

**Town of Hempstead, a Mun. Corp. v AJM Capital II,
LLC**

2013 NY Slip Op 34197(U)

July 22, 2013

Supreme Court, Nassau County

Docket Number: 009758/12

Judge: Randy Sue Marber

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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

Present: **HON. RANDY SUE MARBER**

Justice

IAS Part 14

X

THE TOWN OF HEMPSTEAD, A MUNICIPAL CORPORATION,

Plaintiff,

-against-

AJM CAPITAL II, LLC,

Defendant.

X

Index No. 009758/12
Motion Sequence...01
Motion Date: 05/07/13
XXX

Action No. 1

ROOSEVELT FIELD WATER DISTRICT, A DEPARTMENT OF THE TOWN OF HEMPSTEAD, A MUNICIPAL CORPORATION,

Plaintiff,

- against -

AJM CAPITAL II, LLC,

Defendant.

Index No.: 009757/12
Motion Sequence...01
Motion Date: 05/07/13
XXX

Action No. 2

Papers Submitted:

- Notice of Motion (Action No. 1).....X
- Affirmation in Opposition.....X
- Reply Affirmation.....X
- Sur-Reply Affirmation.....X
- Notice of Motion (Action No. 2).....X
- Affirmation in Opposition.....X
- Reply Affirmation.....X
- Sur-Reply Affirmation.....X

Upon the foregoing papers, the motions by the Defendant, AJM CAPITAL II, LLC (“AJM”), seeking an order (i) pursuant to CPLR § 3211 (a) (5) and CPLR § 217, granting summary judgment dismissing the Plaintiffs’ complaints in their entirety, with prejudice, on the grounds that the Plaintiffs’ declaratory judgment actions are time barred, as they were not timely commenced within the four (4) month statute of limitations applicable to the claims set forth therein; (ii) declaring that the Tax Lien Certificates issued by the Treasurer of the County of Nassau on or about March 22, 2007 (Action No. 1) and April 21, 2003 (Action No. 2), held by the Defendant, AJM, are valid liens on the subject properties; and (iii) scheduling an inquest to calculate the full amount of the liens, including interest and additional taxes, if any, are decided as hereinafter provided. Plaintiffs oppose the Defendant’s respective applications.

Factual Background

Action No. 1 involves a claim by the Town of Hempstead that a tax lien on property located at 2730 Long Beach Road, Oceanside, New York is invalid and void. The premises was the site of the now demolished Oceanside Motel and was acquired by the Town of Hempstead in a condemnation proceeding, with a Vesting Order dated May 23, 2005. The Defendant, AJM, acquired a Tax Lien Certificate on the premises by assignment from Nassau County as of September 23, 2011. The Certificate covers unpaid School Taxes for the 2005-06 tax year (July 1, 2005 — June 30, 2006) and Town and District Taxes for the 2006 year, and for all subsequent years up to and including School Tax year 2010-11 and Town and District Tax year 2011.

Upon assignment of the Tax Lien Certificate, the Defendant notified the Town of Hempstead that they were the holders of the liens, and demanded payment of all taxes due and additional amounts due, together with interest, by letter dated May 25, 2012. In that letter, they calculated the amount due with respect to the Tax Lien to be \$379,496.06. By letter dated July 27, 2012, counsel for the Town of Hempstead advised AJM that they rejected the demand for payment, asserting that the liens were void *ab initio*, and that the Town was not responsible for taxes in accordance with Municipal Corporation Law § 406, which states in pertinent part that “1. (r)real property owned by a municipal corporation within its corporate limits held for a public use shall be exempt from taxation...”

The Plaintiff, Town of Hempstead, filed their complaint on July 30, 2012. It asserts that as of May 23, 2005, the property was vested in a municipality, and was used for a public purpose, thereby rendering it immune from taxation.

Action No. 2 involves a Tax Lien Certificate issued on or about April 21, 2003 by the Treasurer of Nassau County. The Certificate, in the amount of \$115,012.71, is a lien on a property located at Corporate Drive, Westbury, New York, which the Town Water District acquired for a public purpose on July 30, 2001. The Certificate includes unpaid School District taxes for the 2001-02 tax year (July 1, 2001 — June 30, 2002) and the Town and Special District taxes for the 2007 year.

