

**Carle Place Union Free School Dist. v County of  
Nassau**

2011 NY Slip Op 32589(U)

September 30, 2011

Supreme Court, Nassau County

Docket Number: 3069/11

Judge: Antonio I. Brandveen

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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: ANTONIO I. BRANDVEEN  
J. S. C.

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CARLE PLACE UNION FREE SCHOOL DISTRICT, EAST WILLISTON UNION FREE SCHOOL DISTRICT, FARMINGDALE UNION FREE SCHOOL DISTRICT, FREEPORT UNION FREE SCHOOL DISTRICT, GARDEN CITY UNION FREE SCHOOL DISTRICT, HEWLETT-WOODMERE UNION FREE SCHOOL DISTRICT, HICKSVILLE UNION FREE SCHOOL DISTRICT, ISLAND TREES UNION FREE SCHOOL DISTRICT, LONG BEACH CITY SCHOOL DISTRICT, MASSAPEQUA UNION FREE SCHOOL DISTRICT, MINEOLA UNION FREE SCHOOL DISTRICT, PLAINVIEW- OLD BETHPAGE CENTRAL SCHOOL DISTRICT, ROCKVILLE CENTRE UNION FREE SCHOOL DISTRICT, WEST HEMPSTEAD UNION FREE SCHOOL DISTRICT,

TRIAL / IAS PART 30  
NASSAU COUNTY

Index No. 3069/11

Action No. 1

Motion Sequence No. 001, 002,  
003

Petitioners-Plaintiffs,

For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules and for Declaratory Judgment,

- against -

THE COUNTY OF NASSAU, THE NASSAU COUNTY SEWER AND STORM WATER DISTRICT AND THE NASSAU COUNTY SEWER AND STORM WATER FINANCE AUTHORITY,

Respondents-Defendant.

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In the Matter of THE BOARD OF EDUCATION OF THE EAST MEADOW UNION FREE SCHOOL DISTRICT, THE BOARD OF EDUCATION OF THE WESTBURY UNION FREE SCHOOL DISTRICT and THE NATIONAL CENTER FOR DISABILITY SERVICES, INC. d/b/a ABILITIES,

Index No. 3075/11

Action No. 2

Motion Sequence No. 001, 002

Petitioners-Plaintiff,

For a Judgment Pursuant to Article 78 and Section 3001 of the Civil Practice Law and Rules

- against -

THE COUNTY OF NASSAU, THE NASSAU COUNTY LEGISLATURE and EDWARD MANGANO, as NASSAU COUNTY EXECUTIVE,

Respondents-Defendant.

In the Matter of HOFSTRA UNIVERSITY,

Index No. 3203/11

Petitioner,

Action No. 3

- against -

Motion Sequence No. 001, 002

NASSAU COUNTY, NEW YORK, and the NASSAU COUNTY TREASURER,

Respondent.

In the Matter of ST. FRANCIS HOSPITAL, ROSLYN, NEW YORK, ST. FRANCIS RESEARCH and EDUCATIONAL CORPORATION, WSNCHS NORTH, INC., d/b/a ST. JOSEPH HOSPITAL and MERCY MEDICAL CENTER,

Index No. 3335/11

Action No. 4

Motion Sequence No. 001

Petitioners,

- against -

NASSAU COUNTY, NEW YORK, and the NASSAU COUNTY TREASURER,

Respondents.

The following papers having been read on this motion #3069/11:

Notice of Petition, Affidavits, & Exhibits .....	<u>1, 2, 3</u>
Answering Affidavits .....	<u>4, 5, 6</u>
Replying Affidavits .....	<u>          </u>
Briefs: Plaintiff's / Petitioner's .....	<u>          </u>
Defendant's / Respondent's .....	<u>7, 8</u>

The following papers having been read on this motion #3075/11:

Notice of Petition, Affidavits, & Exhibits .....	<u>1, 2</u>
Answering Affidavits .....	<u>3</u>
Replying Affidavits .....	<u>          </u>
Briefs: Plaintiff's / Petitioner's .....	<u>          </u>
Defendant's / Respondent's .....	<u>          </u>

The following papers having been read on this motion #3203/11:

Notice of Petition, Affidavits, & Exhibits .....	<u>1, 2</u>
Answering Affidavits .....	<u>3</u>
Replying Affidavits .....	<u>4</u>
Briefs: Plaintiff's / Petitioner's .....	<u>5</u>
Defendant's / Respondent's .....	<u>6</u>

The following papers having been read on this motion #3335/11:

Notice of Petition, Affidavits, & Exhibits .....	<u>1</u>
Answering Affidavits .....	<u>          </u>
Replying Affidavits .....	<u>          </u>
Briefs: Plaintiff's / Petitioner's .....	<u>          </u>
Defendant's / Respondent's .....	<u>          </u>

The Respondents/Defendants upon the petition and notice of petition submitted in this action/proceeding as well as the petition and notice of petition submitted in three other actions/proceedings to wit: Board of Education of East Meadow, et al v. County of Nassau, Index No. 3075-11; Hofstra University v. County of Nassau, Index No. 3203-11 and St. Francis Hospital et al. v. County of Nassau, Index No. 3335-11, all of which challenge the validity of Nassau County Ordinance 184-2010 and Amendment Ordinance No. 199-2010, moves this court:

