Verizon N.Y. Inc. v Supervisor of Town of N. Hempstead
2014 NY Slip Op 34011(U)
January 28, 2014
Supreme Court, New York County
Docket Number: 8117/09
Judge: Thomas P. Phelan
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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. THOMAS P. PHELAN,

Justice.

TRIAL/IAS PART 2
NASSAU COUNTY

VERIZON NEW YORK INC., formerly known as NEW YORK TELEPHONE COMPANY,

Plaintiff,

ORIGINAL
RETURN DATE: 11/22/13
SUBMISSION DATE: 12/20/13
INDEX NO.: 8117/09

-against-

MOTION SEQ.: # 04, 05,

SUPERVISOR OF TOWN OF NORTH HEMPSTEAD; TOWN OF NORTH HEMPSTEAD; NEW CASSEL GARBAGE DISTRICT; ALBERTSON, SEARINGTOWN, and HERRICKS GARBAGE DISTRICT; ROSLYN GARBAGE DISTRICT; PORT WASHINGTON GARBAGE DISTRICT; CARLE PLACE GARBAGE DISTRICT; GLENWOOD GARBAGE DISTRICT; MANHASSET GARBAGE DISTRICT; NEW HYDE PARK/GARDEN CITY PARK/FLORAL PARK CENTRE GARBAGE DISTRICT; TOWN BOARD OF THE TOWN OF NORTH HEMPSTEAD, AS COMMISSIONERS OF: NEW CASSEL GARBAGE DISTRICT, ALBERTSON, SEARINGTOWN and HERRICKS GARBAGE DISTRICT, ROSLYN GARBAGE DISTRICT, PORT WASHINGTON GARBAGE DISTRICT, CARLE PLACE GARBAGE DISTRICT, GLENWOOD GARBAGE DISTRICT, MANHASSET GARBAGE DISTRICT, and NEW HYDE PARK/GARDEN CITY PARK/FLORAL PARK CENTRE GARBAGE DISTRICT; BOARDS OF COMMISSIONERS AND COMMISSIONERS OF: NEW CASSEL GARBAGE DISTRICT, ALBERTSON, SEARINGTOWN, and HERRICKS GARBAGE DISTRICT, ROSLYN GARBAGE DISTRICT, PORT WASHINGTON GARBAGE DISTRICT, CARLE PLACE GARBAGE DISTRICT, GLENWOOD GARBAGE DISTRICT, MANHASSET GARBAGE DISTRICT and NEW HYDE PARK/GARDEN CITY PARK/FLORAL PARK CENTRE GARBAGE DISTRICT; RECEIVER OF TAXES OF THE TOWN OF NORTH HEMPSTEAD; and CONTROLLER OF THE TOWN OF NORTH HEMPSTEAD,

Defendants.

SUPERVISOR OF TOWN OF NORTH HEMPSTEAD; TOWN OF NORTH HEMPSTEAD; NEW CASSEL GARBAGE DISTRICT; ALBERTSON, SEARINGTOWN, and HERRICKS GARBAGE DISTRICT; ROSLYN GARBAGE DISTRICT; PORT WASHINGTON GARBGE DISTRICT; CARLE PLACE GARBAGE DISTRICT; GLENWOOD GARBAGE DISTRICT; MANHASSET GARBAGE DISTRICT; NEW HYDE PARK/GARDEN CITY PARK/FLORAL PARK CENTRE GARBAGE DISTRICT; TOWN BOARD OF THE TOWN OF NORTH HEMPSTEAD, AS COMMISSIONERS OF: NEW CASSEL GARBAGE DISTRICT, ALBERTSON, SEARINGTOWN and HERRICKS GARBAGE DISTRICT, ROSLYN GARBAGE DISTRICT, PORT WASHINGTON GARBAGE DISTRICT, CARLE PLACE GARBAGE DISTRICT, GLENWOOD GARBAGE DISTRICT, MANHASSET GARBAGE DISTRICT, and NEW HYDE PARK/GARDEN CITY PARK/FLORAL PARK CENTRE GARBAGE DISTRICT; BOARDS OF COMMISSIONERS AND COMMISSIONERS OF: NEW CASSEL GARBAGE DISTRICT, ALBERTSON, SEARINGTOWN, and HERRICKS GARBAGE DISTRICT; ROSLYN GARBAGE DISTRICT, PORT WASHINGTON GARBAGE DISTRICT, CARLE PLACE GARBAGE DISTRICT, GLENWOOD GARBAGE DISTRICT, MANHASSET GARBAGE DISTRICT and NEW HYDE PARK/GARDEN CITY PARK/FLORAL PARK CENTRE GARBAGE DISTRICT; RECEIVER OF TAXES OF THE TOWN OF NORTH HEMPSTEAD; and CONTROLLER OF THE TOWN OF NORTH HEMPSTEAD,

Third-Party Plaintiffs,

-against-

THE COUNTY OF NASSAU, THE NASSAU COUNTY BOARD OF ASSESSORS, THE NASSAU COUNTY BOARD OF ASSESSMENT REVIEW, THE ASSESSMENT REVIEW COMMISSION OF THE COUNTY OF NASSAU AND THE NASSAU COUNTY ASSESSOR,

Third-Party Defendants.

The following papers read on this motion:

Notice of Motion 1
Notice of Motion for Leave to Reargue 2
Affirmation to in Opposition 3
Memorandum of Law 4, 5, 6, 7

This motion by plaintiff ("Verizon") for an order pursuant to CPLR 2221(d) granting it reargument of this court's order dated August 16, 2013, and upon reargument ordering defendant Town of North Hempstead (the "Town") to refund Verizon illegal ad valorem levies for tax years 2003 through 2012 is denied.

This motion by third-party defendants the County of Nassau, the Nassau County Board of Assessors, the Nassau County Board of Assessment Review, the Assessment Review Commission of the County of Nassau and the County of Nassau Assessor for an order pursuant to CPLR 2221(d)(e) granting it reargument and renewal of this court's order dated August 16, 2013, is denied.

Succinctly put, in seeking reargument and renewal, movants contest this court's direct imposition of liability for the refund of illegal *ad valorem* levies on the third-party County pursuant to County Guaranty (see Nassau County Code § 6.26[b][3][c]) as opposed to defendant Town. The movants, however, have failed to demonstrate that this court "overlooked or misapprehended any pertinent law or fact" (*Orridge v Barry*, 109 AD3d 644 [2d Dept 2013], citing CPLR 2221(d) [2]).

The movants rely on *Klinger v Dudley,* 41 NY2d 362, 370 [1977]. That decision, however, is readily distinguishable from the situation extant. In *Klinger*, it was not plaintiff's inability to recover directly of the third-party defendants that precluded it from exercising judgment against them but their inability to recover of defendants that prohibited it from collecting directly of the third-party defendant. In fact, In *Klinger,* the Court refused to impose under the principles of *Dole v Dow Chem. Co.,* 30 NY2d 143[1971] " 'indemnification' against *liability* rather than 'indemnification' against *loss* by the main defendants" (*Klinger v Dudley,* 41 NY2d, at 370; see also *Reich v Manhattan Boiler and Equipment Company,* 91 NY2d 771 [1998]; *Pfizer, Inc. v Stryker Corporation*, 348 FSupp2d 131 [SDNY 2004]). Unlike in *Klinger*, here, the County's direct liability is statutory. The County Code provides that refunds of this nature "shall be a county charge" (see Nassau County Code § 6.26[b][3][c]).

