

**Blind Brook-Rye Union Free Sch. Dist. v Harrison
Cent. Sch. Dist.**

2024 NY Slip Op 35250(U)

May 10, 2024

Supreme Court, Westchester County

Docket Number: Index No. 68045/2023

Judge: William J. Giacomo

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

To commence the statutory time period for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
PRESENT: HON. WILLIAM J. GIACOMO, J.S.C.**

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BLIND BROOK-RYE UNION FREE SCHOOL DISTRICT,

Plaintiff,

Index No. 68045/2023

– against –

Motion Seq. 1

HARRISON CENTRAL SCHOOL DISTRICT,

DECISION & ORDER

Defendants.

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In this underlying action for money had and received, unjust enrichment, among other claims, defendant Harrison Central School District (defendant) moves, pre answer, pursuant to CPLR 3211(a) (5) and 3211 (a) (7), to dismiss plaintiff Blind Brook-Rye Union Free School District’s (plaintiff) complaint as time barred and for failing to state a cause of action. This motion is unopposed.

Papers Considered

NYSCEF DOC NO. 1-15

1. Summons and Complaint/Notice of Motion/Affirmation of Howard M. Miller, Esq./Exhibits A-C /Memorandum of Law/Stipulation to Briefing Schedule/Court Notices

FACTUAL AND PROCEDURAL BACKGROUND

On September 29, 2023, plaintiff commenced the instant action by filing a summons and complaint. The complaint states that, on July 8, 2022, nonparties acquired a property located at 56 Lincoln Avenue, Rye Brook, New York. The property is intersected by the boundary line between plaintiff and defendant. On October 24, 2022, the owners of the property notified plaintiff of their address change and bussing needs of their school-aged children. In accordance with Education Law § 3203, the owners subsequently submitted forms on November 4, 2022,

designating plaintiff as the school district of attendance. The complaint indicates that the owner previously resided in the plaintiff's school district and had been attending school in the district.

On June 21, 2023, plaintiff sent a letter to defendant "as a demand pursuant to New York Education Law § 3203 for the monies collected by the Harrison Central School District ('District of Premises') as school tax revenue for the premises known as 56 Lincoln Ave, Rye Brook, NY 10573 (the 'Premises') for the 2022-2023 tax year, totaling \$36,901.88." Plaintiff alleges that it bore the cost of educating the child and is entitled to the taxes paid to defendant. Defendant denied plaintiff's request, on the basis that a designation of school district was not timely made by August 1, 2022 and because the designation was not submitted to the Harrison District Clerk.

A notice of claim was served on defendant on September 28, 2023 and the complaint followed. The complaint sets forth four causes of action. In the first cause of action, money had and received, plaintiff alleges that although defendant received taxes for educating a child who has designated plaintiff as the district of attendance, defendant refused to reimburse plaintiff for the payments owed. Plaintiff states that its damages are \$36,901.88 for the 2022-2023 fiscal year and \$37,959.81 for the 2023-2024 fiscal year. The second cause of action, grounded in unjust enrichment, claims that defendant has been unjustly enriched by refusing to provide plaintiff with the tax payments received. In the third cause of action, conversion, plaintiff alleges that defendant has wrongfully converted the amount of taxes paid in connection with the property. The fourth cause of action, declaratory judgment, seeks a declaration that, among other things, as long as plaintiff is designated as the school district for the owner of the property, defendant must remit payment to plaintiff of any and all school taxes received by defendant in connection with the property.

Defendant moves to dismiss the complaint. Defendant argues that the complaint is time-barred, as the first through third causes of action have a one-year statute of limitations. It explains that for causes of action for money had and received against a school district, the statute of limitations is one year from the day that taxes are paid. Defendant issued its tax warrants on July 12, 2022. As plaintiff filed this action on September 29, 2023, allegedly more than one year after defendant "obtained a lien of the taxes," the complaint should be dismissed as time barred.

