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SUPREME COURT, APPELLATE DIVISION

SECOND DEPARTMENT

Miriam Osborn Memorial Home Assoc. v. Chassin[208]
(printed August 30, 1996)

The plaintiff, Miriam Osborn Memorial Home Association, sought judicial declaration that assessments on the gross receipts of health care facilities made under New York Public Health Law section 2807-d[209] were unconstitutional, that the assessment constituted a tax, that it was not liable for assessments imposed by the law and also sought to enjoin enforcement of the statute.[210] The plaintiff claimed that the statute violated its substantive due process rights, denied it equal protection of the laws and constituted a taking without just compensation.[211] The

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208. N.Y. L.J., Aug. 30, 1996, at 27.

209. N.Y. PUB. HEALTH LAW § 2807-d (McKinney 1993). This section provides in pertinent part:

> 1. (a) Hospitals . . . are charged assessments on their gross receipts . . . on a cash basis in the percentage amounts and for the periods specified in subdivision two of this section. 2.(b)(i) For residential health care facilities the assessment shall be six-tenths of one percent of each residential health care facility's gross receipts received from all patient care services and other operating income . . . . 2.(b)(ii) For residential health care facilities an additional assessment shall be one and two-tenths percent of each residential health care facility's gross receipts received from all patient care services and other operating income . . . . 7. (a) Every hospital shall submit reports on a cash basis of actual gross receipts received from all patient care services and operating income for each month . . . . 7. (b) Every hospital shall submit a certified annual report on a cash basis of gross receipts received in such calendar year from all patient care services and operating income.

Id.

210. *Miriam*, N.Y. L.J., Aug. 30, 1996, at 27.

211. *Id.* In addition to the constitutional issues, plaintiff claimed the statute violated 42 U.S.C. § 1983, and unlawfully imposed a franchise tax upon it. 42 U.S.C. § 1983 provides in pertinent part:

defendants entered two counterclaims seeking compliance with the reporting requirements of the statute and payment of the assessment imposed by § 2807-d.[212] The defendants moved for a dismissal of the plaintiff's complaint and partial summary judgment on their own counterclaims.[213] In response, the plaintiff entered a cross motion for summary judgment on its claims and for dismissal of defendants' counterclaims.[214] The Appellate Division, Second Department, found that the statute was not so arbitrarily designed or enforced as to offend either the Due Process Clauses or the Equal Protection Clauses of the Federal[215] or New York State Constitution,[216] nor did it constitute an unjustified taking under either Constitution.[217] The

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> Every person who, under color of any statute, ordinance, regulation . . . of any State . . . subjects . . . any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Id. N.Y. TAX LAW § 209 (1) (McKinney 1993). This section provides in pertinent part: "For the privilege of exercising its corporate franchise . . . every domestic or foreign corporation . . . shall annually pay a franchise tax . . . ." *Id.*

212. *Miriam*, N.Y. L.J., Aug. 30, 1996, at 27.

213. *Id.*

214. *Id.*

215. U.S. CONST., amend. V. The Fifth Amendment provides in pertinent part: "No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." *Id.*

U.S. CONST. amend. XIV, § 1. The Fourteenth Amendment, section one, provides in pertinent part: "No State shall . . .deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." *Id.*

216. N.Y. CONST. art. I, § 6. Article one, section six, provides in pertinent part: "No person shall be deprived of life, liberty or property without due process of law." *Id.*

N.Y. CONST. art. I, § 7(a). Article one, section seven, provides: "Private property shall not be taken for public use without just compensation." *Id.*

N.Y. CONST. art. I, § 11. Article one, section eleven provides in pertinent part: "No person shall be denied the equal protection of the laws of this state or any subdivision thereof." *Id.*

court granted defendants' summary judgment motion, dismissing plaintiffs' complaint.[218] It further granted partial summary judgment on defendants' counterclaims, directing compliance with the reporting requirements of the statute, and denied plaintiff's cross motion in its entirety.[219]

Another plaintiff, a not-for-profit corporation, owns and operates the Osborn Retirement Community.[220] The nursing home is licensed by New York State under Article 28 of the Public Health Law.[221] Pursuant to section 2807-d of the Public Health Law, plaintiff was required to submit certified monthly and annual income reports to defendants, the New York State Department of Public Health and its Commissioner, Mark Chassin.[222] Defendants, in turn, were authorized under the statute to receive and distribute the assessments.[223] Additionally, the Commissioner was authorized to recoup deficiencies in payments owed by a facility from third party reimbursers, such as Blue Cross and Health Maintenance Organizations.[224]

