SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

PRESENT: HON. R. BRUCE COZZENS, JR.
Justice.

TRIAL/IAS PART 4
NASSAU COUNTY

EDWARD P. MANGANO in his official capacity as Nassau County Executive, COUNTY OF NASSAU, COUNTY OF SUFFOLK, INCORPORATED VILLAGE OF FLORAL PARK, INCORPORATED VILLAGE OF VALLEY STREAM, INCORPORATED VILLAGE OF MINEOLA, INCORPORATED VILLAGE OF NEW HYDE PARK, TOWN OF MONROE, TOWN OF CHESTER, TOWN OF WARWICK, TOWN OF HIGHLANDS, TOWN OF WAWAYANDA, TOWN OF BLOOMING GROVE, TOWN OF CRAWFORD, VILLAGE OF HIGHLAND FALLS ORANGE COUNTY CHAMBER OF COMMERCE, VILLAGE OF WOODBURY, VILLAGE OF MAYBROOK, COUNTY OF WESTCHESTER, VILLAGE OF SOUTH BLOOMING GROVE, TOWN OF WOODBURY and TOWN OF SMITHTOWN, and COUNTY OF PUTNAM,

Plaintiff(s),

-against-

MOTION
#013,014,015,016,017,
018
INDEX # 14444/10
MOTION DATE:
May 23, 2012

SHELDON SILVER in his official capacity as Speaker of the New York State Assembly; RICHARD RAVITCH, in his official capacity as President of the New York State Senate; MALCOLM A.SMITH, in his official capacity as Temporary President of the New York State Senate; JOHN SAMPSON, in his official capacity as the Conference Leader of the New York State Senate; THE STATE OF NEW YORK ; DAVID A. PATERSON in his official capacity as the Governor of the State of New York; THE NEW

YORK STATE DEPARTMENT OF TAXATION AND FINANCE; JAIME WOODWARD, in his official Capacity as Acting Commissioner of the New York State Department of Taxation and Finance; THOMAS DINAPOLI, in his official capacity as the Comptroller of the State of New York; the METROPOLITAN TRANSPORTATION AUTHORITY; JAY H. WALDER in his official capacity as Commissioner of the Metropolitan Transit Authority,

Defendant(s).

The following papers read on this motion:

Notice of Motion.....4
Notice of Cross Motion.....1
Affirmation.....1
Briefs.....
Plaintiffs.....1
Defendant.....1

Upon the foregoing papers it is ordered that plaintiffs' respective summary judgment motions and defendants' respective cross motions for summary judgment are determined as hereinafter set forth.

This application arises out of a projected $1.8 billion budgetary shortfall by the Metropolitan Transportation Authority (MTA) in May 2009. In response to this, the New York State Legislature passed the MTA Tax Bill on May 6th, 2009 in an attempt to resolve the MTA's monetary situation. In addition, Governor Paterson delivered a message of necessity concerning this bill to the legislature on May 6th, 2009. The bill was passed by 60% of the Assembly and passed by 52% of the Senate.

In support of their motions, the plaintiffs maintain that the MTA payroll tax violated the Home Rule provisions of the State Constitution, the bill is unconstitutional because it appropriates public monies for a local purpose, and that it is unconstitutional for imposing liability onto political subdivisions for the debt of a public corporation. In addition, plaintiffs argue that the MTA must be self-sustaining under Public Authorities Law section 1266(3), the payroll tax violates equal protection by discriminating against certain employers, and that the residents of Nassau County have been unfairly burdened by the tax.

In support of their cross-motions, the defendants contend that the Home Rule doctrine does not apply because the MTA payroll tax is a general law, the MTA payroll tax does not appropriate funds for a local purpose and that plaintiffs have no claims under section 123 of the State Finance Law. Furthermore, defendants assert that the MTA payroll tax is consistent with section 1266 of the Public Authorities Law, the state has not assumed liability for the debts of

the MTA and that the MTA payroll tax is not a governor appropriation bill. In addition, defendant Sheldon Silver, in his official capacity as Speaker of the New York State Assembly, et al, argue that they are immune to suit under the Speech and Debate Clause in the New York State Constitution and that plaintiffs lack the capacity to sue.

A. Immunity of State Officials

The Speech and Debate Clause in the New York State Constitution states that, "For any speech or debate in either house of the legislature, the members shall not be questioned in any other place." N.Y. Const. art. III, § 11. This has been construed to mean that the, "Speech and Debate Clause of the New York State Constitution immunizes the members of the legislature from civil liability for statements made in the course of their official functions and thus enables the legislators to perform the duties of their office and to fulfill their responsibilities without fear of reprisal through civil suits charging defamation." *Oates v. Marino*, 106 A.D.2d 289, 482 N.Y.S.2d 738 (1984)).

The MTA payroll tax was passed into law through the legislative actions of the defendants. While the MTA payroll tax was passed in violation of State Constitution requirements, the legislative actions of the defendants are still immune from suit. "That determination by legislators is allegedly erroneous does not abrogate speech or debate clause; because judgments of legality or constitutionality obviously involve questions of legislative acts, courts may not strip acts taken in legislative process of their constitutional immunity by finding that acts are substantively illegal or unconstitutional. McKinney's Const. Art. 3 § 11." *Straniere v. Silver*, 218 A.D.2d 80, 637 N.Y.S.2d 982 aff'd 89 N.Y.2d 825, 675 N.E.2d 1222 (1996).

The Court finds that the defendants have passed the MTA payroll tax within the scope of their official capacities as legislators. Therefore, the actions of the defendants' are protected under the Speech and Debate Clause of the New York State Constitution.
As such, defendants' motion is granted to the extent that individual defendants Sheldon Silver, Richard Ravitch, Malcolm A. Smith, John Sampson and David A. Paterson are hereby dismissed from the action.

B. Capacity to Sue

Municipalities do not have the capacity to challenge the constitutionality of state legislation. "The traditional principle throughout the United States has been that municipalities and other local governmental corporate entities and their officers lack capacity to mount constitutional challenges to acts of the State and State legislation. This general incapacity to sue flows from judicial recognition of juridical as well as political relationship between those entities and the State." *City of New York v. State*, 86 N.Y.2d 286, 289, 665 N.E.2d 649, 651 (1995)).

However, this rule has four exceptions. "The only exceptions to the general rule barring local governmental challenges to State legislation which have been identified in the case law are: (1) an express statutory authorization to bring such a suit (*County of Albany v. Hooker*, 204 N.Y., at 9, 97 N.E. 403, supra); (2) where the State legislation adversely affects a municipality's proprietary interest in a specific fund of moneys (*County of Rensselaer v. Regan*, 173 A.D.2d 37, 578 N.Y.S.2d 274, affd. 80 N.Y.2d 988, 592 N.Y.S.2d 646, 607 N.E.2d 793; *Matter of Town of Moreau v. County of Saratoga*, 142 A.D.2d 864, 531 N.Y.S.2d 61); (3) where the State statute impinges upon 'Home Rule' powers of a municipality constitutionally guaranteed under article IX of the State Constitution (*Town of Black Brook v. State of New York*, 41 N.Y.2d 486, 393 N.Y.S.2d 946, 362 N.E.2d 579); and (4) where 'the municipal challengers assert that if they are obligated to comply with the State statute they will by that very compliance be forced to violate a constitutional proscription' (*Matter of Jeter v. Ellenville Cent. School Dist.*, 41 N.Y.2d 283, 287, 392 N.Y.S.2d 403, 360 N.E.2d 1086 [citing *Board of Educ. v. Allen*, 20 N.Y.2d 109, 281 N.Y.S.2d 799, 228 N.E.2d 791, affd. 392 U.S. 236, 88 S.Ct. 1923, 20 L.Ed.2d 1060])." City of New York, 86 NY2d at 291-292.

The court finds that the third exception, which concerns Article IX of the New York State Constitution, is applicable to the issue at hand. "Article IX further provides that a special law relating to the property, affairs or government of any local government may not be enacted without a 'home rule message' from the locality or the localities affected by the law (N.Y. Const., art. IX, § 2[b][2]). A home rule message is a 'request of two thirds of the total membership of [the local] legislative body or * * * [a] request of its chief executive officer concurred in by a majority of such membership' (id.)." *Patrolmen's Benevolent Ass'n of City of New York Inc. v. City of New York*, 97 N.Y.2d 378, 385, 767 N.E.2d 116, 120 (2001). In addition, a special law can be passed, "On certificate of necessity from the governor reciting facts which in the judgment of the governor constitute an emergency requiring enactment of such law and, in such latter case, with the concurrence of two-thirds of the members elected to each house of the legislature." N.Y. Const., art. IX § 2(b)(2)(b).

In the instant matter, the court finds that the MTA tax bill is related to the property, affairs or government of the local governments named as plaintiffs. Therefore, it is relevant to determine if the MTA payroll tax is a special or general law. Defendants contend that home rule powers are not applicable here because the MTA payroll tax is a general law. "A general law is defined as a 'law which in terms and in effect applies alike to all counties, all counties other than those wholly included within a city, all cities, all towns or all villages'" (N.Y. Const., art IX, § 3[d][1]). In contrast, a 'special law' is defined as a 'law which in terms and in effect applies to one or more, but not all, counties, counties other that those wholly included within a city, cities, towns or villages' (N.Y. Const., art. IX, § 3[d][4])." *Patrolmen's Benevolent Ass'n of City of New York Inc.*, 97 N.Y.2d at 385.

The counties, towns and villages that are affected by the MTA payroll tax are those within the Metropolitan Commuter Transportation District (MCTD). This district is widespread and includes seven different counties, which stretch from the east end of Long

Island to as far north as Dutchess county. The MCTD is so widespread that it cannot be deemed to be "within a city" which is needed for a general law. The MTA payroll tax applies to counties, but not all counties in the state, which is the rationale for finding that this is a special law.

However, there is one way around the Home Rule message. "A recognized exception to the home rule message requirement exists when a special law serves a substantial State concern (id., at 389, 654 N.Y.S.2d 85, 676 N.E.2d 847; see also, *Matter of Kelley v. McGee*, 57 N.Y.2d 522, 538, 457 N.Y.S.2d 434, 443, N.E.2d 908 [1982]). To overcome the infirmity of enacting a special law without complying with home rule requirements, the enactment must have a reasonable relationship to an accompanying substantial State concern (*City v. PBA*, supra, at 391, 654 N.Y.S.2d 85, 676 N.E.2d 847). Thus, a special law that relates to the property, affairs or government of a locality is constitutional only if enacted upon home rule message or the provision bears a direct a reasonable relationship to a 'substantial State concern' (id., at 393, 654 N.Y.S.2d 85, 676 N.E.2d 847)." Id.

It is not contested that the counties within the MCTD would be affected if there were a decrease in the capability of the MTA. However, it is hard to see how the residents in Buffalo or other upstate areas would similarly be affected. If this matter really is a substantial state concern, then the legislature could have reasonably taxed every county within the state under a general tax law to meet the MTA deficit. Instead, it chose to only tax those counties within the MCTD. This is because it is only the counties within the MCTD that are affected by the continuance of development of the MTA. By the actions of the legislature itself, it has been shown that the MTA payroll tax is only an issue that is of concern to the residents within the MCTD. Therefore, the budgetary crisis of the MTA is not a matter of substantial state concern and the exception to the home rule message requirement does not apply in this case.

The Court finds that the MTA payroll tax is a special law, which had to be passed by a home rule message. This was not done. Therefore, while municipalities do not have the capacity to challenge the constitutionality of state legislation, the MTA payroll tax falls within the third exception. In addition, the court finds that this law does not bear a reasonable relationship to a substantial State concern. Thus, this special law was not passed within the exception provided for in the State constitution. The MTA payroll tax impinges upon the home rule powers of the municipality guaranteed under article IX of the State Constitution, which gives the plaintiffs the capacity to sue.

C. Constitutionality of the MTA Payroll Tax

The court finds that the MTA payroll tax was unconstitutionally passed by the New York State Legislature. The MTA payroll tax is a special law, which does not serve a substantial state interest. This law should have been, according to the State Constitution, passed with either a Home Rule message or by message of necessity with two-thirds vote in each house. This did not occur, therefore this law was passed unconstitutionally.

As such, the plaintiffs' motions' for summary judgment is granted to the extent that the court finds the MTA payroll tax to be unconstitutional and defendants' motion to dismiss the complaint is denied except as to the individual defendants as noted. Submit judgment on notice.

Dated: AUG 22 2012

J.S.C.