

NO. CV 03 0566126S : SUPERIOR COURT  
DOMINION NUCLEAR, ET AL. : JUDICIAL DISTRICT OF  
 : NEW LONDON  
 : AT NEW LONDON  
v.  
TOWN OF WATERFORD : SEPTEMBER 23, 2004

MEMORANDUM OF DECISION  
ON PLAINTIFFS' MOTION TO DISMISS SPECIAL DEFENSES

This is a real estate and personal property tax appeal by the plaintiff Dominion Nuclear Connecticut, Inc., et al. (Dominion Nuclear), contesting the valuation placed on its property by the assessor for the defendant town of Waterford as of the last revaluation on October 1, 2002. In addition to answering the eighty-three counts contained in Dominion Nuclear's complaint, Waterford filed four special defenses claiming that Dominion Nuclear lost its exemptions from the personal property tax because of alterations to the property, an intentional relinquishment of the exemption and the inability of Dominion Nuclear to take an assignment of an exemption. Dominion Nuclear now moves to dismiss those four special defenses for lack of subject matter jurisdiction.

As the basis for its motion to dismiss, Dominion Nuclear claims that (1) the town has not exhausted its administrative remedies; (2) the Connecticut department of environmental protection (DEP) of the state of Connecticut retains jurisdiction over issues relating to exemptions of property used for air pollution; and (3) the assessor has no authority to question the validity of the DEP's certification granting the exemption.

Waterford's response to Dominion Nuclear's motion to dismiss is that there is no jurisdictional issue involved in its special defenses, rather they involve issues of law for the court to resolve. Waterford argues that it is inappropriate to use a motion to dismiss to attack the merits of a special defense. We agree with the town. The issues raised by the special defenses are not jurisdictional in nature but rather issues of law for this court to decide.

Dominion Nuclear relies on the holding in Connecticut Bank & Trust Co. v. Brown, Superior Court, judicial district of Waterbury, Docket No. 097908 (June 10, 1994) (11 Conn. L. Rptr. 607) as its authority that a motion to dismiss may properly be used to challenge special defenses, where, as here, those special defenses call into question whether it is the court or the DEP that should determine whether Dominion Nuclear has lost its exemption. A motion to dismiss can be used to contest a court's subject matter jurisdiction. Practice Book § 10-31. In the present action, which is a tax appeal, the subject matter is the determination of the value of the plaintiffs' real estate and personal property. This court has jurisdiction over such matters as granted by the legislature in General Statutes § 12-117a. As noted in Carrubba v. Moskowitz, 81 Conn. App. 382, 401, 840 A.2d 557, cert. granted, 268 Conn. 916, 847 A.2d 310 (2004), the proper procedure for attacking a special defense used as a bar to an action is either a motion to strike or a motion for summary judgment, even though, in the past, special defenses have been challenged by a motion to dismiss where no objection has been taken to that procedure. Practice Book § 10-39 (a) (5); see also Fort Trumbull Conservancy, LLC v. Alves, 262 Conn. 480, 497-502, 815 A.2d 1188 (2003) (treating a motion to dismiss as a motion to strike); McCutcheon & Burr, Inc. v. Berman, 218 Conn. 527, 590 A.2d 438 (1991).

Connecticut Bank & Trust, supra, 11 Conn. L. Rptr. 607, relied upon by Dominion Nuclear, was a foreclosure action in which the plaintiff filed a motion to dismiss and a motion to strike the counterclaims and special defenses raised by the defendants. As stated in that case: "The allegations of the defendants' counterclaims and special defenses are brought directly against the FDIC. The claims relate to the conduct of the FDIC while pursuing the foreclosure action as receiver for CBT and NCBT. As such, the defendants' counterclaims and special defenses seek payment from and a

determination of rights to the assets of the FDIC, and assert claim[s] relating to any act or omission of the FDIC as receiver . . . .” Connecticut Bank & Trust Co. v. Brown, supra, 11 Conn. L. Rptr. 608-609. Broadly construing the word “claim” as used in the Financial Reform and Recovery Act, 12 U.S.C. § 1281, the court in Connecticut Bank and Trust dismissed the defendant’s counterclaims and special defenses because they had not first exhausted their administrative remedies by seeking a review before the FDIC of those allegations contained in their counterclaims and special defenses. Connecticut Bank & Trust based its authority to dismiss the counterclaims and special defenses on Park City Hospital v. Commission on Hospitals & Health Care, 210 Conn. 697, 702, 556 A.2d 602 (1989). Park City did not deal with a motion to dismiss a special defense but rather dealt with the issue of the court, in the absence of a motion to dismiss, disposing of the case on the its own motion.

The basic purpose of a motion to dismiss is to determine whether, on the face of the record, this court has jurisdiction to proceed with the case. Goodyear v. Discala, 269 Conn. 507, 511, 849 A.2d 791 (2004). As we have previously stated, the issues presented by the four special defenses filed by the town do not raise jurisdictional issues.

Accordingly, the plaintiffs’ motion to dismiss is denied.

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Arnold W. Aronson  
Judge Trial Referee