No. 64
Roslyn Union Free School District,
Appellant,
v.
Michael Barkan, et al.,
Defendants,
Carol Margaritis,
Respondent.

James M. Wicks, for appellant.
John P. Gibbons, Jr., for respondent.

GRAFFEO, J.:

In this case, we are asked whether a three or six-year statute of limitations applies to causes of action for negligence and breach of fiduciary duty by a school district against a former member of the school board. We hold that the six-year limitations period in CPLR 213 (7) is applicable and, therefore,

this action was timely commenced.

I

In September 2002, an accounting firm hired by plaintiff Roslyn Union Free School District discovered irregularities in the district's financial records. An audit revealed that Pamela Gluckin, the assistant superintendent for business, had stolen $223,000 from district accounts. The Roslyn Union Free School District Board of Education (the Board) was notified of Gluckin's misconduct and it decided to allow Gluckin to repay the misappropriated funds (along with attorney's fees and accounting costs) and retire. The Board, however, did not notify law enforcement authorities or state officials about Gluckin's criminal activities, nor did it publicly disclose her illegal conduct.

Unfortunately, the theft by Glucken turned out to be just one component of a long-running conspiracy to loot the school district's coffers. After Glucken left her post, information about additional missing funds surfaced and eventually a criminal investigation was undertaken by the Nassau County District Attorney's Office. In February 2004, Gluckin was arrested for grand larceny in the first degree for stealing more than $1 million from the school district. The investigation also implicated the school district's Superintendent (Frank Tissone) and an account clerk (Deborah Rigano, who was Gluckin's niece), and they too were arrested for grand larceny. An extensive

forensic audit by the State Comptroller determined that, from 1998 through 2004, approximately $11 million had been misappropriated: Gluckin had stolen over $4.6 million; Tassone had taken more than $2.4 million; and Rigano had received about $300,000.[1] In total, various sums had been funneled to more than two dozen people.[2]

In addition to the criminal prosecutions that emerged from these investigations, the school district initiated a lawsuit against former and current members of the Board for their allegedly lax management during the years the funds disappeared and their attempt to keep these illegal activities under wraps. The action was commenced in April 2005 under several theories of liability, including causes of action for breach of fiduciary duty and common-law negligence based on the Board's failure to identify and prevent the ongoing thievery or take further investigatory action after Gluckin's misappropriations were first discovered.[3] The complaint also asserted that the Board members

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[1] Gluckin and Rigano were convicted of second-degree grand larceny and sentenced to prison terms of 3-to-9 years and 2-to-6 years, respectively. Tassone received a 4-to-12 year sentence after being convicted of grand larceny in the first degree.

[2] See Office of the N.Y. State Comptroller, Roslyn Union Free School District, Anatomy of a Scandal, Report of Examination, at 54 (2005).

[3] In addition to breach of fiduciary duty and negligence, the complaint includes causes of action for declaratory judgment, accounting, unjust enrichment and constructive trust (the latter two claims have been abandoned by the school district).

should have implemented internal financial control policies and procedures to ensure reliable oversight and protection of the school district's assets.[4]

Defendant Carol Margaritis was a member of the Board for approximately one year, beginning in 2000. Her departure from the Board occurred before Gluckin's criminal activities came to light. There are no allegations that Margaritis knew about the ongoing illegal scheme, benefitted from the theft of the school district's funds or received any portion of the stolen monies. Margaritis also did not participate in the Board's decision not to reveal Gluckin's initial thievery. Margaritis was, however, a member of the Board during a time period that funds were being stolen by school district employees.

Margaritis moved to dismiss the complaint against her, arguing that the causes of action were time-barred because the school district's claims were subject to the three-year statute of limitations in CPLR 214 (4) and the complaint was filed more than three years after she ceased being a school board member.

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[4] In a separate but related action, Supreme Court, Nassau County, explained in its decision that the school district had several insurance policies that may have provided coverage for a portion of its losses (see Rosyln Union Free School Dist. v Jaspan Schlesinger Hoffman, LLP, Index No. 17083/05 [Sup Ct, Nassau County, July 7, 2006, Davis, J.]). Apparently, the insurers had disclaimed coverage because the Board had not timely informed them about Gluckin's activities after her misconduct was discovered (see id.). The Board's alleged failure to promptly notify the insurance carriers, and the school district's corresponding lost opportunity to pursue insurance claims, are among the underlying liability issues in the appeal before us.

