

New York State Elec.& Gas Corp. v Hudson Riv.

2013 NY Slip Op 30817(U)

April 23, 2013

Supreme Court, Albany County

Docket Number: 6279-12

Judge: Joseph C. Teresi

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STATE OF NEW YORK
SUPREME COURT
NEW YORK STATE ELECTRIC
AND GAS CORPORATION;

COUNTY OF ALBANY

Plaintiff,

-against-

HUDSON RIVER - BLACK RIVER
REGULATING DISTRICT,

Defendant.

DECISION and ORDER
INDEX NO. 6279-12
RJI NO. 01-12-108961

Supreme Court Albany County All Purpose Term, April 9, 2013
Assigned to Justice Joseph C. Teresi

APPEARANCES:
Nixon Peabody, LLP
Christopher Thomas, Esq.
Attorneys for the Plaintiff
1300 Clinton Square
Rochester, New York 14604

Eric T. Schneiderman, Esq.
Attorney General for the State of New York
Attorneys for Defendant
C. Harris Dague, Esq. (AAG)
The Capitol
Albany, New York 12224

TERESI, J.:

Defendant, as operator of the Conklingville Dam, regulates the flow of the Hudson River. Plaintiff is a down stream user of such regulated flow and a beneficiary of the “headwater benefits”¹ Defendant creates. Plaintiff commenced this action to recover the charges Defendant

¹ Headwater benefits arise from “[a]n upstream dam... render[ing] the downstream flow more even and predictable, enabling downstream hydropower plants to operate at a higher capacity.” (Albany Eng'g Corp. v F.E.R.C., 548 F3d 1071, 1072 [DC Cir 2008]).

has wrongfully collected between 2002 and 2008 for those headwater benefits. Issue was joined and both parties now move for summary judgment.² Because Plaintiff demonstrated its entitlement to judgment as a matter of law and no triable issue of fact was raised, Plaintiff's motion is granted and Defendant's is denied.

Defendant's wrongful collection of headwater benefits has come before this Court in two prior actions.

In Albany Engineering Corporation v Hudson River-Black River Regulating District (Index No. 5289-11), by Decision and Order dated April 2, 2012, this Court granted AEC's summary judgment motion.³ The AEC Decision found that when the Defendant obtained a Federal Energy Regulatory Commission (hereinafter "FERC") license to operate the Conklingville Dam in 2002, it was required to obtain FERC authorization to collect headwater benefits. Because Defendant failed to obtain such authorization, AEC "was entitled to a refund[] for those [headwater benefits] assessments previously paid." (AEC Decision at 7).

Then on January 17, 2013, in Northern Electric Power Company v. Hudson River-Black River Regulating District (Index No. 3510-12), NEPC's motion for summary judgment was also granted.⁴ Applying the doctrine of collateral estoppel and considering the merits of the defenses raised, the NEPC Decision again found that the Defendant "had no authority to collect headwater

² By Letter Order, dated March 4, 2013, the parties were permitted to supplement their motions with briefs addressing collateral estoppel.

³ Albany Engineering Corporation will be referred to as "AEC" and the April 2, 2012 Decision and Order will be referred to as "the AEC Decision."

⁴ Northern Electric Power Company will be referred to as "NEPC" and the January 17, 2013 Decision and Order will be referred to as "the NEPC Decision."

benefits from [NEPC] for the period between 2002 through 2008.” Again, NEPC and its co-plaintiff were held to be “entitle[d] to recoup the monies wrongfully collected.”

Here, the AEC and NEPC Decisions entitle Plaintiff to summary judgment by operation of the collateral estoppel doctrine.

As is applicable Plaintiff’s motion for summary judgment, “[t]he party seeking the benefit of collateral estoppel has the burden of demonstrating the identity of the issues in the present litigation and the prior determination, whereas the party attempting to defeat its application has the burden of establishing the absence of a full and fair opportunity to litigate the issue in the prior action.” (Howard v. Stature Elec., Inc., __ NY3d __ [2013], quoting Kaufman v Eli Lilly and Co., 65 NY2d 449 [1985]; Martin v Rosenzweig, 70 AD3d 1112 [3d Dept 2010]; Nachum v Ezagui, 83 AD3d 1017 [2d Dept 2011]; Gadani v DeBrino Caulking Assoc., Inc., 86 AD3d 689, 691 [3d Dept 2011]; Ryan v New York Tel. Co., 62 NY2d 494, 501 [1984]).