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217. *Miriam*, N.Y. L.J., Aug. 30, 1996, at 27. The court, in turn, rejected plaintiffs § 1983 claim on the grounds that a deprivation of federal rights was not shown to have occurred under color of state law. *Id.* Plaintiffs contention that it was exempt from §209 of the Tax Law was accepted by the court, which further noted that the plaintiff remained liable for taxes other than a franchise tax, such as the income assessment at issue in this case. *Id.*

218. *Id.*

219. *Id.*

220. *Id.*

221. *Id.* N.Y. PUB. HEALTH LAW § 2800 (McKinney 1993). Section 2800 provides in pertinent part: "In order to provide for the protection and promotion of the health of the inhabitants of the state . . . the department of health shall have the central, comprehensive responsibility for the development and administration of the state's policy with respect to hospital and related services . . . ." *Id. See* N.Y. PUB. HEALTH LAW § 2801 (McKinney 1993). Section 2801 provides the following definition: "Hospital means a facility or institution engaged principally in providing services by or under the supervision of a physician . . . for the prevention, diagnosis, or treatment of human disease . . . including . . . [a] nursing home." *Id.*

222. N.Y. PUB. HEALTH LAW § 2807-d (4) (McKinney1993).

223. N.Y. PUB. HEALTH LAW § 2807-d (6) (McKinney1993).

224. *Miriam*, N.Y. L.J., Aug. 30, 1996, at 27.

On becoming effective on January 1, 1991, the statute provided for a .6 percent assessment on a hospital's gross receipts. The statute provided an exception, only in the case of hospitals experiencing financial hardship due to costs associated with bad debts or the costs of providing charity care.[225] The statute was amended the following year to include an additional 1.2 percent assessment.[226] At that time, exceptions were also created for voluntary, non-profit hospitals, totally dependent on charitable contributions, and for hospitals limited to caring only for police, firefighters, and emergency service workers.[227]

Initially, the court examined plaintiffs contention that the arbitrary and capricious enforcement of the statute violated its due process rights.[228] New York endorses the federal courts' interpretation of the Due Process Clause which holds that legislation, which is reasonably related to accomplishing a permissible governmental objective, satisfies the substantive due process requirements.[229] Plaintiff insisted that the governmental purpose, as demonstrated by the legislative history, was to procure savings in the Medicaid program.[230] This purpose, plaintiff contended, was not furthered by enforcing the statute against non-Medicaid providers like itself.[231] The court, however, disagreed with plaintiff's interpretation of the

225. *Id.*

226. *Id.*

227. *See* N.Y. PUB. HEALTH LAW §2807-d (1)(b) (McKinney 1993). Section 2807-d (1)(b) provides in pertinent part:

> [T]he following categories of hospitals shall not be charged assessments pursuant to this section: (i) voluntary nonprofit and private proprietary general hospitals which qualify for distributions made in accordance with paragraph (c) of subdivision nineteen of section twenty eight hundred seven-c of this article; (ii) voluntary nonprofit hospitals totally financed by charitable contributions or by the income thereon dedicated to the free care of low income patients; and (iii) any facility dedicated solely to the care of police, firefighters, volunteer firefighters, and emergency service personnel.

Id.

228. *Miriam*, N.Y. L.J., Aug. 30, 1996, at 27.

229. *See* Village of Belle Terre v. Boraas, 416 U.S. 1, 13 (1974).

230. *Miriam*, N.Y. L.J., Aug. 30, 1996, at 27.

231. *Id.*

legislative history.[232] The court noted that the statute applied to all "hospitals" licensed under Article 28, and not just those which participated in the Medicaid program.[233] Instead, the court agreed with defendants' position that the reduction of the state budget deficit was the primary objective of the Legislature in enacting the statute.[234]

Further, plaintiff's contention that the statute was not intended to apply to it, because there was no explicit method of enforcement against non-Medicaid hospitals, was similarly rejected.[235] Although the Commissioner of the Department of Health was empowered to command third parties to withhold payments from delinquent institutions and to pay such deficiencies to the Department, the statute did not limit the Commissioner to this method of collection.[236] Plaintiff's reliance on prior decisions which excluded methods of enforcement not mentioned in the statute in question[237] was rejected on the grounds that those statutes provided comprehensive enforcement provisions.[238] In this case, the court noted that there was no similar elaborate enforcement scheme provided by the statute.[239]

Additionally, legislation enacted under the Legislature's power to raise revenue is violative of the Due Process Clause only when it constitutes the arbitrary exercise of a power otherwise

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232. *Id.*
233. *Id.*
234. *Id.*
235. *Id.*
236. *Id.*
237. Transamerica Mtge. Advisors v. Lewis, 444 U.S. 11 (1981)(holding that the Investment Advisers Act of 1940, in providing contractual remedies for breaches of fiduciary duties, precluded a private right of action for damages); N.A. Orlando Constr. Corp. v. Consolidated Edison Co., 129 Misc. 2d 1077, 1079, 495 N.Y.S.2d 883, 885 (Sup. Ct. Queens County 1985) (finding that an excavator was not a member of the class protected by the statutory scheme which required a utility to furnish the location of its underground facilities), *aff'd*, 131 A.D.2d 827, 517 N.Y.S.2d 188 (2d Dep't 1987).
238. *Miriam*, N.Y. L.J., Aug. 30, 1996, at 27.
239. *Id.*

forbidden.[240] The authority of the Legislature to implement a tax scheme is nearly unrestricted, being subject to constraint only when the design is absolutely unreasonable.[241] As the tax scheme in *Miriam* was reasonably related to the legislative purpose of reducing the state budget deficit, and furthered that objective, the court found no violation of the Federal or State Due Process Clauses.[242]

Secondly, the court examined the plaintiff's contention that its equal protection rights under both the 14th Amendment of the Federal Constitution and the New York State Constitution were violated by the exemption of similarly situated facilities from the statutory assessments.[243] Equal rights challenges receive similar treatment in New York and the federal courts.[244] Applying the standard enunciated in *Trump v. Chu*,[245] the court found that the statute must be upheld because its classification system was not offensively discriminatory and was rationally related to a legitimate governmental purpose.[246] Furthermore, the Legislature's latitude in devising a reasonable classification scheme was recognized.[247]

The issue in *Trump* concerned the validity of a real estate gains tax on property transfers in excess of one million dollars.[248] Developers Donald Trump and Richard Pellicane argued that the tax unfairly differentiated between transfers based on a monetary

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240. A. Magnano Co. v. Hamilton, 292 U.S. 40, 44 (1934); *See also* Ames Volkswagen, Ltd. v. State Tax Comm'n, 47 N.Y.2d 345, 348-49, 391 N.E.2d 1302, 1304, 418 N.Y.S.2d 324, 326 (1979) (holding that a statute requiring prepayment of estimated monthly sales tax liability was a proper exercise of legislative authority).

241. *Ames Volkswagen*, 47 N.Y.2d at 349, 391 N.E.2d at 1304, 418 N.Y.S.2d at 326.

242. *Miriam*, N.Y. L.J., Aug. 30, 1996, at 27.

243. *Miriam*, N.Y. L.J., Aug. 30, 1996, at 27.

244. *See* Trump v. Chu, 65 N.Y.2d 20, 478 N.E.2d 971, 489 N.Y.S.2d 455, *appeal dismissed*, 474 U.S. 915 (1985).

245. *Id.*

246. *Miriam*, N.Y. L.J., Aug. 30, 1996, at 27.

247. *Id.* (quoting Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 359 (1973)).

248. *Trump*, 65 N.Y.2d at 22, 478 N.E.2d at 973, 489 N.Y.S.2d at 457.

amount, so that taxpayers whose gains were identical were taxed differently on the basis of the final sale amount.[249] The *Trump* court noted that a gross receipts tax which treated similar transactions differently based on the total receipts of the business had been invalidated by the Supreme Court.[250] However, the Court's objection in that case was the failure to consider profit as a factor in deciding whether to apply the tax.[251] In contrast, the transfer tax in *Trump* was assessed only on the gain from the property.[252] Thus, finding that the tax was only applied to profits, and rationally related to a legitimate state purpose, the court upheld the constitutionality of the tax scheme.[253]

In *Miriam*, plaintiff did not challenge the rational relationship of the exemptions to a legitimate state objective.[254] Additionally, plaintiff failed to meet its burden of proving the absence of any rational basis for the imposition of the classification scheme chosen by the Legislature.[255] The Second Department also rejected plaintiff's contention that it was similarly situated to institutions receiving exemptions under the 1992 amendment.[256] Plaintiff was not a charity hospital, nor did it care exclusively for fire, police, and emergency workers.[257]

Similarly, the court found the plaintiffs' argument that the Department of Health was selectively enforcing the statute without merit.[258] Recognizing that "latitude must be accorded authorities charged with making the decisions related to legitimate law enforcement interests,"[259] the court deferred to the Department of Health's decision not to enforce the assessment

249. *Id.* at 24, 478 N.E.2d at 974, 489 N.Y.S.2d at 458.

250. *Id.* at 25, 478 N.E.2d at 975, 489 N.Y.S.2d at 459 (citing Stewart Dry Goods v. Lewis, 294 U.S. 550, *reh'g denied*, 295 U.S. 768 (1935)).

251. *Trump*, 65 N.Y.2d at 26, 478 N.E.2d at 976, 489 N.Y.S.2d at 460.

252. *Id.*

253. *Id.*

254. *Miriam*, N.Y. L.J., Aug. 30, 1996, at 27.

255. *Trump*, 65 N.Y.2d at 25, 478 N.E.2d at 974, 489 N.Y.S.2d at 458.

256. *Miriam*, N.Y. L.J., Aug. 30, 1996, at 27.

257. *Id.*

258. *Id.*

259. 303 West 42nd Street Corp. v. Klein, 46 N.Y.2d 686, 694, 389 N.E.2d 815, 819, 416 N.Y.S.2d 219, 224 (1979).

against three nursing homes suspected of having assessable income during a period when they had no exemption.[260] Again, the court observed, plaintiff had failed to show that enforcement was impermissibly based on race, religion, or another arbitrary standard.[261]

Lastly, the court examined the plaintiff's contention that the statute violated the Takings Clause of both the Federal and State Constitutions.[262] In the absence of a rigid rule for determining when a statute results in an unconstitutional taking, both the Federal and State courts consider several factors: the statute's economic impact, its impact on investment-backed expectations, and the character of the government action.[263] Once more, plaintiff failed to meet its burden of production concerning the adverse impact of the statute.[264] Additionally, the court characterized the statutory scheme as an attempt to "adjust the benefits and burdens of economic life to promote the common good,"[265] a permissible government action which did not constitute a compensable taking.[266] Citing an early Supreme Court decision,[267] the court observed its lack of power to alter a tax scheme devised by the Legislature for the purpose of redistributing its burdens.[268]

Having failed to demonstrate that any of its claims had merit, plaintiff was not entitled to proceed to trial.[269] Thus, the court granted summary judgment in defendants favor and dismissed the

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260. *Miriam*, N.Y. L.J., Aug. 30, 1996, at 27.
261. *Id.*
262. *Id.*
263. Penn Cent. Transp. Co. v. New York, 438 U.S. 104, 124, *reh'g denied*, 439 U.S. 883 (1978); *See also* Connolly v. Pension Benefit Guaranty Corp., 475 U.S. 211, 224 (1986) (upholding the imposition of penalties on employers withdrawing from pension plans whose benefits are guaranteed by the federal government).
264. *Miriam*, N.Y. L.J., Aug. 30, 1996, at 27.
265. *Connolly*, 475 U.S. at 225.
266. *Miriam*, N.Y. L.J., Aug. 30, 1996, at 27.
267. Dane v. Jackson, 256 U.S. 589, 598-99 (1921).
268. *Miriam*, N.Y. L.J., Aug. 30, 1996, at 27.
269. *Id.*

complaint.[270] Further, in granting partial summary judgment to defendants on their counterclaims, the court directed plaintiff to comply with the statute's reporting requirements.[271] Finally, plaintiff's cross-motion for summary judgment on its claims and for dismissal of defendants' counterclaims was denied.[272]

SUPREME COURT, APPELLATE DIVISION

THIRD DEPARTMENT

Moghimzadeh v. College of Saint Rose[273] (decided February 6, 1997)

Plaintiff, Mahmood Moghimzadeh, was terminated from his employment as a tenured professor at defendant College of Saint Rose, a private college, and alleged that he was deprived of his Federal[274] and State[275] constitutional guarantees of procedural due process.[276] The Appellate Division, Third Department, affirmed the order of the Supreme Court, Albany County which dismissed the plaintiff's complaint for failure to state a cause of action and held that the plaintiff did not have a valid due process claim absent an indication that the defendant's action of dismissal constituted "meaningful State participation."[277]

The plaintiff argued that, although the defendant college is a private entity, it is subject to regulation and inspection by the

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270. *Id.*

271. *Id.*

272. *Id.*

273. 653 N.Y.S.2d 198 (3d Dep't 1997).

274. U.S. CONST. amend. XIV, § 1. Section one provides in pertinent part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law . . . . " *Id.*

275. N.Y. CONST. art. I, § 6. Section six provides in pertinent part: "[N]o person shall be deprived of life, liberty, or property, without due process of law . . . . " *Id.*

276. *Moghimzadeh*, 653 N.Y.S.2d at 198.

277. *Id.* at 199.