The Court notes that the "tax warrant" in the record herein is the subject on the agenda for a meeting held on July 12, 2022 by the Harrison Central School District. The "agenda items details" sets forth the following, in relevant part: "upon the recommendation of the Superintendent

of Schools, the Board of Education levy taxes for the voter approved budget for the school year commencing July 1, 2022 in the amount of \$116,318,295; that the sums as set forth in the forms of budget heretofore submitted by the Superintendent be appropriated; that taxes in the necessary amount be levied therefore; that the Board members be authorized to execute a warrant therefore, and that the warrant be delivered to the Town authorities.”

Defendant also argues that the complaint fails to state a cause of action because the designation was not made by August 1, 2022. According to defendant, the designation is required to be submitted on or before August first in any year and thereafter. As the designation of the property was not made until November 4, 2022, the complaint should be dismissed.

Although plaintiff was involved in adjournment discussions, plaintiff did not file opposition papers.

DISCUSSION

Dismissal

“In moving to dismiss a cause of action pursuant to CPLR 3211 (a) (5) as barred by the applicable statute of limitations, a defendant bears the initial burden of demonstrating, prima facie, that the time within which to commence the action has expired.” *Matteawan On Main, Inc. v City of Beacon*, 109 AD3d 590, 590-591 (2d Dept 2013). As relevant here, “an action against a school district must be commenced within one year after the cause of action accrues.” *North Salem Cent. Sch. Dist. v Mahopac Cent. Sch. Dist.*, 1 AD3d 418, 419 (2d Dept 2003).

“Upon a motion to dismiss pursuant to CPLR 3211 (a) (7) for failure to state a cause of action, the sole criterion is whether the subject pleading states a cause of action, and if, from the four corners of the complaint, factual allegations are discerned which, taken together, manifest any cause of action cognizable at law, then the motion will fail.” *Esposito v Noto*, 90 AD3d 825, 825 (2d Dept 2011) (internal quotation marks and citations omitted). The court must afford the pleading a liberal construction, accept the facts alleged in the pleading as true, accord the plaintiff the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory. *Id.* “Whether the complaint will later survive a motion for summary judgment, or whether the plaintiff will ultimately be able to prove its claims, of course, plays no part in the determination of a pre-discovery CPLR 3211 motion to dismiss.” *Endless Ocean, LLC v Twomey, Latham, Shea, Kelley, Dubin & Quartararo*, 113 AD3d 587, 589 (2d Dept 2014).

First Cause of Action

To state a cause of action for money had and received, a plaintiff must allege that “(1) the defendant received money belonging to the plaintiff, (2) the defendant benefitted from receipt of the money, and (3) under principles of equity and good conscience, the defendant should not be permitted to keep the money.” *Pacella v RSA Consultants, Inc.*, 164 AD3d 806, 808 (2d Dept 2018) (internal quotation marks omitted). “A cause of action to recover money had and received accrues when the taxes were paid.” *Matteawan On Main, Inc. v City of Beacon*, 109 AD3d 590, 590-591 (2d Dept 2013).

Defendant states that it issued its tax warrants on July 12, 2022. As plaintiff filed this action on September 29, 2023, allegedly after the one-year statute of limitations expired, the complaint should be dismissed as time barred.

Here, plaintiff has alleged that defendant received property taxes for educating a child who designated plaintiff as the school district, that defendant is not entitled to that money and that defendant must remit those payments to plaintiff. The property owners did not acquire the property until after July 1, 2022, and they did not designate plaintiff as the school district until November 4, 2022. The Court finds that defendant has failed to meet its burden as it failed to state when it received the tax payer funds in question. It is unclear how the funds of a homeowner who moved in after July 1, 2022, who may or may not have children, and may or may not pay their taxes, could be appropriated in an expected tax levy. Accordingly, defendant failed to establish its prima facie entitlement to relief pursuant to CPLR 3211 (a) (5) and this branch of the motion is denied. *See e.g. Matteawan On Main, Inc. v City of Beacon*, 109 AD3d at 591 (branch of City of Beacon’s motion pursuant to CPLR 3211 (a) (5) denied, because “[a]lthough the defendant, the City of Beacon, contends that the first, third, and fifth causes of action asserted in the amended complaint accrued when the plaintiff paid the disputed taxes, it offered no evidence to establish when those taxes were paid”).

Second and Third Causes of Action

“The cause of action to recover damages for unjust enrichment started to run upon the occurrence of the wrongful act giving rise to a duty of restitution.” *North Salem Cent. Sch. Dist. v Mahopac Cent. Sch. Dist.*, 1 AD3d at 419. Similarly, “a cause of action to recover damages for conversion generally accrues when the conversion takes place.” *Siegler v Lippe*, 189 AD3d 903, 904 (2d Dept 2020).

Here, the unjust enrichment and conversion started to accrue when the defendant failed to remit funds that were allegedly due to plaintiff, despite plaintiff's demands. Defendant again has failed to meet its initial burden of demonstrating, prima facie, that the time within which to commence the action has expired, as it failed to state when it received the tax payer funds in question. Defendant does not explain why the conversion and unjust enrichment claims are time barred, and seems to rely on July 12, 2022 as the date for when the action started to accrue. The record indicates that plaintiff made a demand on June 21, 2023. Accordingly, even though there is no opposition to the motion, the branch of defendant's motion to dismiss these claims as barred by the statute of limitations, is also denied. *See e.g. Exit Empire Realty v Zilelian*, 137 AD3d 742, 743 (2d Dept 2016) (Court properly denied plaintiff's unopposed motion, as "plaintiff failed to meet its prima facie burden of establishing its entitlement to judgment as a matter of law").

Failure to State a Claim

Citing Education Law § 3203, defendant argues that the complaint should be dismissed for failing to state a cause of action, as the designation was made after August 1, 2022, in contravention of the statute.

Education Law § 3203 (1) provides that

"The owner of taxable property that is so located that the boundary line between two school districts intersects . . . may designate the school in either of such districts to which the children lawfully residing in said dwelling on said property shall attend by filing with the district clerk of each of such districts a notice of such designation on or before August first in any year and thereafter or, in the case of a single family unit, when such dwelling unit is built or when its owner-occupant's first child commences attending school from such residence and thereafter whenever the ownership of such taxable property changes hands in an arms length transaction or, likewise, the first child of its new owner-occupant first commences attending school from such residence and, until a subsequent designation shall be made and filed, such children shall be deemed to be resident children of the district designated and shall be entitled to the school privileges of such district as resident pupils without the payment of tuition."

Defendant offers only part of the statute in its argument, which part seems to provide that the owner may designate the school by filing the designation by August 1 of the year. Even though the motion is unopposed, the Court is unable to consider defendant's arguments as defendant provides no relevant caselaw in support of its assertions. Moreover, the records submitted by defendant indicate that plaintiff made its demand pursuant to Education Law § 3203. Education Law § 3203 (2) states the following:

[5]

authorities of the district designated and furnishing the instructional service may recover the amount in an action therefor.”

There is no date given by which the designated school district shall demand payment or institute an action. Accordingly, defendant failed to establish that plaintiff has no viable causes of action and the remainder of the motion to dismiss is denied.

CONCLUSION

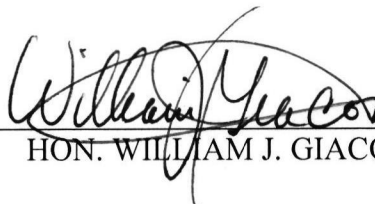
Accordingly, it is hereby

ORDERED that the defendant’s motion to dismiss the complaint, pursuant to CPLR 3211 (a) (5) and 3211 (a) (7) is DENIED; and it is further

ORDERED that the defendant shall serve its answer within ten days of service of this order with notice of entry (*see* CPLR 3211[f]).

The parties are directed to appear for a Preliminary Conference on a future date and time to be selected by the Preliminary Conference Part.

Dated: White Plains, New York
May 10, 2024



HON. WILLIAM J. GIACOMO, J.S.C.