

NEW YORK COURT OF APPEALS

Herkimer County Industrial Development Agency v. Village of Herkimer

No. 14 · No. No. 14 · Decided March 25, 2021

SUMMARY

The New York Court of Appeals held that Herkimer County Industrial Development Agency was not personally liable for unpaid water rents incurred by its tenant manufacturer. The Village of Herkimer's water regulations provided remedies including a lien on the premises and shutting off water service, but did not authorize personal liability against the property owner. The court reversed the Appellate Division order and answered the certified question in the negative.

CASE DETAILS

COURT	New York Court of Appeals
WRITING FOR THE COURT	Chief Judge DiFiore; Judge Rivera; Judge Stein; Judge Fahey; Judge Garcia; Judge Wilson
JURISDICTION	New York
DECIDED	March 25, 2021
DOCKET	No. 14
DISPOSITION	reversed
PROCEDURAL POSTURE	Declaratory judgment action concerning liability for unpaid municipal water rents; the plaintiff appealed from an order of the Appellate Division, and the Court of Appeals also answered a certified question.
PRECEDENTIAL VALUE	Published New York Court of Appeals memorandum decision; precedential value not otherwise specified in the source.
PARTIES	Herkimer County Industrial Development Agency v. Village of Herkimer

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the Village of Herkimer's Water Department Rules and Regulations authorized personal liability against the property owner for unpaid water rents incurred by the owner's tenant.
2. Whether the applicable statutory and regulatory remedies for unpaid water rents were limited to a lien on the property and termination of water service.

HOLDINGS

1. The Water Department Rules and Regulations did not authorize a claim against the Herkimer County Industrial Development Agency for personal liability for the tenant's unpaid water rents.
2. The Agency was not personally liable for the unpaid water rents because the applicable law provided for a lien on the real property rather than personal liability by the owner.

KEY QUOTATIONS

“The Water Department Rules and Regulations of the Village of Herkimer, on which the Village relies, do not authorize a claim against plaintiff for personal liability upon nonpayment of water rents.” (-2)

“For these reasons, we conclude that plaintiff is not liable for the unpaid water rents.” (-3)

FACTUAL BACKGROUND

The Herkimer County Industrial Development Agency owned property involved in bond-financing sale-and-leaseback transactions and leased it to a manufacturer. The manufacturer incurred unpaid water rents. The Village sought a declaration that the Agency was personally liable for those charges, while the Agency sought dismissal of the counterclaim and a declaration of nonliability.

PROCEDURAL HISTORY

The Village of Herkimer asserted by counterclaim that the Herkimer County Industrial Development Agency was personally liable for water rents incurred by its tenant manufacturer. The Appellate Division ruled adversely to the plaintiff insofar as appealed from. The Court of Appeals reversed that portion of the order, granted judgment for the plaintiff, and answered the certified question in the negative.

DISPOSITION

reversed

CASES CITED

- Dunbar v City of New York, 177 App Div 647 (1st Dept 1917), affd 223 NY 597 (1918), affd 251 US 516 (1920)

OPINION

PER CURIAM.

State of New York MEMORANDUM Court of Appeals This memorandum is uncorrected and subject to revision before publication in the New York Reports. No. 14 Herkimer County Industrial Development Agency, Appellant, v. Village of Herkimer, Respondent, et al., Defendant. Charles W. Malcomb, for appellant. Michael J. Longstreet, for respondent. MEMORANDUM: The order of the Appellate Division, insofar as appealed from, should be reversed, with costs, judgment granted in plaintiff's favor in accordance with this memorandum, and the certified question answered in the negative. -1- -2- No. 14 In this declaratory judgment action, brought by Herkimer County Industrial Development Agency (plaintiff), the Village of Herkimer, through a counterclaim, seeks a judgment declaring that plaintiff is personally liable to the Village for certain unpaid water rents.

The bills were incurred by a manufacturer that was plaintiff's tenant pursuant to bond financing sale-and-leaseback transactions. Plaintiff seeks dismissal of the counterclaim and a declaration that it is not personally liable for the water rents. Judgment should be granted in plaintiff's favor.

The Water Department Rules and Regulations of the Village of Herkimer, on which the Village relies, do not authorize a claim against plaintiff for personal liability upon nonpayment of water rents. To the extent the Rules and Regulations determine the Village's remedies for unpaid water bills, they refer to "a lien on the premises where the water is used" (Rule No. 8; see also Village Law § 11-1118 [providing that unpaid water rents constitute a lien on real property]) and to shutting off water supply, upon notice (see Rule No. 9; see also Village Law § 11-1116 [providing that a village may enforce observance of its water use rules and regulations by cutting off water supply]).

The Village points in particular to Rule No. 22, but that provision, which is contained in a section regulating how water meters are used to register consumption, does not impose an additional remedy for nonpayment.

The Village's reliance on *Dunbar v City of New York* (177 App Div 647 [1st Dept 1917], *affd* 223 NY 597 [1918], *affd* 251 US 516 [1920]) is misplaced. *Dunbar* held that a landowner's consent to the supply of water to a tenant "must be deemed to be made with a view to the existing law" (*id.* at 649).

Here, the law applicable to the subject property -2- -3- No. 14 provided for a lien upon the real property, and not personal liability by the owner. *Dunbar*, therefore, does not support the Village's assertion that plaintiff is personally liable.

For these reasons, we conclude that plaintiff is not liable for the unpaid water rents. We need not reach, and take no position on, plaintiff's alternative argument that it possessed only a nominal, non-beneficial ownership interest in the property that was so limited as to defeat any claim of personal liability for the water rents. Order insofar as appealed from reversed, with costs,

judgment granted in plaintiff's favor in accordance with the memorandum herein and certified question answered in the negative.

Chief Judge DiFiore and Judges Rivera, Stein, Fahey, Garcia and Wilson concur. Decided March 25, 2021 -3-

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