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Local Finances

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LOCAL FINANCES

N.Y. CONST. art. VIII, § 1:

No county, city, town, village or school district shall give or loan its credit to or in aid of any individual, or public or private corporation or association

N.Y. CONST. art. VIII, § 2:

No county, city, town, village or school district shall contract any indebtedness except for county, city, town, village or school district purposes, respectively.

N.Y. CONST. art. X, § 5:

Neither the state nor any political subdivision thereof shall at any time be liable for the payment of any obligations issued by such a public corporation heretofore or hereafter created, nor may the legislature accept, authorize acceptance of or impose such liability upon the state or any political subdivision

SUPREME COURT, APPELLATE DIVISION

FIRST DEPARTMENT

Tribeca Community Ass'n, Inc. v. New York State Urban
Development Corp.¹
(decided January 27, 1994)

Plaintiffs claimed that their state constitutional rights were violated when defendant, New York City Urban Development Corporation [hereinafter UDC] leased city property to defendant commodities exchange, which constituted a gift or loan to a

1. 200 A.D.2d 536, 607 N.Y.S.2d 18 (1st Dep't 1994).

private party for its private benefit.² The court held that the lease was not unconstitutional because the private benefit to defendant was only incidental to the project's substantial public purpose.³

Defendant commodities exchange contended that its location in Four World Trade Center in New York City was inadequate.⁴ To encourage the exchange to remain in New York City, the proponents proposed that a site north of the World Trade Center be conveyed to the defendants from the city in order to construct a larger facility.⁵ The UDC, pursuant to its enabling act,⁶ found the land to be blighted⁷ and thus conducive for city renewal.⁸

2. *Id.* at 537, 607 N.Y.S.2d at 18.

3. *Id.* at 537, 607 N.Y.S.2d at 19.

4. *Id.* at 536, 607 N.Y.S.2d at 18-19.

5. *Id.* at 536-37, 607 N.Y.S.2d at 18.

6. N.Y. UNCONSOL. LAWS § 6260(c) (McKinney 1979). This provision states:

(c)[I]n the case of a land use improvement project:

- (1) That the area in which the project is to be located is a substandard or unsanitary area, or is in danger of becoming a substandard or unsanitary area and tends to impair or arrest the sound growth and development of the municipality;
- (2) That the project consists of a plan or undertaking for the clearance, replanning, reconstruction and rehabilitation of such area and for recreational and other facilities incidental or appurtenant thereto;
- (3) That the plan or undertaking affords maximum opportunity for participation by private enterprise, consistent with the sound needs of the municipality as a whole.

Id.

7. A "blighted" area is liberally defined by the courts. *See, e.g.,* *Yonkers Community Dev. Agency v. Morris*, 37 N.Y.2d 478, 335 N.E.2d 327, 373 N.Y.S.2d 112 (1975). In *Yonkers*, the issue was the taking of land by the city of Yonkers through its Community Development Agency for the public purpose of clearing blighted areas. *Id.* at 483, 335 N.E.2d at 332, 373 N.Y.S.2d at 118. In determining what is a blighted area, factors to consider may include:

[I]rregularity of the plots, inadequacy of the streets, diversity of land ownership making assemblage of property difficult, incompatibility of the existing mixture of residential and industrial property, overcrowding, the incidence of crime, lack of sanitation, the drain an area makes on municipal services, fire hazards, traffic congestion, and pollution. It can encompass areas in the process of deterioration or

The deal included partial financing from the Economic Development Corporation [hereinafter EDC] and a ninety-nine year lease between defendant exchange and UDC.⁹ Defendants bound themselves to remain in the city for thirty years, with an option to purchase the land after those thirty years at the land's market value.¹⁰

Plaintiffs brought suit claiming that the lease by the city was for defendant's private use and that it constituted a gift or loan to a private party in violation of the State Constitution.¹¹ Defendant's motion for summary judgment was granted and the plaintiffs appealed to the appellate division.¹²

The court found that there was no basis to disturb UDC's finding that the land leased to defendant was blighted.¹³ Moreover, the court found that while defendant received an "incidental" benefit from the project, it was the public which "substantial[ly]" benefited from it.¹⁴ Therefore, the lease was not a gift or loan by the city to a private party and was constitutional.¹⁵

In reaching its conclusion, the court relied on the reasoning of *Murphy v. Erie County*.¹⁶ In *Murphy*, the court held that Erie

threatened with it as well as ones already rendered useless, prevention being an important purpose.