The school district countered that CPLR 213 (7) provided a six-year statute of limitations since the school district is, by definition, a municipal corporation that may sue a former board member to recover damages. Supreme Court agreed with Margaritis and dismissed the claims against her. The Appellate Division affirmed, reasoning that the three-year period set forth in CPLR 214 (4) was applicable (71 AD3d 660 [2d Dept 2010]). We granted leave to appeal (15 NY3d 702 [2010]) and now conclude that the causes of action for breach of fiduciary duty, negligence and declaratory judgment should be reinstated as timely.

II

This is an unusual case because it is rare for school districts to engage in litigation against the individuals who voluntarily seek election to serve on school boards. Such public service is commendable and a vital component of our state's legal and moral duty to educate its children. The filing of a lawsuit by a school district against the members of its school board is certainly a disincentive for attracting qualified candidates to perform this important civic function. Here, apparently, the school district responded to a particularly egregious set of facts involving severe financial mismanagement -- over $11 million was stolen from taxpayers in a criminal conspiracy operated by two high-ranking school district employees and certain members of the Board were allegedly complicit because they may have breached the duties that were entrusted to them to

protect the school district's assets. The question before us is not whether any Board members bear a degree of responsibility for these losses, but whether the case against defendant Margaritis was timely filed.

Causes of action that seek monetary damages for injury to property are generally subject to a three-year statute of limitations (see CPLR 214 [4]; IDT Corp. v Morgan Stanley Dean Witter & Co., 12 NY3d 132, 139 [2009]). But CPLR 213 (7) extends the limitations period to six years for "an action by or on behalf of a corporation against a present or former . . . officer . . . to recover damages for waste or for an injury to property or for an accounting in conjunction therewith."[5] If the specific language of CPLR 213 (7) encompasses a particular claim, it supplants the general three-year rule of CPLR 214 (4). The issue here then distills to whether a school district is a "corporation" within the meaning of CPLR 213 (7), thereby providing a six-year statute of limitations for covered claims. We hold that it is.

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[5] An "injury to property" is broadly defined as "an actionable act, whereby the estate of another is lessened, other than a personal injury, or the breach of a contract" (General Construction Law § 25-b). Three of the causes of action at issue here are premised on an injury to property -- the loss of the school district's funds: the claims for breach of fiduciary duty and negligence seek monetary damages as relief, and the claim for declaratory judgment is premised on the existence of a breach of fiduciary duty (see generally Solnick v Whalen, 49 NY2d 224, 229-230 [1980]). The fourth cause of action, for an accounting, is addressed in CPLR 213 (7).

We begin our analysis with the General Construction Law, which supplies the definitions of certain statutory terms used to interpret the language and purpose of a statute (see General Construction Law § 110). This Court has previously relied on the General Construction Law when considering the applicability of a statute of limitations (see Western Elec. Co. v Brenner, 41 NY2d 291, 293 [1977]; Empire Trust Co. v Heinze, 242 NY 475, 478-479 [1926]) and we again find it appropriate to do so.

General Construction Law § 65 (a) (1) defines the term "corporation" as referring to, among other entities, a "public corporation." A "public corporation," in turn, includes a "municipal corporation" under General Construction Law §§ 65 (b) (1) and 66 (1). And the term "municipal corporation," as defined in General Construction Law § 66 (2), expressly embraces a "school district." Because a school district is both a municipal corporation and a public corporation, it falls within the ambit of the term "corporation" in CPLR 213 (7).

Other provisions of State law recognize that school districts are corporations. The state constitution, for example, describes a school district as a "public corporation" (NY Const, art X, § 5) -- terminology identical to that appearing in General Construction Law § 65 (a) (1). Education Law § 1701 similarly denotes that the board of a union free school district is a "body corporate." Other statutes also refer to school districts as

municipal corporations (see General Municipal Law § 119-n [a]; Public Officers Law § 10; RPTL 102 [10]). Furthermore, we have long observed that school districts are inherently corporate in nature (see e.g. Greater Poughkeepsie Library Dist. v Town of Poughkeepsie, 81 NY2d 574, 580-581 [1993]; Bassett v Fish, 75 NY 303, 311-312 [1878]). Utilizing a plain language analysis, school districts have been deemed corporations and, as such, they benefit from the limitations period that applies to certain corporate causes of action.[6]

Margaritis maintains that we should reject this definitional approach because, when the Legislature intends for a statute to apply to a school district, it has used the specific term "school district" in the statutory text. Margaritis points to Education Law § 3813, which imposes certain notice of claim requirements on actions brought "against any school district." This argument fails to appreciate the distinction between a narrowly drawn statute and a more general provision -- such as CPLR 213 (7) -- which was intended to apply in a myriad of different circumstances. Education Law § 3813 is a specific statute that sets forth the procedures for pursuing a claim against a school district as well as certain other educational entities. But it has no bearing on the statute of limitations

[6] Under Executive Law § 63-c, the Attorney General is empowered to elect to sue on behalf of a school district to recover public property that has been misappropriated. Such an action is subject to a limitations period of six years (see CPLR 213 [5]).

governing when a school district may initiate a lawsuit. The Legislature could have enacted a statute that narrowly imposes time limitations for actions commenced by school districts against present or former board members, but it has not done so. In the absence of such a legislative directive, the appropriate limitations period must be determined by referring to the CPLR, which is general by design. Indeed, since the Legislature used the more general term, which it had defined to include "school district[s]" (General Construction Law § 66 [2]), it would have been redundant to separately list "school districts" in CPLR 213 (7), as Margaritis insists should have happened. Consequently, we cannot agree that school districts should be excluded from the purview of CPLR 213 (7).[7]

III

It has been suggested that CPLR 213 (7) should not control here because that statute is restricted to equitable causes of action asserted by a corporation against its former officers or directors. This is not so. Equitable claims evoke non-monetary relief, such as the issuance of an injunction, an

[7] Another contention proffered by Margaritis -- that school board members are not "directors" covered by CPLR 213 (7) -- is refuted by General Construction Law § 66 (15), which defines the term "director" to include "any member of the governing board of such corporation, whether designated as director, trustee, manager, governor, or by any other title, designated to manage the affairs of a corporation." A member of a school board is necessarily a member of the governing board of the school district, the entity responsible for managing the district.

accounting, or a remedy in the nature of specific performance or reformation of a contract (see Blacks Law Dictionary 33 [9th ed]). But CPLR 213 (7) applies to all "action[s]," with no differentiation between legal and equitable claims. In fact, equitable causes of action are usually subject to a six-year statute of limitations by application of the "catch-all" provision in CPLR 213 (1) (see Siegel, NY Prac § 36 [4th ed]), which suggests that there is no basis for limiting subdivision (7) to equitable claims. Furthermore, subdivision (7) employs the phrase "to recover damages" -- the quintessential reference to non-equitable monetary relief. From its plain language, CPLR 213 (7) provides a corporation, such as a school district, with six years to assert both equitable and non-equitable causes of action against a former director, officer or shareholder.

The legislative history of CPLR 213 (7) further confirms that its reach covers non-equitable and equitable causes of action. The statute's lineage can be traced back to at least the early 1800s (see 3 Rev Stats, ch IV, tit 2, art 4, § 44 [1829]), the Field Code (see L 1848, ch 379, § 89; L 1849, ch 438, § 109) and the Code of Remedial Justice (see L 1876, ch 448, chap IV, tit 2, § 394; see generally Denman v McGuire, 101 NY 161, 164 [1886]; Throop, The Code of Civil Procedure, at xii [1877]). The limitations period was reduced from six to three years when the Code of Civil Procedure was adopted (see L 1877, ch 416, § 394) and that time limit was carried over when the

Civil Practice Act became law (see L 1920, ch 925; Civil Prac Act § 49 [4]).

Despite the shortened statute of limitations enacted in section 49 of the Civil Practice Act, this Court decided that a six-year statute of limitations applied to causes of action to recover for an injury to corporate property caused by negligence and that a ten-year period applied to equitable claims (see Potter v Walker, 276 NY 15, 26-27 [1937]). After Potter, New York courts began to apply various limitations periods -- three, six or ten years (see L 1942, ch 851, Bill Jacket at 29, 34) -- depending on the theory of liability asserted, the relative culpability of the alleged wrongdoer and the nature of the corporation (see e.g. Dunlop's Sons, Inc. v Spurr, 285 NY 333, 336 [1941]; Mencher v Richards, 283 NY 176, 182 [1940]). In fact, all three periods were examined in some cases (see e.g. Coane v American Distilling Co., 298 NY 197, 207 [1948]). Needless to say, this situation caused much confusion (see L 1942, ch 851, Bill Jacket at 14, 57, 80).