- (a) pursuant to CPLR § 602, consolidating or joining, for the purpose of determination, the four related actions/proceedings in that they all involve common questions of law and fact, since all of these actions/proceedings challenge the validity of Nassau County Ordinance 184-2010 and Amendment

Ordinance No. 199-2010 and since consolidating an/or joining for purposes of determination would avoid conflicting decisions and would serve the interests of judicial economy;

(b) pursuant to CPLR § 7804(f), dismissing the causes of action alleged to be under CPLR § Article 78, since a proceeding under Article 78 is inappropriate to challenge a legislative act;

(c) pursuant to CPLR § 7804(f), dismissing this proceedings (to the extent that petitioner alleges this to be a hybrid action/proceeding) since a proceeding is not a valid vehicle to challenge the validity of a law;

(d) pursuant to CPLR § 3211(a)(7) dismissing the complaint for failure to state a viable claim for relief since the plaintiffs/petitioners lack standing to challenge the ordinance; the causes of action alleged are not ripe for judicial determination and since the plaintiffs/petitioners have not presented a justiciable controversy to the court.

On November 3, 2010 the County of Nassau adopted Ordinance 184-2010 to impose a service charge for use of the services of sewer facilities maintained by Nassau County Sewer and Storm Water Districts on owners or occupants designated as "Exempt Users" and "High Water Users". "Exempt Users" were referred to as entities that use the services without charge because their real property are exempt from the ad valorem tax levied upon taxable property in the District. "High Water Users" were referred to as entities that use the services of sewer facilities maintained by the District to a greater extent than others such that assessments imposed upon them are disproportionately low when compared with their actual uses of the services maintained by the District.

On December 14, 2010 the County of Nassau amended the Ordinance by enacting Ordinance 199-2010. The amendment excluded from the definition of "Exempt Users"; Houses of Worship, Fire Companies, Voluntary Ambulance Services and Veterans Organizations, thereby excluding those entities from the sewer use charges.

All of the petitioners in these four actions are public school districts or medical or educational institution as defined in the New York Not-For-Profit Corporation Law. They

argue, inter alia, that the ordinance as enacted makes no rational basis for excluding some entities that are exempt from ad valorem taxes and not others such as school districts.

Petitioners point out the ordinance as enacted permits High End Users a deduction and exemption for certain water use that is not discharged into the sewer facilities maintained by Respondents while Exempt Users are not afforded equal treatment. All of the petitions challenge the County ordinance as arbitrary, capricious and violates both the General Municipal Law and the Nassau County Charter.

The court finds the existence of common issues of law and fact to in all these actions. The petitioner school districts assert their claim for exemption from real property taxes is under a different provision of the Real Property Tax Law than the private entities. The court finds, however, that the primary issue in all of the actions, the validity of the Ordinance, is of such importance that joint litigation is warranted in the interest of judicial economy. A motion to consolidate actions or for a joint trial pursuant to CPLR 602(a) rests in the sound discretion of the trial court. Absent a showing of prejudice to a substantial right by a party opposing the motion, consolidation for a joint trial should be granted where common questions of law or fact exist (see, *Mattia v. Food Emporium, Inc.*, 259 A.D.2d 527, (N.Y.A.D. 2 Dept. 1999).

This court further finds the Respondents/Defendants have failed to sustain its burden for dismissal of these action on the grounds that plaintiffs lack standing and is without merit (see, *Subcontractors Trade Assn. v Koch*, 62 NY2d 422; *Leo v General Elec. Co.*, 145 AD2d 291). Equally unpersuasive is that the claims are unripe and no judicable controversy is presented. The effective date of the ordinance is July 1,2011. Even in the absence of enforcement of the Ordinance by the Respondents/Defendants to date , the intent of the Respondents/Defendants

to enforce the statute against the petitioners is clear which presents a direct and immediate threat of harm (*see, Lorillard Tobacco Comp. v Roth*, 99 N.Y.316; *Amazon.com, LLC v N.Y.S. Dept. Of Taxation and Finance*, 81 A.D.3d 188).

Finally, the question of whether an Article 78 Proceeding or a hybrid Article 78 proceeding/Declaratory Judgment action is an inappropriate proceeding to challenge the validity of a legislative act is not determinative of these actions. Pursuant to CPLR § 103 [c] if a court has obtained jurisdiction over the parties, a civil proceeding shall not be dismissed solely because it is not brought in proper form, the court shall make whatever order is required for its proper prosecution.


Accordingly, a joint trial is ordered for the four actions. Each action shall maintain its separate index number and separate caption.

It is further ordered that the Article 78 Proceedings and the hybrid Article 78 proceeding/Declaratory Judgment action are converted into actions for Declaratory Judgment pursuant to CPLR § CPLR § 103 [c].

So ordered.

Dated: September 30, 2011

ENTER:

  
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J. S. C.

NON FINAL DISPOSITION

**ENTERED**  
OCT 03 2011  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE