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SHORT FORM ORDER

INDEX No. 09-4452

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 9 - SUFFOLK COUNTY

P R E S E N T :

Hon. DANIEL MARTIN
Justice of the Supreme Court

MOTION DATE 1-11-12
ADJ. DATE 12-18-12
Mot. Seq. # 004 - MotD
005 - MotD; CASEDISP

PINELAWN CEMETERY, Plaintiff and Counterclaim Defendant, - against - METROPOLITAN TRANSPORTATION AUTHORITY THE LONG ISLAND RAIL ROAD COMPANY, Defendant and Counterclaim Plaintiffs, and NEW YORK & ATLANTIC RAILWAY, Defendant/Intervenor, and THE TOWN OF BABYLON, Additional Counterclaim Defendant.	MARK A. CUTHBERTSON, ESQ. Attorney for Pinelawn Cemetery 434 New York Avenue Huntington, New York 11743 JAY SAFAR, ESQ. Attorney for MTA & LIRR 267 Carleton Avenue, Suite 301 Central Islip, New York 11722 GLYYNN MERCEP & PERCELL, LLP Attorney for NY & Atlantic Railway 57 North Country Road, P.O. Box 712 Stony Brook, New York 11790 BOND, SCHOENECK & KING, PLLC Attorney for Town of Babylon One Lincoln Center Syracuse, New York 13202

Upon the following papers numbered 1 to 47 read on these motions for summary judgment; Notice of Motion/ Order to Show Cause and supporting papers 1 - 9, 15 - 34 ; Notice of Cross Motion and supporting papers ___; Answering Affidavits and supporting papers 12 - 13, 36 - 37 ; Replying Affidavits and supporting papers 40 - 44 ; Other memoranda of law 10 - 11, 14, 35, 38 - 39, 45, 46 - 47 : (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that these motions are hereby consolidated for purposes of this determination; and it is further

ORDERED that this motion by the plaintiff Pinelawn Cemetery for an order pursuant to CPLR 3212 granting summary judgment in its favor is granted to the extent that the defendants/counterclaim plaintiffs Metropolitan Transit Authority and Long Island Rail Road are found liable to pay to the

plaintiff the real property taxes, including interest and penalties, assessed for the tax years 2007/2008, 2008/2009, and 2009/2010, and is otherwise denied; and it is further

ORDERED that this motion by the additional counterclaim defendant Town of Babylon for an order pursuant to CPLR 3212 granting summary judgment dismissing the counterclaim of the defendants/counterclaim plaintiffs Metropolitan Transit Authority and Long Island Rail Road is granted to the extent that said defendants/counterclaim plaintiffs' claims for a tax exemption regarding the tax years 2007/2008, 2008/2009, and 2009/2010 are dismissed as time-barred, and is otherwise denied; and it is further

ORDERED that upon a search of the record pursuant to CPLR 3212(b), summary judgment is granted in favor of defendants/counterclaim plaintiffs Metropolitan Transit Authority and Long Island Rail to the extent that they are entitled to a declaration that they have no obligation to pay the tax assessment for the 2010/2011 tax year, and that the property is exempt from future taxation pursuant to Public Authorities Law 1275.

This is an action for breach of contract, quantum meruit, and declaratory judgment seeking to require the defendant/counterclaim plaintiff Metropolitan Transit Authority (MTA) to pay certain real property taxes due. The plaintiff, Pinelawn Cemetery (Pinelawn), a New York not-for-profit corporation organized in 1902, is the largest cemetery in the State of New York. Pinelawn owns two parcels along New Highway (the property) which were separately leased to the defendant Long Island Rail Road (LIRR), a subsidiary of the MTA. The first lease, dated August 30, 1904 (1904 Lease), ran for 99 years and expired by its terms on August 30, 2003. The second lease, is dated November 1, 1905 (1905 Lease). Both leases contained renewal provisions whereby the MTA, as tenant, could exercise an option to renew the leases by giving written notice not later than three months prior to the end of the term. Pinelawn contends that the 1904 Lease was not renewed by the MTA. In a separate action before the Court, *Pinelawn Cemetery v Coastal Distribution, LLC, et al.*, Index No. 04-8599, MTA takes the position that the 1904 Lease has been validly renewed. MTA also takes that position in this action.

The Leases provide in identical paragraphs that: "[MTA-LIRR] covenants to bear, pay and discharge all such taxes, duties and assessments whatsoever as shall or may during the said term hereby be granted be charged, assessed or imposed upon said premises." Pinelawn contends that the Leases leave no room for question that MTA is responsible for the taxes on the property. It is undisputed that taxes were not assessed on the property from 1904 until 2007.

It is undisputed that MTA entered into a Transfer Agreement with the defendant/ intervenor New York & Atlantic Railway (NYAR) on or about November 1996. Said agreement transferred MTA's freight operations to NYAR, including use of the property. On or about February 2002, NYAR entered into a contract with nonparty Coastal Distribution, LLC (Coastal) to operate a transloading facility on the property. Transloading is the practice of transferring a shipment from one mode of transportation to another, for example, from trucks to rail cars. Coastal is a for-profit New York corporation. Pinelawn first received a tax bill from the additional counterclaim defendant Town of Babylon (Town) for the 2007-2008 Tax Year, and the Town issued a tax bill for the property each year thereafter. Pinelawn made written demand on the MTA for payment of the 2007-2008 Tax Bill, and for each subsequent year.

MTA has not made payment of any taxes demanded.

Pinelawn now moves for summary judgment. MTA and NYAR contend that they are exempt from property taxes pursuant to Public Authorities Law (PAL) 1275 which provides:

> [P]roperty owned by the authority, property leased by the authority and used for transportation purposes, and property used for transportation purposes by or for the benefit of the authority exclusively pursuant to the provisions of a joint service arrangement or of a joint facilities agreement or trackage rights agreement shall all be exempt from taxation and special ad valorem levies. The authority shall be required to pay no fees, taxes or assessments, whether state or local, including but not limited to fees, taxes or assessments on real estate ... upon any of its property ...

Pinelawn contends that whether or not MTA is entitled to a tax exemption it is obligated to pay the outstanding real estate taxes based on the express terms of the 1905 Lease, and pursuant to the theory of quantum meruit for the parcel governed by the 1904 Lease. When the terms of a written contract are clear and unambiguous, the contract should be enforced in accordance with the plain meaning of its terms (*see* ***Greenfield v Philles Records***, 98 NY2d 562, 750 NYS2d 565 [2002]; ***W.W.W. Assoc. v Giancontieri***, 77 NY2d 157, 565 NYS2d 440 [1990]; ***Willsey v Gjuraj***, 65 AD3d 1228, 885 NYS2d 528 [2d Dept 2009]). Extrinsic evidence as to what the parties really intended, but omitted from or misstated in the contract, generally is not admissible to create an ambiguity in a contract that is unambiguous on its face (*see* ***W.W.W. Assoc. v Giancontieri***, *supra*; ***Chimart Assocs. v Paul***, 66 NY2d 570, 498 NYS2d 344 [1986]; ***Krystal Investigations & Sec. Bur., Inc. v United Parcel Serv., Inc.***, 35 AD3d 817, 826 NYS2d 727 [2d Dept 2006]). "The best evidence of what parties to a written agreement intend is what they say in their writing" (***Slamow v Del Col***, 79 NY2d 1016, 1018, 584 NYS2d 424 [1992]; *see also* ***Goldman v White Plains Ctr. for Nursing Care , LLC***, 11 NY3d 173, 867 NYS2d 27 [2008]).

However, the issue is whether the terms of the lease or leases require MTA to pay the subject tax assessments whether or not those assessments are legal or void. In general, a court must endeavor to give the words in a contract a fair and reasonable interpretation (***Sutton v East River Sav. Bank***, 55 NY2d 550, 450 NYS2d 460 [1982]; ***Frame v Maynard***, 83 AD3d 599, 922 NYS2d 48 [1st Dept 2011]; ***Essex Ins. Co. v Pingley***, 41 AD3d 774, 839 NYS2d 208 [2d Dept 2007]). It is well settled that a contract should be interpreted so as to avoid unfair and anomalous consequences (***Nassau Ch., Civ. Serv. Empls. Assn. v Nassau County***, 77 AD2d 563, 430 NYS2d 98 [2d Dept 1980]; ***Matter of Friedman***, 64 AD2d 70, 407 NYS2d 999 [2d Dept1978]; ***River View Assoc. v Sheraton Corp. of Am.***, 33 AD2d 187, 306 NYS2d 153 [1st Dept 1969]). Even when the terms of a written contract are clear and unambiguous, the intent of the parties must be found within the four corners of the contract, giving practical interpretation to the language employed and the parties' reasonable expectations (***Franklin Apt. Assoc., Inc. v. Westbrook Tenants Corp.***, 43 AD3d 860, 841 NYS2d 673 [2d Dept 2007]; ***Matter of Matco-Norca, Inc.***, 22 AD3d 495, 802 NYS2d 707 [2d Dept 2005]; ***Del Vecchio v Cohen***, 288 AD2d 426, 733 NYS2d 479 [2d Dept 2001]).

A review of the leases between Pinelawn and MTA reveals that the rental for each parcel is set at

$1.00 per year. It is undisputed that the property was exempt from taxation from the date that MTA took possession until the 2007/2008 tax year. The Court finds that the parties to the leases contemplated that the property would be used for public purposes, and that the language in the leases requires MTA to pay only those taxes legally imposed if the property is not used for same. Thus the parties agreed that any taxes imposed were the responsibility of MTA and the legality of same was for that entity to dispute. In addition, a cause of action for quantum meruit, grounded in quasi contract, is only viable in the absence of an express agreement, and is not really a contract at all, but rather a legal obligation imposed in order to prevent a party's unjust enrichment (***Clark-Fitzpatrick, Inc. v Long Is. R.R. Co.***, 70 NY2d 382, 521 NYS2d 653 [1987]; ***Scott v Fields***, 92 AD3d 666, 938 NYS2d 575 [2d Dept 2012]). Assuming for the purposes of this motion only that the 1904 Lease has not been properly renewed, whether or not MTA has been unjustly enriched depends on MTA's right to a tax exemption herein.

The record reveals that MTA has asserted a counterclaim against Pinelawn and the Town seeking a declaratory judgment that the leased properties are tax exempt. Thus, MTA's opposition to Pinelawn's motion for summary judgment and MTA's counterclaim both rest on the Court's interpretation of PAL 1275. In essence, the issue is whether the use by Coastal is for "transportation purposes by or for the benefit of the authority " under PAL 1275. Pinelawn contends that a series of Surface Transportation Board (STB) decisions are controlling regarding the issues herein. Those cases involved the question whether Coastal's efforts to construct a building on the property were subject to local zoning regulations. The Interstate Commerce Commission Termination Act of 1995 (ICCTA) grants the STB exclusive jurisdiction over "transportation by rail carriers" 49 USC § 10501 (b) (1). The issues before the STB included whether it had jurisdiction over Coastal's activities, and whether federal law preempted the Town's zoning laws. The STB determined that it did not have exclusive jurisdiction under the ICCTA because Coastal was not a rail carrier, and NYAR did not exercise sufficient control of Coastal's activities.

NYAR challenged the STB decisions which found that federal law did not preempt the Town's enforcement of its zoning regulations. In ***New York & Atlantic Ry. Co. v Surface Transp. Bd.***, 635 F3d 66 (2d Cir. 2011), the Second Circuit denied NYAR's petition stating that Coastal's activities constitute transportation within the meaning of the ICCTA, but that it did not have jurisdiction because the "only argument is whether the activities were performed by or under the control of a rail carrier." Here, a review of the record reveals that Coastal's activities are conducted for "transportation purposes" under PAL 1275.

The remaining issue is whether Coastal's activities are "for the benefit" of MTA. A review of the Transload Facilities Operations Agreement between NYAR and Coastal reveals that MTA receives a direct benefit from the current arrangement as it receives a fee for each rail car which is transloaded by Coastal, and that the its Transfer Agreement with NYAR relieves it of its obligations as a rail carrier to provide freight services throughout Long Island. It has been held that a public authority's lease of tax exempt premises to a for-profit entity benefits that authority and entitles the authority to a continued exemption under PAL 1275 (***Metropolitan Transp. Auth. v City of New York***, 70 AD2d 551, 416 NYS2d 612 [1st Dept 1979].

However, the Court finds that its inquiry should not end there. The Town has moved for summary judgment seeking to dismiss the MTA's counterclaim on the same grounds as Pinelawn. In addition, the Town contends that said counterclaim is time-barred pursuant to the four-month limitation period for a proceeding under CPLR article 78, and/or should be dismissed pursuant to CPLR 3211 (a) (4) as there is another action pending. A defendant seeking to dismiss the complaint insofar as asserted against it as time-barred has the initial burden of proving through documentary evidence that the action was untimely commenced after its accrual date (*see* ***Morris v Gianelli***, 71 AD3d 965, 897 NYS2d 210 [2d Dept 2010]; ***Lessoff v 26 Court Street Assoc., LLC***, 58 AD3d 610, 872 NYS2d 144 [2nd Dept 2009]; ***Sabadie v Burke***, 47 AD3d 913, 849 NYS2d 440 [2d Dept 2008]). Thereafter, the burden shifts to the plaintiff to aver evidentiary facts establishing that the action was timely or to raise an issue of fact as to whether the action was timely (***Lessoff v 26 Ct. St. Assoc., LLC***, *supra*).

It is undisputed that the MTA's counterclaim was brought on May 10, 2010, more than four months after the date that the tax rolls were finalized for the tax years 2007/2008, 2008/2009, and 2009/2010. The Town asserts that the tax roll for the tax year 2010/2011 was finalized on December 9, 2010. The Court finds that the MTA timely asserted its counterclaim regarding the 2010/2011 tax year. However, the Town has established its prima facie entitlement to summary judgment dismissing MTA's counterclaim regarding the first three tax years herein.

In opposition to the Town's motion for summary judgment, MTA contends that its counterclaim is subject to the six-year limitation period for a declaratory judgment action, not the four-month limitation period in a CPLR article 78 proceeding. In addition, the MTA asserts that it brought its counterclaim in a timely manner as it could not have challenged the Town's assessment regarding the property until this action was commenced by Pinelawn. It is well settled that a tax assessment can be challenged in an article 78 proceeding or in a declaratory judgment action (***Kahal Bnei Emunim & Talmud Torah Bnei Simon Israel v Town of Fallsburg***, 78 NY2d 194, 573 NYS2d 43 [1991]). However, the six-year limitation period for declaratory judgments does not necessarily govern all such actions. If an examination of the substance of the relationship out of which the claim arises reveals that the rights of the parties sought to be established in the declaratory judgment action are, or could have been, resolved through a form of proceeding for which a specific limitation period is statutorily provided, then that statutorily specified period limits the time for commencement of the declaratory judgment action (*Id.*, at 205, 573 NYS2d at 49; ***Solnick v Whalen***, 49 NY2d 224, 425 NYS2d 68 [1980]). Thus, MTA was required to bring its counterclaim asserting its right to a tax exemption within four months of the date that a particular tax assessment became final (***Kahal Bnei Emunim & Talmud Torah Bnei Simon Israel v Town of Fallsburg***, *supra*; ***Suffolk Family Equity Inc. v County of Nassau***, 233 AD2d 436, 650 NYS2d 21 [2d Dept 1996]; ***Matter of New Jersey Tr. Rail Operations v County of Rockland***, 187 AD2d 430, 589 NYS2d 549 [2d Dept 1992]; *see also* ***Metropolitan Transp. Auth. v Assessor of the City of Mount Vernon***, 30 Misc 3d 470, 913 NYS2d 509 [Sup Ct, Westchester County 2010]).

Moreover, MTA's contention that it could not have challenged the subject tax assessment as it is the lessee of the property, and not the owner, is without merit. The lessee of an entire parcel, who is contractually obligated by its lease to make payment of property taxes, has standing to challenge tax assessments regarding that property (***Matter of Waldbaum, Inc. v Finance Admin.***, 132 Misc 2d 364,

504 NYS2d 347 [Sup Ct, Queens County 1986] *revd on other grounds sub nom.* ***Matter of Waldbaum, Inc. v Finance Adm'r of City of N.Y.***, 74 NY2d 128, 544 NYS2d 561 [1989]; *see also* ***Matter of Arlen Realty and Dev. Corp. v Board of Assessors of the Town of Smithtown***, 74 AD2d 905, 425 NYS2d 855 [2d Dept 1980]; ***Matter of McLean's Department Stores, Inc. v Commissioner of Assessment of City of Binghampton***, 2 AD2d 98, 153 NYS2d 342 [3d Dept 1956]; ***Matter of Ames Dept. Stores v Assessor of Town of Concord***, 102 AD2d 9, 476 NYS2d 222 [4th Dept 1984]; ***Matter of Grecian Garden Apts., Inc. v Barlow***, 71 Misc 2d 457, 336 NYS2d 204 [Sup Ct, Monroe County 1972]).

Accordingly, the Town's motion for summary judgment dismissing MTA's counterclaim is granted to the extent that the claims regarding the tax years 2007/2008, 2008/2009, and 2009/2010 are dismissed as time-barred.

However, a court may search the record and grant summary judgment in favor of a nonmoving party with respect to a cause of action or issue that is the subject of the motions before the court (CPLR 3212 [b]; ***Dunham v Hilco Construction Co., Inc.***, 89 NY2d 425, 654 NYS2d 335 [1996]; ***Yusin v Saddle Lake Home Owners Association, Inc.***, 73 AD3d 1168, 902 NYS2d 139 [2010]). Upon reviewing the entirety of the records submitted, the Court determines as a matter of law that MTA is entitled to summary judgment on its counterclaim for declaratory judgment that the property, whether possessed by MTA by lease or otherwise, is tax exempt regarding the 2010/2011 tax year and thereafter (***Kahal Bnei Emunim & Talmud Torah Bnei Simon Israel v Town of Fallsburg***, *supra*).

In light of the Court's findings herein, Pinelawn has established its prima facie entitlement to summary judgment regarding its cause of action for breach of contract regarding the tax years 2007/2008, 2008/2009, and 2009/2010. The subject tax assessments became the legal obligation of MTA upon its failure to challenge those assessments in a timely manner. MTA has failed to raise an issue of fact regarding Pinelawn's entitlement to summary judgment as set forth herein. However, Pinelawn's cause of action for declaratory judgment is denied as academic. Said cause of action seeks a declaration that "MTA-LIRR must pay any taxes imposed on the Property for the life of the Lease." The requested relief has been fully addressed in the Court's determination that Pinelawn is entitled to summary judgment herein, and that MTA is entitled to summary judgment on its counterclaim.

Accordingly, Pinelawn's motion is granted to the extent that MTA is found liable to pay to the plaintiff the real property taxes, including interest and penalties, assessed for the tax years 2007/2008, 2008/2009, and 2009/2010, and MTA is entitled to entry of judgment declaring that it has no obligation to pay the tax assessment for the 2010/2011 tax year, and that the property is exempt from future taxation pursuant to PAL 1275.

Settle judgment.

Dated: March 4, 2013
Riverhead, NY

HON. DANIEL MARTIN, A.J.S.C.