The Defendant, AJM, acquired the Tax Lien Certificate from the County by assignment on September 23, 2011, and notified the Town Water District by letter dated June 25, 2012 that they were the holders of the lien, and demanded payment with respect to the

Tax Lien Certificate, and additional amounts due, together with accrued interest. Counsel for the Town Water District, by letter dated July 27, 2012, rejected the demand, claiming that the lien was void and unenforceable and should be cancelled. Action No. 2 followed.

The complaint in Action No. 2, filed on July 30, 2012, asserts that to the extent that the Tax Lien Certificate relates to taxes for periods subsequent to July 30, 2001, the date on which the Water District acquired the property for a public use, it is void and unenforceable.

Plaintiffs in both actions have not cross-moved, but have requested as part of their opposition to the motions to dismiss, that the Court treat the Defendant's motion as one for summary judgment, that the Court search the record, and grant them summary judgment on the underlying complaints.

Defendant's Motion to Dismiss:

The Defendant, AJM, in both cases contends that the actions are governed by a four-month statute of limitations, which began to run when the tax assessment became final. In so doing, they place primary reliance on *Kahal Bnei Emunim v. Town of Fallsburg*, 78 N.Y.2d 194 (1991) and *New Jersey Rail Operations v. County of Rockland*, 187 A.D.2d 430 (2d Dept. 1992).

Kahal was an action by a religious corporation for a judgment declaring void a 1987 real property tax assessment because its property was mandatorily exempt under RPTL § 420-a, and that the assessor lacked jurisdiction to place the property on the assessment roll.

The corporation operated a religious and educational institution in Brooklyn, New York, and enjoyed 501 (c) (3) status under the Internal Revenue Code. In November 1985 it purchased a summer camp in Fallsburg, Sullivan County, for use by students for study and recreation during the summer. The property was never previously exempt from taxes, and Kahal took no actions to secure exempt status. The property was assessed as fully taxable for the 1986/87 school taxes and the 1987 State and County taxes. Kahal's challenge to the assessment was resolved by a stipulation with the Town of Fallsburg and the Fallsburg Assessor which provided that Kahal was "entitled to a real property tax exemption . . . For fiscal years beginning after March 1, 1986, to wit, school taxes, July 1, 1986 and State and County taxes January 1, 1987" and that "[a]ny real property tax assessed for school taxes after January 1, 1987 shall be cancelled, including the attached bills". The stipulation was "So Ordered" by the Supreme Court.

Notwithstanding the foregoing Stipulation, the Assessor placed the property on the assessment roll as fully taxable for the tax years beginning March 1, 1987 and March 1, 1988. Kahal did not protest the 1987 tentative assessment, but did file a grievance against the 1988 tentative assessment, which, for some undisclosed reason, was dismissed.

In July, 1988 Kahal filed a declaratory judgment action against the Town of Fallsburg, the Fallsburg Tax Collector, and Sullivan County, seeking a determination voiding the tax assessments and liens for 1987 and 1988, and a declaration that the property was tax exempt so long as it was owned by Kahal, and used for a corporate purpose. The Town and Town Tax Collector asserted affirmative defenses that the 1987 challenge was barred by

statute and regulations, and that based on the information available, the Assessor made a good-faith determination that the property was not entitled to an exemption. Both the Trial Court and Appellate Division agreed that the challenge to the 1987 assessment was time-barred as not having been brought within four months of the final assessment.

On appeal to the Court of Appeals, Kahal argued that because it was a religious corporation, the Assessor did not have jurisdiction to place the property on the rolls. Therefore, a challenge to the assessment can be made at any time in a plenary action, and need not be commenced within the four-month time limit imposed by Article 78. It argued that its mandatory entitlement to an exemption cannot be made contingent on timely applications for an exemption. It further argued that once its tax-exempt status was determined by stipulation, revocation of that status by the Town entitled them to notice, and that the burden of establishing non-entitlement to the exemption rested with the Town.