The Legislature responded in 1942 by enacting Civil Practice Act § 48 (8) (see L 1942, ch 851, § 1). It resurrected the six-year rule as the general statute of limitations for corporate actions against directors, officers or shareholders. Notably, the statute also abrogated the distinction between legal and equitable claims by applying the six-year period to all "legal or equitable" actions by a corporation against an officer

for an accounting or fraud "or to recover a penalty or forfeiture imposed or to enforce a liability created by common law or by statute" (Civil Practice Act § 48 [8]). But actions "to recover damages for waste or for an injury to property or for an accounting in connection therewith" were excluded from the six-year limitations period -- a three-year statute of limitations applied to these types of claims (see id.).

Eventually, in 1962, the Legislature eliminated this distinction, making the six-year limitations period "applicable to all actions against a director, officer, or stockholder of a corporation" (Sixth Report to the Legislature by the Senate Finance Committee relative to the Revision of the Civil Practice Act, 1962 Legis Doc No 8, at 91 [emphasis added]; see L 1962, ch 308, Bill Jacket at 572, 617; 4A NY Consol Laws Serv, CPLR 213, at 334, Advisory Committee Notes). This new provision was codified as CPLR 213 (8) (see L 1962, ch 308) and read as follows:

> "an action by or on behalf of a corporation against a present or former director, officer or stockholder for an accounting, or to procure a judgment on the ground of fraud, or to enforce a liability, penalty or forfeiture, or to recover damages for waste or for an injury to property or for an accounting in conjunction therewith."[8]

Subdivision (8) was later renumbered as subdivision (7) (see L 1975, ch 43, § 2), but its substantive language has not been

[8] The statute was amended to correct a typographical error before the effective date of the CPLR (see L 1963, ch 532, § 5).

altered since the CPLR took effect. Hence, since 1963, section 213 has provided a uniform six-year statute of limitations for any action by a corporation against its present or former officers, directors or stockholders, whether seeking equitable or legal relief. Because CPLR 213 (7) has remained worded in this manner for almost five decades without any substantive restructuring, there is no merit to the assertion that the statute does not cover causes of action for money damages.

IV

Based on the text of CPLR 213 (7), the applicable definitional provisions of the General Construction Law and the statute's underlying legislative history, we conclude that a six-year statute of limitations governs claims of this nature. As a result, the causes of action in this case for breach of fiduciary duty, common-law negligence, declaratory judgment and an accounting were timely commenced against defendant Margaritis.[9]

V

Although the complaint here was not barred by the statute of limitations, we agree with the Appellate Division that the school district's allegations do not state a cognizable cause of action against Margaritis for an accounting. This equitable remedy is designed to require a person in possession of financial

[9] Because we find the claims timely under CPLR 213 (7), it is unnecessary for us to address the school district's alternative argument premised on CPLR 213 (5).

records to produce them, demonstrate how money was expended and return pilfered funds in his or her possession (see generally Ederer v Gursky, 9 NY3d 514, 525 [2007]). As we have noted, there is no allegation that Margaritis received any of the stolen monies or possessed any relevant documentary proof that the district itself has not acquired. Since the State Comptroller was able to trace countless financial transactions in order to determine how the vast bulk of the stolen monies was used and the identity of the individuals who received the funds, there appears to be no need for an accounting against this individual. On these facts, this cause of action should be dismissed.

Accordingly, the order of the Appellate Division should be modified, without costs, by reinstating the causes of action for breach of fiduciary duty, common-law negligence and declaratory judgment as against defendant Margaritis, and, as so modified, affirmed.

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Order modified, without costs, by reinstating the causes of action for breach of fiduciary duty, negligence and declaratory judgment as against defendant Carol Margaritis, and as so modified, affirmed. Opinion by Judge Graffeo. Chief Judge Lippman and Judges Ciparick, Read, Smith, Pigott and Jones concur.

Decided May 3, 2011