Id. at 483, 335 N.E.2d at 332, 373 N.Y.S.2d at 118.

8. *Tribeca*, 200 A.D.2d at 537, 607 N.Y.S.2d at 19.

9. *Id.* at 536-37, 607 N.Y.S.2d at 19.

10. *Id.* at 537, 607 N.Y.S.2d at 19.

11. *Id.* See N.Y. CONST. art. 8, § 1. This provision states in pertinent part: "No county, city, town, village or school district shall give or loan any money or property to or in aid of any individual, or private corporation or association, or private undertaking. . . ." *Id.*; see also N.Y. CONST. art. 7, § 8, cl. 1. This provision states in pertinent part: "The money of the state shall not be given or loaned to or in aid of any private corporation or association, or private undertaking" *Id.*

12. *Tribeca*, 200 A.D.2d at 536, 607 N.Y.S.2d at 18.

13. *Id.* at 537, 607 N.Y.S.2d at 19.

14. *Id.*

15. *Id.*

16. 28 N.Y.2d 80, 268 N.E.2d 771, 320 N.Y.S.2d 29 (1971). The Erie County Legislature adopted a resolution which authorized the issuance of fifty million dollars to finance the construction of a domed stadium. *Id.* at 84, 268

County's contract with defendant was not an invalid gift or loan of county property to aid a private corporation, and did not violate the New York Constitution, article I, section 8.¹⁷

The court, in *Murphy*, stated that "it is evident that the county's residents will be obtaining the full benefit for which the stadium is intended, the ability to view sporting events and cultural activities, regardless of the identity of the party operating the stadium."¹⁸ Furthermore, even though defendant would derive a benefit from the stadium, it was only incidental because "the very public purpose for which the stadium is authorized will be served by it"¹⁹

Moreover, the *Murphy* court stated that since the lease to defendant was in furtherance of a public and not a private purpose, it could not be construed as a gift or loan of county property in aid of a private corporation.²⁰ Thus, the constitution was not violated because the "lease would be 'incident to providing for the recreation or the pleasure of the public.'"²¹

Similarly, in the case at bar, the lease to defendant commodities exchange was largely for the public purpose of maintaining a source of business in New York City, and the incidental private benefit defendants received from the larger facilities did not transform the lease into a gift or loan to a private party in violation of the State Constitution.²²

N.E.2d at 772, 320 N.Y.S.2d at 31. Thereafter, Erie County, authorized by the Legislature, entered into a contract with defendant Kenford Company in which defendant would donate to the county land to build the stadium in return for a lease of the stadium for forty years, or alternatively, a management agreement for the stadium for twenty years. *Id.* Taxpayers for Erie County brought a lawsuit alleging that the contract the county entered into violated the New York State Constitution, converted the stadium into a private use area and not a public use area, and that the lease to defendant by the county was a loan or gift of county property in aid of a private corporation. *Id.* at 85, 268 N.E.2d at 772, 320 N.Y.S.2d at 31-32.

17. *Id.* at 89, 268 N.E.2d at 775, 320 N.Y.S.2d at 35.

18. *Id.* at 87, 268 N.E.2d at 774, 320 N.Y.S.2d at 34.

19. *Id.* at 87-88, 268 N.E.2d at 774, 320 N.Y.S.2d at 34.

20. *Id.* at 88, 268 N.E.2d at 774, 320 N.Y.S.2d at 34.

21. *Id.* at 88, 268 N.E.2d at 774, 320 N.Y.S.2d at 35 (citation omitted).

22. *Tribeca*, 200 A.D.2d at 537, 607 N.Y.S.2d at 19.