In fact, the Town has brought to this court's attention a litany of cases holding the County directly liable for refunds for improper taxes (see *Corporate Prop. Invs. v Board of Assessors of County,* 153 AD2d 656 [2d Dept 1989], *affd sub nom Bowery Sav. Bank v. Board of Assessors of County of Nassau,* 80 NY2d 961 [1992]; *Corporate Prop. Invs. v Uniondale Union Free School,* 153 AD2d 663 [2d Dept 1989], *affd sub nom Bowery Sav. Bank v. Board of Assessors of County of Nassau,* supra; *Matter of Coliseum Towers Assoc. v Livingston,* 153 AD2d 683 [2d Dept 1989], *affd sub nom Bowery Sav. Bank v. Board of Assessors of County of Nassau,* supra; *Coliseum Hotel Assoc. v Uniondale Union Free School,* 153 AD2d 654 [2d Dept 1989], *affd sub nom Bowery Sav. Bank v. Board of Assessors of County of Nassau,* supra; *Matter of Bowery Sav. Bank v Board of Assessors,* 153 AD2d 679 [2d Dept 1989], *affd sub nom Bowery Sav. Bank v. Board of Assessors of County of Nassau,* supra; *Matter of Jericho Quadrangle One Co. v Musiello,* 153 AD2d 690 [2d Dept 1989], *affd sub nom Bowery Sav. Bank v. Board of Assessors of County of Nassau,* supra; *Matter of Jericho Props. No. 1 v Musiello,* 153 AD2d 689[2d Dept 1989], *affd sub nom Bowery Sav. Bank v. Board of Assessors of County of Nassau,* supra; *Garden City Ctr. Assoc. v Board of Assessors of County of Nassau,* 153 AD2d 667 [2d Dept 1989], *app dismissed* 75 NY2d 804 [1990]; *Global Frozen Food v. County of Nassau,* 153 AD2d 669 [2d Dept 1989], *affd sub nom Bowery Sav. Bank v. Board of Assessors of County of Nassau,* supra; *Reckson Assoc. v Uniondale Union Free School Dist.,* 153 AD2d 676 [2d Dept 1989], *affd sub nom Bowery Sav. Bank v. Board of Assessors of County of Nassau,* supra; *Matter of Chasco Co. v Musiello,* 153 AD2d 681 [2d Dept 1989], *app dismissed* 75 NY2d 801 [1990]; *Matter of Jericho-Westbury Indoor Tennis v Board of Assessors,* 153 AD2d 692 [2d Dept 1989], *affd sub nom Bowery Sav. Bank v. Board of Assessors of County of Nassau,* supra; see also, *Corbin v County of Nassau,* 26 Misc3d 572 [Sup Ct Nassau County 2009]).

Indeed, in the aforementioned cases, the court held that imposing liability for tax refunds on school districts was in "contravention of the clear legislative mandate of the Nassau County Administrative Code [which provides] exemptions or reductions shall be a county charge" (*Corporate Prop. Invs. v Board of Assessors of County,* supra) and that the school districts could not be held liable for refunds. The same principle applies to the Town when the County Guaranty is applied.

That the County was found not to be a "necessary party" in other ad valorem cases

does not address let alone resolve the issue presented here. Similarly, that indemnification has been awarded to the Town from the County previously does not directly address the issue extant, either. Nor is this court's decision inconsistent with the decison by Judge Jaeger in *Verizon, New York Inc., formerly known as New York Telephone Company v Supervisor of Town of Hempstead, et al.* (SFO March 7, 2013, Index No. 8308-10). That decision directed the County to pay Verizon directly in the event that it was awarded judgment against the Town. The reason for that limitation was simple: Verizon had not yet sought let alone obtained a declaration as to its entitlement to a refund. This court's decision in this case is in complete harmony with Justice Jaeger's decision.

As for the County's motion for renewal based on a need to conduct discovery, this fact is not newly discovered nor was it unavailable to the County on the original motion. Renewal accordingly does not lie (*Winograd v Neiman*, 11 AD3d 455 [2d Dept 200]). In fact, this new argument is directly contravened by the County's prior brief in opposition to the Town's motion for summary judgment when it said that only "a pure question of law" was involved and that the "interpretation of the County Guaranty presented no questions of fact."

In conclusion, the motions for reargument and renewal are denied.

This decision constitutes the order of the court.

Dated: January 28, 2014

Thomas P. Phelan, J.S.C.