Plaintiff first demonstrated that Defendant’s wrongful collection of headwater benefits in the AEC and NEPC Decisions is identical to its wrongful collection of those benefits from Plaintiff. The plaintiffs in all three actions are downstream users of the headwater benefits the Defendant creates by regulating the Hudson River’s flow. Although each paid headwater benefit assessments after 2002, as was found in both the AEC and NEPC Decisions, Defendant “never had authority to exact any compensation... for headwater benefits” after 2002. (AEC Decision at 5, and NEPC Decision at 4, both quoting Albany Eng'g Corp. v F.E.R.C., supra at 1079). Here too, Defendant had no authority to collect headwater benefits from Plaintiff after 2002. Because this issue was clearly raised and was essential to both the AEC and NEPC Decisions, it cannot now be relitigated.

Plaintiff also demonstrated that Defendant's statute of limitations and Paramount Film Distrib. Corp. v State (30 NY2d 415 [1972]) defenses are identical to issues raised in and decided by the NEPC Decision. Previously, in the NEPC Decision, this Court held that the six year statute of limitations applicable to NEPC's "unjust enrichment cause of action accrued on November 28, 2008." (NEPC Decision at 6; CPLR 213[1]; Davis v Cornerstone Tel. Co., LLC, 61 AD3d 1315 [3d Dept 2009]). The underlying statute of limitations analysis and the above conclusion are identical here, making Plaintiff's commencement of this action (November 15, 2012) timely. Plaintiff similarly demonstrated the identicality of Defendant's reliance on Paramount Film Distrib. Corp. v State here and in the NEPC Decision. This Court specifically analyzed, in the NEPC Decision, the merit of Defendant's purported Paramount Film Distrib. Corp. v State proof. Defendant again submits such legal analysis, but the collateral estoppel doctrine precludes its relitigation.

As such, Plaintiff established its prima facie entitlement to judgment as a matter of law by operation of the collateral estoppel doctrine.

With the burden shifted, Defendant made no showing that it did not have a full and fair opportunity to litigate the above issues. Because the "nature of the forum and the importance of the claim in the prior litigation, the incentive and initiative to litigate and the actual extent of litigation, the competence and expertise of counsel, the [non-]availability of new evidence, the [lack of] differences in the applicable law and the foreseeability of future litigation" all balance in favor of a finding that Defendant previously had a full and fair opportunity to litigate (Martin v Rosenzweig, supra at 1114), Defendant raised no material issue of fact.

Upon such holding, Plaintiff also demonstrated the amount of headwater benefits it

overpaid and Defendant raised no triable issue of fact. Plaintiff established, with an affidavit made by its “Manager, Hydro Operations,” that it paid Defendant \$714,078.07 for headwater benefits during the subject 2002 through 2008 period. Defendant’s Chief Fiscal Officer admits receipt of the 2002 through 2008 payments, while also acknowledging that the FERC issued (on July 31, 2012) a final Order Determining Headwater Benefits⁵. The Headwater Benefits Order establishes that Plaintiff should have been charged a total headwater benefits assessment of \$126,461 for the 2002 through 2008 period. Defendant offered no proof in opposition to such calculation. Plaintiff further admits that, according to the Headwater Benefits Order, Defendant is entitled to a credit of \$35,205 per year for 2009 through 2012 for the headwater benefits it received but did not pay for. On this record such facts are uncontested and entitle Plaintiff to a judgment in the amount of \$446,798.07.

Accordingly, because “Plaintiff[] established that [Defendant] had no authority to collect headwater benefits from them for the period between 2002 through 2008 along with their related entitlement to recoup the monies wrongfully collected; and the [Defendant] raised no triable issue of fact” (NEPC Decision at 7), Plaintiff is entitled to a judgment against Defendant in the amount of \$446,798.07, plus interest from the date each overpayment was made.

This Decision and Order is being returned to the attorneys for Plaintiff. A copy of this Decision and Order and all other original papers submitted on this motion are being delivered to the Albany County Clerk for filing. The signing of this Decision and Order shall not constitute

⁵ Order Determining Headwater Benefits, dated July 31, 2012, will be referred to as “Headwater Benefits Order.” Defendant’s memorandum of law admits that no appeal from such Order is pending.

entry or filing under CPLR 2220. Counsel is not relieved from the applicable provision of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: April 23, 2013
Albany, New York



JOSEPH C. TERESI, J.S.C.

PAPERS CONSIDERED:

1. Notice of Motion, dated January 29, 2013; Affidavit of Hugh Ives, dated January 8, 2013, with attached Exhibits A-E; Affidavit of Christopher Thomas, dated January 9, 2013, with attached Exhibits A-O.
2. Notice of Cross-Motion, dated February 1, 2013, with attached Exhibit A; Declaration, dated February 1, 2013, with attached Exhibits 1-2; Affidavit of Richard J. Ferrara, dated February 1, 2013, with attached Exhibits 1-4.