The Court agreed that Kahal's entitlement to an exemption was not dependent on their filing of an application, but determined that a challenge to an assessment must be made within the four-month time limit of CPLR Art. 78. To the extent that the State Board of Equalization and Assessment purports to require the filing of designated forms by regulation contained in 9 NYCRR § 190-1.4, it is an illegal addendum to the language of RPTL § 420-a and its legislative intent. In other words, Kahal's tax-exempt status was not dependent upon the filing of an application to attain same.

Further, the Court rejected the contention that because its property was mandatorily exempt, the assessor lacked jurisdiction to place the property on the assessment

roll as fully taxable and therefore the assessment is illegal and a nullity that may be challenged at any time in a plenary action. *Kahal*, 78 N.Y. at 204. The Court further noted that a challenge to assessment which is “excessive, unequal or unlawful, or that the property is misclassified” must normally be asserted in a proceeding under Art. 7 of the Real Property Tax Law. But where the challenge is that the assessor has exceeded his power, a plenary action may collaterally attack the assessment, and the procedures of Art. 7 need not be followed.

The Court also rejected *Kahal*’s claim that its declaratory judgment action was governed either by those cases which hold that an equity action to “clear cloud on title” may be brought at any time or by the “catch-all” six-year limitation of CPLR § 213 (1). In so finding, the Court reasoned that, “if an examination of the substance of the relationship out of which the claim arises ‘reveals that the right of the parties sought to be stabilized in an action for declaratory relief, are, or have been, open to a resolution through a form of proceeding for which a specific limitation period is statutorily provide, then that period limits the time for commencement of the declaratory judgment action.’ ” *Kahal*, 78 N.Y.2d at 205, citing *Solnick v. Whalen*, 49 N.Y.2d 224, 229 (1980)

The, Defendant, AJM, contends that the foregoing reasoning is fully applicable to the analogous exemption contained in RPTL § 206, which provides in pertinent part that “1. (r)real property owned by a municipal corporation within its corporate limits held for a public use shall be exempt from taxation and exempt from special ad valorem levies and special assessments to the extent provided in section four hundred ninety of this chapter.”

Plaintiffs' Opposition to Defendant's Motion:

The Plaintiffs, in turn, argue that the Court should treat the Defendant's motions as one for summary judgment, search the record, and grant summary judgment to the Town in accordance with CPLR § 3212 (c) . They contend that while no answer has been filed on behalf of the Defendant, the sole basis for the Defendant's motions is the statute of limitations, and if AJM's motions are denied, the sole issue is a question of law which is appropriately dealt with as a summary judgment matter.

The Plaintiffs further claim that *Kahal* is inapplicable to the instant case. They contend that there is no statute of limitations for a municipality to challenge a tax imposed without jurisdiction. They assert that the Town is not time-barred, and may challenge a tax assessment and tax lien which is issued without jurisdiction, at any time as *void ab initio*. In support of their position, the Plaintiffs cite *Shorter v. Chenango County*, 269 A.D. 594, 595 (3d Dept. 1945), which held that once Chenango County acquired the property by tax deed, there was no justification for assessments made thereafter. A second tax sale by the County to a third party, based upon taxes assessed against the County, was also unjustified. Plaintiffs also cite to *Town of Brookhaven v. Aronauer*, 65 A.D.2d 570, 571 (2d Dept. 1978). In *Aronauer*, the Court concluded that the property was dedicated as a park property in 1966 and, as such, was exempt from taxation under RPTL § 406. Therefore, the foreclosure and tax sale deed was *void ab initio*. It further determined that the failure of a town employee to apply for an exemption and remove the subject property from the tax assessment rolls as taxable real property does not estop the town from challenging the validity of the 1971 tax

sale deed.

