sup Ct, Nassau County

Docket Number: 14444/10

Judge: R. Bruce Cozzens

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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

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

TRIAL/IAS PART 5
NASSAU COUNTY

EDWARD P. MANGANO in his official capacity as Nassau County Executive, COUNTY OF NASSAU, COUNTY OF SUFFOLK, INCORPORATED VILLAGE OF FLORAL PARK, INCORPORATED VILLAGE OF VALLEY STREAM, INCORPORATED VILLAGE OF MINEOLA, INCORPORATED VILLAGE OF NEW HYDE PARK, TOWN OF MONROE, TOWN OF CHESTER, TOWN OF WARWICK, TOWN OF HIGHLANDS, TOWN OF WAWAYANDA, TOWN OF BLOOMING GROVE, TOWN OF CRAWFORD, VILLAGE OF HIGHLAND FALLS ORANGE COUNTY CHAMBER OF COMMERCE, VILLAGE OF WOODBURY, VILLAGE OF MAYBROOK, COUNTY OF WESTCHESTER, VILLAGE OF SOUTH BLOOMING GROVE, AND TOWN OF WOODBURY.

Plaintiff(s),

-against-

SHELDON SILVER in his official capacity as Speaker of the New York State Assembly; RICHARD RAVITCH, in his official capacity as President of the New York State Senate; MALCOLM A. SMITH, in his official capacity as Temporary President of the New York State Senate; JOHN SAMPSON, in his official capacity as the Conference Leader of the New York State Senate; THE STATE OF NEW YORK ; DAVID A. PATERSON in his official capacity as the Governor of the State of New York; THE NEW

MOTION #007, 008,
009, 010
INDEX # 14444/10
MOTION DATE:
January 20, 2011

YORK STATE DEPARTMENT OF TAXATION AND FINANCE; JAIME WOODWARD, in his official Capacity as Acting Commissioner of the New York State Department of Taxation and Finance; THOMAS DINAPOLI, in his official capacity as the Comptroller of the State of New York; the METROPOLITAN TRANSPORTATION AUTHORITY; JAY H. WALDER in his official capacity as Commissioner of the Metropolitan Transit Authority,

Defendant(s).

The following papers read on this motion:

Notice of Motion.....	5
Affirmation in Opposition.....	8
Reply Affirmation.....	7
Briefs.....	
Plaintiff.....	4

Upon the foregoing papers, it is ordered that the movants' motion to intervene pursuant to CPLR §§ 1012 and 1013 is determined hereinafter set forth.

Plaintiffs Edward Mangano, in his official capacity as Nassau County Executive, and the County of Nassau (hereinafter collectively referred to as "Nassau County") commenced an action on or about July 29, 2010 challenging the constitutionality and legality of Chapter 25 of the 2009 Session Laws of the State of New York (the "MTA Tax"). The MTA Tax requires that every employer, including municipalities, who engages in business within the Metropolitan Commuter Transit District ("MCTD") pay a tax at a rate of thirty-four hundredths (.34) percent of the payroll expense of the employer for the supposed benefit and contribution to the Metropolitan Transportation Authority ("MTA") funding source. Multiple municipalities, from various counties in New York, have joined this action as plaintiffs since its commencement.

In separate motions to intervene pursuant to CPLR §§ 1012 and 1013, the County of Westchester, Village of South Blooming Grove and Town of Woodbury (filing jointly), Village of Woodbury, and the Village of Maybrook, seek to join the Nassau County action and amend the complaint as added parties due to the existence of common issues of law and fact. All four movants are municipalities incorporated under New York state law, and are located within the MCTD and therefore required to pay the MTA Tax.

Movants argue that common issues of law and fact exist and that they have a direct and substantial interest in the outcome of the proceeding in Nassau County's action. The action involves a disposition and/or distribution of municipal property and movants could be adversely affected by a judgment rendered in the action. If the MTA Tax is found to be valid, the movants would be bound by that judgment and the same would have *res judicata* effect

against them and they would be obligated to pay the MTA Tax.

Movants also argue in their timely motion that there will be no prejudice to defendants as no discovery has taken place and the Court's interest in judicial economy is advanced as movants could file separate lawsuits that could potentially be consolidated pursuant to CPLR §602.

Defendants have answered the Nassau County complaint and have filed a motion to change venue, which is still pending. Other than movants' motions to intervene, no other substantive or procedural progress has been made.

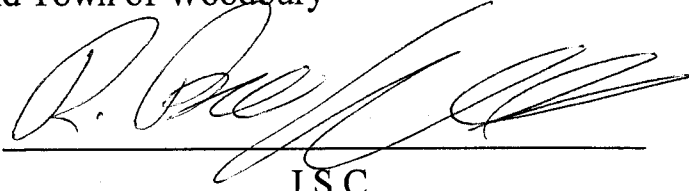
Defendants argue that venue is not proper and that venue is proper in Albany, NY. Defendants also argue that the intervenor motion is premature and the decision on the venue motion should be determined prior to the decision on the intervenor motion. Defendants indicate in their opposition papers that they would allow movants to intervene in the pending action that is now venued in Albany. Movants object to defendants' suggestion, as a motion for summary judgment has already been submitted in that action and the action may be litigated before movants could participate.

"Upon a timely motion, a person is permitted to intervene as of right in an action involving the disposition of property where that person may be adversely affected by the judgment (*see* CPLR 1012(a)(3); *Velazquez v Decaudin*, 49 AD3d 712, 717 (2008); *George v Grand Bay Assoc. Enter. Inc.*, 45 AD3d 451, 452 (2007); *Greenpoint Sav. Bank v McMann Enters.*, 214 AD2d 647 (1995); *but see Citibank, N.A. v Plagakis*, 8 AD3d 604, 605 (2004)). In addition, a court, in its discretion, may permit a person to intervene, *inter alia*, when the person's claim or defense and the main action have a common question of law or fact (*see* CPLR 1013). Whether intervention is sought as a matter of right under CPLR 1012(a), or as a matter of discretion under CPLR 1013, is of little practical significance since a timely motion for leave to intervene should be granted, in either event, where the intervenor has a real and substantial interest in the outcome of the proceedings [citations omitted]. In exercising its discretion, the court shall consider whether the intervention will unduly delay the determination of the action or prejudice the substantial rights of any party [citations omitted]" *Wells Fargo Bank, Nat. Ass'n v McLean*, 70 AD3d 676, 894 NYS2d 487. CPLR § 1012(a)(2) authorizes a person to intervene in an action as a right where they are or may be bound by a judgment in the pending action and the representation of that interest by the other parties may be inadequate and the person is bound by the decision and its *res judicata* effect against them (*see Vantage Petroleum v. Board of Assessment Review, etc., of Town of Babylon*, 91 AD2d 1037, 458 NYS 2d 632).

In addition to proving that common questions of law and fact exist, the movants, in their timely motion, have also demonstrated their possession of real and substantial interests in the outcome of the Nassau County action. A decision on the validity of MTA Tax would be binding upon all movants. Since the Nassau County action is in its early litigation stages and discovery has not commenced, defendants would not be prejudiced nor will the action be delayed by the intervention of the four additional municipalities.

Therefore, the County of Westchester, Village of South Blooming Grove, Town of Woodbury, and the Village of Maybrook's motions to join the Nassau County action is granted. The parties should be added as party plaintiffs and the caption shall read as follows: Orange County Chamber of Commerce, Village of Woodbury, Village of Maybrook, County of Westchester, Village of South Blooming Grove, and Town of Woodbury

Dated: **JUN 30 2011**



J.S.C.

ENTERED
JUL 08 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE