

Verizon N.Y. Inc. v Supervisor of Town of N. Hempstead
2014 NY Slip Op 34012(U)
July 22, 2014
Supreme Court, Queens 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: 05/23/14
SUBMISSION DATE: 06/23/14
INDEX NO.: 8117/09

-against-

MOTION SEQ.: # 15, 16

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.

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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,

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 Cross Motion	2
Affirmation is Support of Plaintiff's Motion to Renew....	3
Affirmation is Support of towns Cross-Motion	4
Memorandum of Law	5, 6

This motion by plaintiff Verizon New York Inc., formerly known as New York Telephone Company ("Verizon"), for an order pursuant to CPLR 2221(e) granting renewal of this court's order dated August 16, 2013, which required third-party defendant County to pay the refunds of ad valorem levies to Verizon directly for 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010 and 2011, and this court's order dated January 28, 2014, which denied reargument of this court's orders dated August 16, 2013, is determined as provided herein.

This motion by defendant/third-party plaintiffs 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 ("Town") for an order pursuant to CPLR 2201 staying this action pending the final determination of motions for leave to appeal to the Court of Appeals in *New York Tel. Co. v Supervisor of Town of Hempstead* (115 AD3d 821 [2d Dept 2014]), *New York Tel. Co. v Supervisor of Town of Hempstead* (115 AD3d 824 [2d Dept

2014]) and *Verizon N.Y., Inc. v Supervisor of Town Oyster Bay*, 115 AD3d 849 [2d Dept 2014]) or, in the alternative requiring judgments against defendants and third-party defendant to be entered simultaneously is determined as provided herein.

The issue before this court is who is directly liable to plaintiff Verizon for the refund of special ad valorem levies. This court held in *New York Tel. Co. v Supervisor of Town of Hempstead* (115 AD3d 821), *New York Tel. Co. v Supervisor of Town of Hempstead* (115 AD3d 824) and *Verizon N.Y., Inc. v Supervisor of Town Oyster Bay*, (115 AD3d 849) that the County was responsible for paying plaintiffs New York Tel. Co. and Verizon directly due to the County Guaranty (Nassau County Administrative Code § 6-26.0[b][3][c]) despite the fact that it was a third-party defendant in those actions. This court held similarly in its orders dated August 16, 2013, and January 28, 2014, in this case. Since those orders were issued, the Second Department has specifically ruled to the contrary, imposing liability for special ad valorem levies on the Towns, which, it has held, is entitled to indemnification from the County (*New York Tel. Co. v Supervisor of Town of Hempstead*, 115 AD3d 821; *New York Tel. Co. v Supervisor of Town of Hempstead*, 115 AD3d 824; *Verizon N.Y., Inc. v Supervisor of Town Oyster Bay*, 115 AD3d 849).

Verizon seeks renewal of this court's orders in this case based on those Appellate Division decisions and asks that this court impose direct liability on the Town for the refund of special ad valorem levies. In response, third-party defendant Town seeks a stay of this action on the ground that the Appellate Division decisions are in error and it has, accordingly, sought leave to appeal to the Court of Appeals. The third-party County has not only supported Verizon's application but represents that it has sought reargument of or, in the alternative, leave to appeal to the Court of Appeals the Appellate Division decisions which have held it responsible for indemnifying the Towns. While the County candidly admits that the Appellate Division has denied its application for reargument and leave to appeal to the Court of Appeals in *Verizon N.Y., Inc. v Supervisor of Town Oyster Bay* (115 AD3d 849), it represents that it intends to seek leave to appeal to the Court of Appeals, directly. It accordingly requests that this court "hold in abeyance any decision concerning any potential obligation by [it] to reimburse any refunds paid by the Town or its special districts for special ad valorem levies to the plaintiff..." until those applications are finally decided. It, in fact, concurs with

the Town that a stay of this action is appropriate until all pending applications in the other special ad valorem/County Guaranty cases are decided.

“CPLR 2221, inter alia, provides that a motion for leave to renew ‘shall be based upon new facts not offered on the prior motion that would change the prior determination . . . and shall contain reasonable justification for the failure to present such facts on the prior motion’ ” (*Kingston v. Brookdale Hosp. and Medical Center*, 4 AD3d 397, 398 [2d Dept 2004], quoting CPLR 2221 (e) (2), (3)). The facts relied on here in support of the respective motions were not in existence when the motions in this case were decided. Verizon is clearly entitled to renewal based on the Appellate Divisions’ decisions in *New York Tel. Co. v Supervisor of Town of Hempstead* (115 AD3d 821), *New York Tel. Co. v Supervisor of Town of Hempstead* (115 AD3d 824) and *Verizon N.Y., Inc. v Supervisor of Town Oyster Bay* (115 AD3d 849).

Renewal is granted and upon renewal, the Town defendants are held directly liable to Verizon for the refunds of special ad valorem levies for years 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010 and 2011, and defendant/third-party plaintiffs are granted summary judgment holding the defendant County liable to indemnify them for those refunds.

As for the stay application, “[t]he mere fact that the case that may enunciate the dispositive rule of law is before an appellate court is not sufficient to warrant [a] stay” (Connors, Practice Commentaries, McKinneys Cons Laws of N.Y., Book 7B, C2201:11 [2012 ed.], citing *In re Weinbaum's Estate*, 51 Misc2d 538, 539 [Sur. Ct. Nassau County 1966]). Stays “should be [granted] sparingly, however, and only when the decision is imminent” (Connors, Practice Commentaries, McKinneys Cons Laws of N.Y., Book 7B, C2201:11 [2012 ed.] citing *Miller v. Miller*, 109 Misc2d 982 [Sup. Ct. Suffolk County 1981]). Only “[i]f the point of law involved in the case, and potentially dispositive of it, is about to be definitively decided in another case presently on appeal before a court whose decisions bind the trial court, [may] the action...be stayed to await the decision” (Connors, Practice Commentaries, McKinneys Cons Laws of N.Y., Book 7B, C2201:11 [2012 ed.], citing *In re Weinbaum's Estate*, 51 Misc2d 538)

The County has already been denied reargument and leave to appeal to the Court of Appeals by the Appellate Division in *Verizon N.Y., Inc. v Supervisor of Town*

Oyster Bay (115 AD3d 849), a case that is on all fours with this case. And, assuming, *arguendo*, that the issue presented here reaches the Court of Appeals, that is far from imminent. The Town's motion for a stay is denied.

Finally, the Town has cited no law in support of its request for simultaneous judgments. That application is also denied.

This decision constitutes the order of the court.

Dated: July 22, 2014



Thomas P. Phelan, J.S.C.

Attorneys of Record:

Attorney(s) for Plaintiff
Cullen and Dykman, Esqs.
100 Quentin Roosevelt Blvd.
Garden City, New York 11530

Attorney(s) for Defendant(s)
Jaspan Schlesinger LLP
300 Garden City Plaza
Garden City, New York 11530-3324

Third-Party Defendant(s)
Rivkin Radler LLP
926 RXR Plaza
Uniondale, New York 11556-0926

ENTERED

JUL 23 2014

NASSAU COUNTY
COUNTY CLERK'S OFFICE