Plaintiffs also make a “public policy” argument, pointing to *Village of Highland Falls v. Town of Highlands*, 110 Misc.2d 130 (Sup.Ct., Orange Co. 1981). The Village brought an Article 78 proceeding against the Town to vacate taxes imposed on property which the Village acquired by condemnation. The Town Assessor erroneously placed the property on the tax roll, and, after a delinquency, the County advertised the property for sale. The Town relied on two cases cited in *Kahal, Solnick v. Whalen*, 49 N.Y.2d 224 (1980) and *Press v. Monroe County*, 50 N.Y.2d 695 (1980), both of which imposed the four-month statute of limitations prescribed in Article 78.

The Court in *Village of Highlands* distinguished *Solnick* and *Press*, stating that the granting of exemptions by the Legislature is an expression of public policy. To the extent that a property qualifies for an exemption provided for by statute, the Court held that it is of a genre of cases which would not be time-barred under *Solnick* and *Whalen*. It therefore concluded that all taxes assessed and levied by the Town upon the property owned by the Village were cancelled and the property was stricken from the assessment rolls of the Town.

The Plaintiffs sought to further distinguish the holdings of *Solnick*, *Press* and *Village of Highland Falls* from the case at bar, in that only the latter considered a government, as opposed to an individual, challenge to a non-jurisdictional tax assessment, and that the strong public policies favoring municipalities were not present in *Kahal*.

In a similar vein, the Plaintiffs raise an equitable argument that the Defendant acquired the County tax lien by assignment, and ostensibly did not pay anything for the

bundle of liens in which the Oceanside property was a part. The opportunity for the Defendant, who paid nothing and risked nothing to acquire the tax lien, to receive payments of taxes from the Town would be inequitable. The Plaintiff claims that the Court has discretion to enforce established principles of equity so as to prevent the payment of an assessment, which is *void ab initio* under these circumstances. The Town further argues that recovery by the Defendant under the terms of the Agreement by which it acquired the liens, would constitute unjust enrichment.

The Town also claims that its action, commenced within four months of the Defendant's demand for payment, is timely.

The Defendant takes issue with the import of "public policy" in *Skolnick* and *Press*. AJM's interpretation of these cases is that they stand for the simple principal that a property owner, whose property is improperly placed on the rolls of taxable property, is constrained to seek relief from their situation within four months of the assessment becoming final.

The Plaintiffs claim that the authorization for the Defendant to collect unpaid taxes from the Town, which they contend are *void ab initio*, would be inequitable since the Defendant paid nothing for the assignment of liens, apparently in the cumulative amount of some \$15,000,000, and to require the Town to make payment would violate public policy. The Town claims that the Court has inherent authority to act in furtherance of public policy to avoid the payment of such taxes which were improperly laid at the feet of the Town in the first instance.

Defendant's Reply:

In its Reply Memorandum of Law, the Defendant claims that there is no relationship between the Town and AJM such as would permit the claim of unjust enrichment, and that such claim should be dismissed. The Defendant also claims that the Plaintiffs' claims relating to the Assignment Agreement are without merit. This is claimed to be so because the Defendant did tender consideration to the County for the Assignment. The initial proposal by the Defendant in response to the County's Request for Proposals called for a lump sum payment, (Exh. "C") to Reply Affirmation; but the County Treasurer opted instead for an assignment under which the Defendant would be required to advance all expenses, including title charges, legal fees, fees of environmental consultants and other advisors and be responsible for its own overhead. The County **would, in** turn, receive a percentage of the amount recouped by the Defendant.

The Defendant further challenges the Plaintiffs' claim that the Assignment Agreement resulted in the assignment of a void lien, and that it is against public policy to permit the Defendant to recover on such a basis, claiming that the claim of the liens being void would have required the Town to challenge the validity of the lien within four months of its becoming final. For years, the Town failed to assert any such challenge, and its claim that the lien is void is barred by the Statute of Limitations.

Legal Analysis:

Action No. 2 involves an assignment of Tax Liens by the Nassau County Treasurer in return for payment by AJM of \$115,012.71. It involved School District Taxes

for the 2001/02 tax year and the State, County, Town and Special District taxes for the 2002 tax year, affecting property located at Section 44, Block 078, Lot 94. Roosevelt Field Water District, Town of Hempstead, acquired title to the premises by deed dated July 30, 2001. The Tax Lien Certificate was dated April 21, 2003, and was purchased by the Defendant, AJM, from Nassau County on September 23, 2011. By letter dated June 25, 2012, the Defendant advised the Town that they were the holders of the lien, on which there was now due was \$161,017.79.

