Island Waste Servs. Ltd. v WeCare Transp. LLC
2024 NY Slip Op 35547(U)
March 29, 2024
Supreme Court, Suffolk County
Docket Number: Index No. 004966/2014
Judge: Kathy G. Bergmann
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SHORT FORM ORDER

INDEX No. 004966/2014
CAL. No. 202300928OT

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 6 - SUFFOLK COUNTY

PRESENT:

Hon. KATHY G. BERGMANN
Justice of the Supreme Court

MOTION DATE 12/15/23
ADJ. DATE 1/5/24
Mot. Seq. # 008 MD

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ISLAND WASTE SERVICES LTD., and ALLIED WASTE SYSTEMS, INC. individually and as successor in interest to SUBURBAN CARTING CORP.,

Plaintiffs,

- and -

WECARE TRANSPORTATION LLC, a New York Limited Liability Company,

Intervenor-Plaintiff

- against -

NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, NEW YORK STATE DIVISION OF TAX APPEALS, THOMAS H. MATTOX, in his capacity as Commission of the New York State Department of Taxation and Finance,

Defendants.

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Upon the following papers read on this motion <u>for summary judgment</u>: (1) Notice of Motion and supporting papers by defendants, filed November 17, 2023; (2) Answering Affidavits and supporting papers by plaintiffs, filed December 22, 2023; (3) Replying Affidavits and supporting papers by defendants, filed December 29, 2023; and (4) Sur-replying Affidavits and supporting papers by plaintiffs, filed January 5, 2024, it is

ORDERED that defendants' motion for summary judgment dismissing the complaint is denied.

This Equal Protection claim revolves around sales taxes allegedly assessed on certain waste disposal entities for engaging in certain conduct, but not on other waste disposal entities who engaged in the same exact conduct. Plaintiffs, Island Waste Services Ltd. and Allied Waste Systems, Inc., claim that defendants, the New York State Department of Taxation and Finance, the New York State Division of Tax Appeals, and Thomas Mattox, the Commissioner of the New York State Department of Taxation and Finance, were disparately charging certain waste disposal entities, but not others, sales tax under Tax Law § 1105 for the cost of using third-party truckers to ship waste from waste transfer stations to ultimate disposal facilities. As pertinent here, Island Waste Services was assessed such sales taxes from March 1997 until November 2005, and Allied Waste Systems was assessed such taxes from March 2004 until November 2005. A predecessor-in-interest to Allied Waste Systems, Suburban Carting Corp., was also assessed such taxes from September 2003 until November 2005. Island Waste Services challenged the assessment, and in 2008, an Administrative Law Judge canceled notices of determination and ordered a refund. On appeal, the Tax Appeals Tribunal reversed and upheld the assessment, which decision was affirmed by the Appellate Division, Third Department (***Matter of Island Waste Servs., Ltd. v Tax Appeals Trib. of the State of N.Y.***, 77 AD3d 1080, 909 NYS2d 790 [3d Dept 2010], *lv denied* 16 NY3d 712, 923 NYS2d 417 [2011], *rearg denied* 17 NY3d 838, 930 NYS2d 532 [2011]). Allied Waste Systems and Suburban Carting also timely challenged their assessments, and agreed to be bound by the determination in Island Waste Services' challenge. WeCare Transportation LLC, the intervenor-plaintiff, was allegedly a third-party vendor that engaged in the transportation of waste and was also assessed sales taxes thereon. It also agreed to be bound by the determination in Island Waste Services' challenge.

After the Appellate Division's decision, defendants audited nonparty Waste Management New York LLC (Waste Management) regarding sales taxes. Plaintiffs allege that although defendants assessed sales tax on their use of third-party truckers to ship waste from waste transfer stations to ultimate disposal sites, defendants' audit did not assess any sales tax on Waste Management for its use of third-party truckers to ship waste from waste transfer stations to ultimate disposal sites. Plaintiff commenced this Equal Protection action seeking a judgment declaring, among other things, defendants' enforcement of Tax Law § 1105 to be unconstitutional; and injunctive relief requiring defendants to refund the disputed taxes.

Defendants now seek summary judgment dismissing the complaint. In support of their motion, defendants submit, among other things, the pleadings and a decision of the Tax Appeals Tribunal. In opposition, plaintiffs submit, among other things, an affidavit from Leonard Finegold.

On a motion for summary judgment, the movant has the burden to show, through evidence in admissible form (***Bush v St. Clare's Hosp.***, 82 NY2d 738, 602 NYS2d 324 [1993]; ***Zuckerman v City of New York***, 49 NY2d 557, 427 NYS2d 595 [1980]), that it is entitled to judgment as a matter of law and that there are no disputed issues of material fact (CPLR 3212; ***Matter of New York City Asbestos Litig.***, 33 NY3d 20, 99 NYS3d 734 [2019]). If the movant meets its burden, then the non-movant must show that there is a material issue of fact to be resolved at trial (***Matter of Eighth Jud. Dist. Asbestos***

Litig., 33 NY3d 488, 105 NYS3d 353 [2019]). If the movant does not meet its burden, then the motion must be denied without consideration of any opposing papers (***Vega v Restani Constr. Corp.***, 18 NY3d 499, 942 NYS2d 13 [2012]). On summary judgment, the Court must view the evidence in the light most favorable to the non-moving party (*id.*).

Here, defendants have not satisfied their prima facie burden on summary judgment. They mainly claim that plaintiffs have no evidence of an Equal Protection violation, which is merely pointing to purported gaps in plaintiffs' case (*see* ***Vincent Auto., Inc. v Chevron U.S.A. Inc.***, 107 AD3d 1439, 967 NYS2d 790 [4th Dept 2013] [defendant's contention "that plaintiffs have 'no evidence'" in support of its contamination claim was insufficient]; *see generally, e.g.,* ***Bourne v Martin Dev. & Mgt., LLC***, 219 AD3d 684, 195 NYS3d 220 [2d Dept 2023]).

In any event, defendants' lack of evidence argument fails on the merits. Defendants claim that their sales tax audit of Waste Management is confidential under Tax Law § 1146. As a result, they posit that they "are not at liberty to disclose in the caption[ed] matter any information about any sales tax audit of Waste Management." Defendants also argue that without the audit, plaintiffs cannot possibly have any admissible evidence of disparate treatment. To the extent that the State's own statute prevents these State defendants from using evidence in the State's possession to satisfy their prima facie burden, then that is a self-created problem that is properly resolved by the Legislature. And the State cannot insulate itself from Equal Protection claims based on taxation by summarily declaring as secret the only possible evidence of disparate treatment. Moreover, plaintiffs have submitted a waiver of confidentiality from Waste Management that "waive[s] the secrecy requirements of Tax Law as they pertain to the sales tax field audit of Waste Management for the period September 1, 2000 through August 31, 2005." This waiver is akin to waivers submitted by defendants themselves that, they conceded, allowed them "to disclose testimony and information" in accordance with the waivers' terms. Assuming, without deciding, that the secrecy provisions of the Tax Law were once a barrier to plaintiffs' claims, they are not anymore.

The mere fact that other waste management entities were also assessed sales tax for using third-party truckers to ship waste from waste transfer stations to ultimate disposal sites does not necessitate dismissal of the complaint. This is especially so because defendants' moving papers do not dispute that Waste Management was not taxed for the same conduct and do not provide any explanation for the disparate treatment (*see* ***Fields v Village of Sag Harbor***, 92 AD3d 718, 938 NYS2d 611 [2d Dept 2012] [an Equal Protection defendant did not meet its prima facie burden on summary judgment when it "failed to demonstrate that it treated other similarly situated property owners as it allegedly had treated the plaintiff"]; ***Weaver v Town of Rush***, 1 AD3d 920, 768 NYS2d 58 [4th Dept 2003]; *see generally* ***Tax Equity Now N.Y. LLC v City of New York***, __ NY3d __, __ NYS3d __, 2024 NY Slip Op 01498 [2024] ["the Federal and State Constitutions do not prohibit dual tax rates or require that all taxpayers be treated the same but only require that those similarly situated be treated uniformly"] [alterations, quotation marks, and citations omitted]). The Court notes that, in opposition, plaintiffs submitted an affidavit from Leonard Finegold, Waste Management's Director of State Transaction Tax. Finegold stated that he told defendants in connection with their 2012 audit that Waste Management used third-party truckers to haul waste from waste transfer stations and provided defendants with a list of those third-party truckers and the amounts spent thereon, yet defendants did not assess any sales tax.

Defendants next argue that plaintiffs' claim is barred by res judicata, correctly noting that plaintiffs' challenge to the sales tax assessments ultimately failed. But the basis of plaintiffs' Equal Protection claim is defendants' 2012 audit of Waste Management. An Equal Protection challenge based on the 2012 audit would not have been ripe when plaintiffs originally challenged the tax assessments years prior to the audit, so this action is not barred by res judicata (*see* ***Waterscape Resort LLC v Pavarini McGovern, LLC***, 168 AD3d 561, 90 NYS3d 886 [1st Dept 2019]; ***Dezer Entertainment Concepts, Inc. v City of New York***, 8 AD3d 37, 778 NYS2d 18 [1st Dept 2004], *appeal dismissed* 3 NY3d 700, 785 NYS2d 26 [2004]; ***Jensen v Village of Old Westbury***, 160 AD2d 768, 553 NYS2d 820 [2d Dept 1990]).

Defendants' next argument, that the Court lacks subject-matter jurisdiction over this constitutional challenge, is incorrect (***Matter of First Natl. City Bank v City of N.Y. Fin. Admin.***, 36 NY2d 87, 365 NYS2d 493 [1975]; ***Banfi Prods. Corp. v O'Cleireacain***, 182 AD2d 465, 582 NYS2d 695 [1st Dept 1992]).

Defendants' final argument, that declaratory relief would be improper, is meritless. This Court (Maher, J.), in an order dated June 21, 2016, rejected this argument, which is now law of the case (*see e.g.* ***Hudson City Sav. Bank v 59 Sands Point, LLC***, 162 AD3d 644, 79 NYS3d 60 [2d Dept 2018]). In any event, despite being styled as a single cause of action for a declaratory judgment, the Court is not bound by such labels (*e.g.* ***Diemer v Diemer***, 8 NY2d 206, 203 NYS2d 829 [1960]), and the relief that plaintiff is seeking clearly includes injunctive relief instructing defendants to refund the disputed sales taxes, with interest, due to an Equal Protection violation. Defendants do not allege that this injunctive relief would be improper. The Court notes that even if declaratory relief were improper, the Court may convert those portions of the complaint seeking a declaratory judgment into ones seeking money damages (CPLR 103; ***Matter of Etna Prestige Tech., Inc. v Long Is. R.R. Co.***, 148 AD3d 885, 50 NYS3d 96 [2d Dept 2017]; ***Matter of Steve's Star Serv. v County of Rockland***, 278 AD2d 498, 718 NYS2d 72 [2d Dept 2000]).

Thus, defendants' motion is denied.

Dated: March 29, 2024

Kathy G. Bergmann
J.S.C.
HON. KATHY G. BERGMANN

_____ **FINAL DISPOSITION** ___X___ **NON-FINAL DISPOSITION**