The Plaintiff, Water District, makes the same claim in its complaint that as of the date of acquisition, July 30, 2001, as a municipal corporation, they were exempt from taxes under RPTL § 406, that the lien is invalid, and that they are entitled to a declaratory judgment to that effect.

It is of note that the assessment for the subject property became final as of April 1, 2001. By the time the Town acquired title, the Article 78 four-month statute of limitations had effectively expired. The Plaintiffs, however, claim that the four-month statute is inapplicable and that a challenge to a void assessment may be made at any time, and that no statute of limitations applies. They further claim that their action to declare the tax lien void was brought within four months of the advisement by the Defendant of their ownership of the lien, and was therefore, timely, even if the four-month limitation applies. The Plaintiff also argues that the ability of the Defendant to collect \$200,000, a substantial percentage of which they are to retain, when they paid nothing to the County for the "basket of liens", constitutes unjust enrichment.

Action No. 1:

The Defendant has struck a beneficial agreement with Nassau County. Under most circumstances, collection of unpaid tax arrears is undoubtedly a speculative venture. In this case, AJM is seeking payment from the Town of Hempstead, which would find it hard to make themselves scarce. For a comparatively minimal investment, they may claim entitlement to 50% of the amount of unpaid taxes recovered, with the balance going to the County. (See Exh. "B" to Agreement at Exh. "2", attached to the Plaintiff's Affirmation in Opposition).

There is no question but that the Town is mandatorily exempt from the payment of real property taxes under RPTL § 406. This being said, the holding of the Court of Appeals in *Kahal* presents a strong argument that a statutorily exempt entity is not effectively exempt unless it protests its assessment within four months of the finalization of the assessment. If the analogy between a religious corporation and a municipal corporation is accurate, the failure of the Town to protest the assessment as illegal within four months of April 1, 2005 is determinative of the issue. The issue, then, is whether or not there is a significant distinction between the exemption for a religious organization as opposed to a municipal corporation.

As a starting point, the Court rejects the Plaintiffs' claims that the Defendant is barred from collecting taxes from the Town based upon a theory of unjust enrichment.

The basis for an unjust enrichment claim is that the Defendant has obtained a benefit which "in equity and good conscience" should be paid to the Plaintiff. *Corsello v.*

Verizon New York, Inc., 18 N.Y.3d 777 [2012], quoting *Mandari Trading Ltd. v. Wildenstein*, 16 N.Y.3d 173 (2011). “It is available only in unusual situations when, though the defendant has not breached a contract nor committed a recognized tort, circumstances create an equitable obligation running from the defendant to the plaintiff.” *Id.* Such a claim is unavailable where it simply duplicates, or replaces, a conventional contract or tort claim. *Id.*, *See also, Clark-Fitzpatrick, Inc. v. Long Is. R.R. Co.*, 70 N.Y.2d 382, 388—389 (1987), *Town of Wallkill v. Rosenstein*, 40 A.D.3d 972, 974 (2d Dept.2007).

In the matter *sub judice*, there is no equitable obligation running from AJM to the Town. As such, the claim of unjust enrichment is without merit.

With respect to the Plaintiffs’ argument that municipalities and individual corporations should be treated differently, the language of RPTL §§ 420-a, involving nonprofit corporations, including religious organizations, and RPTL § 406, dealing with municipal corporations is not appreciably different. Each makes the straightforward statement that real property owned by such organizations, and used for the purpose of the nonprofit or for public use, shall be exempt from taxation. Nothing about the respective statutes would lead one to believe that a religious or municipal corporation should be treated differently on the basis of statutory authority. Nor does the case law cited by the Plaintiffs make such a distinction.

The Plaintiffs cite four cases for the proposition that in placing mandatorily exempt properties on the tax roll, the assessor is acting without authority, and a proceeding based upon lack of jurisdiction may be brought at any time, irrespective of the statute of

limitations.

Cameron Estates, Inc. v. Deering, 308 N.Y. 24 (1954) involved a situation in which the landowner paid all taxes assessed against the 560 acre tract of land. A portion of the land was erroneously also assessed to another person, who did not pay the taxes. The tax liens were sold to Suffolk County, which filed tax deeds more than six years prior to the commencement of the action by the owner to bar claims of others to the land and to remove a cloud on title. The Suffolk County Tax Act provided that six years after the date of record of a tax deed from Suffolk County, in the County Clerk's Office, a presumption of regularity of the tax sale, including the assessments of the land sold, should be conclusive. In reversing the Appellate Division, the Court of Appeals determined that "(t)here is a vast difference between a tax deed voidable for irregularity in the proceedings and a tax deed void because the proceedings were a nullity due to prior payment of the tax." The plaintiff was not a party to the proceedings for nonpayment of taxes and "may not now be penalized for failing to assert his true ownership within six years from the recording of the void tax deed." The right to sell the plaintiff's property never existed, as nonpayment of taxes is a condition precedent to the commencement of such proceedings, and when paid, the right to foreclose for nonpayment ceases. *Id.* at 30. The Court further stated that where void deeds are relied upon to create a conclusive presumption of regularity, equity will intervene to permit the removal of a cloud on title. *Id.* at 31.

Similarly, in *Town of Brookhaven v. Aronauer*, 65 A.D.2d 570 (2d Dept. 1978), two corporations conveyed a 1.25 acre parcel of land to Town of Brookhaven by deed dated

November 27, 1963. By resolution dated March 15, 1966, the Town accepted dedication of the property as park property. On December 4, 1967, the property, which was still assessed on the tax roll to Eagle Estates, Inc., one of the grantors, was sold to Aronauer at a Suffolk County Treasurer's tax sale for non-payment of the 1966/67 tax year. The tax lien underlying the tax sale certificate was not redeemed within three years.

Aronauer filed his deed from the Treasurer on January 6, 1971. One month later, a duplicate of the November 27, 1963 deed to the Town of Brookhaven was filed, with the notation that the original, which was delivered to the Town, had been lost. Aronauer subsequently conveyed title by deed dated November 30, 1976, recorded on December 9, 1976. The purchasers sought to file a subdivision map with the Town of Brookhaven, which was rejected. The Town then brought an action to determine the true owner of the property. Special Term denied the motion and cross-motion for summary judgment, finding issues of fact. The Appellate Division reversed, concluding that there was no question of fact in that when the subject property was dedicated as park property in 1966, it was exempt under § 406 of the RPTL, and the foreclosure and tax sale deed was *void ab initio*. "The failure of a town employee to apply for an exemption and remove the subject property from the tax assessment rolls as taxable real property does not estop the town from challenging the validity of the 1971 tax sale (internal citation omitted). Moreover, the principle is well established in this State that park property may not be alienated without express legislative permission (internal citations omitted)." *Id.* at 571.

Autokefalos Orthodox Spirituyal Church of St. George v. City of Mount

Vernon, 285 A.D. 1175 (2d Dept. 1955), involved an action to cancel taxes and tax liens on property which was allegedly exempt under subdivision 6 of § 4 of the Tax Law. The plaintiff's motion to strike affirmative defenses involving failure to comply with the Charter of the City of Mount Vernon, and laches, were denied, and plaintiff appealed. In reversing the lower court, the Appellate Division ruled that the defenses were inadequate as a matter of law. The first was inapplicable to the facts of the case, and, as to the second, ". . . where an institution is exempt under subdivision 6 of section 4 of the Tax Law, the assessors in making the assessments are without jurisdiction and act illegally and not merely erroneously (internal citation omitted)." Even if the charter provision in the first affirmative defense were applicable, it would not serve as a bar to a collateral attack upon the assessment, as the issue of jurisdiction may be raised at any time., citing *People ex rel. Erie R. R. Co. v. State Tax Comm.*, 246 N.Y. 322 (1927) and *Cooper Union v. City of New York*, 272 App. Div. 438, 441 (1947), aff'd. 298 N.Y. 578 (1948).

Lastly, in *Village of Highland Falls v. Town of Highlands*, 110 Misc.2d 130 (Sup.Ct., Orange Co., 1981), the Village sought to vacate taxes assessed by the Town on property which the Village had condemned. The Town's assessor, in furtherance of an order of Supreme Court vacating the tax deed on the motion of a mortgagee, prior to the reversal of the order by the Appellate Division, erroneously placed the property on the tax roll, and, after delinquency in payment of taxes, the County advertised the property for sale.

Respondent claimed that the failure of the Village to file a grievance within the period provided by Art. 7 of the RPTL was fatal to the petition to annul the taxes levied; and,

further, that whether the action is treated as an Art. 78 proceeding or a declaratory judgment action, it has been brought beyond the four month statute of limitations prescribed in CPLR § 217. While expressing an understanding of the need for a short statute of limitations to enable taxing authorities to stabilize fiscal planning and avoid the risk of retroactive disruption, the Court nevertheless concluded that the granting of exemptions to certain classes of property by the Legislature is an expression of the public policy in the State. *Id.* at 135.

Relying on a line of cases which held that when an assessing officer acts outside of their jurisdiction, their acts are a nullity, the assessments void, and the taxes invalid, the Court concluded that if the property otherwise qualifies for an exemption, it is a genre of cases which would not be time barred under prior case law. The public policy considerations in those cases “give way when balanced against the public policy considerations underlying the exemptions and the inherent unjustness and illegality in permitting the assessment and taxation of property that, as far as the assessing officer is concerned, does not even exist (internal citation omitted).” The Court therefore canceled the assessed taxes and removed the property from the assessment roll.

Were it not for the Court of Appeals decision in *Kahal*, this Court would readily adopt the holdings in the foregoing cases. The argument that upon taking title to property by a municipal corporation it is immunized from taxes, is a persuasive one. But the holding of the *Kahal* Court is that the immunity from taxation is not self-executing, but requires a protest by the owner within four months of the finalization of the assessment roll.

With respect to Action No. 1, it is clear that this was not done, and the motion by the Defendant to dismiss the complaint is **GRANTED**.

Action No. 2

Action No. 2 presents a further complication. The Plaintiff, Roosevelt Field Water District, acquired title to the contested property on July 30, 2001. The Tax Lien Certificate issued on or about April 21, 2003, involved taxes for the 2001/2002. The assessment roll was final as of April 1, 2001, and the four month period within which to protest the assessment expired on July 31, 2001. The Plaintiff's position is that immediately upon vesting, July 30, 2001, the property became exempt, having been acquired by a division of a municipal corporation for a public purpose. It is further claimed that even though the Water District acquired title after the roll became final, there is no carry-over, and the tax obligation does not continue for the balance of the tax year.

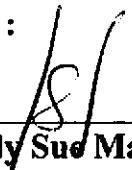
The Defendant does not appear to respond to this issue, simply stating that the present application to vacate the taxes and declare the property as exempt is untimely. The Court need not decide whether the Plaintiff was required to file a protest by the day following acquisition of title. The Plaintiff's action, commenced eleven years after acquisition is untimely under any standard in the context of *Kahal*. The Plaintiff's claim that they commenced the action within four months of its receipt of notification of the existence of the tax lien is fruitless in the face of the Court of Appeals determination that a protest must be filed within four months of the finalization of the tax roll, the limitation period for an Article 78 proceeding.

Again, giving requisite deference to the Court of Appeals, the Court is compelled to grant the motion by the Defendant to dismiss the complaint on behalf of Roosevelt Field Water District. The Defendant's motion in Action No. 2 is therefore **GRANTED.**

This constitutes the Decision and Order of the Court.

Dated: Mineola, New York
July 22, 2013

ENTER:



Hon. Randy Sue Marber, J.S.C.

XXX
ENTERED

JUL 24 2013

NASSAU COUNTY
COUNTY CLERK'S OFFICE