

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: January 5, 2017

522911

MAUREEN ABRAMOSKI et al.,
Appellants,

v

MEMORANDUM AND ORDER

STATE OF NEW YORK,
Respondent.

Calendar Date: November 18, 2016

Before: Peters, P.J., McCarthy, Egan Jr., Lynch and Devine, JJ.

Charny & Associates, Rhinebeck (Russell G. Wheeler of
counsel), for appellants.

Eric T. Schneiderman, Attorney General, Albany (Julie M.
Sheridan of counsel), for respondent.

McCarthy, J.

Appeal from an order of the Court of Claims (DeBow, J.),
entered June 1, 2015, which granted defendant's motion for
summary judgment dismissing the claim.

The facts at issue on this appeal are more fully discussed
in a previous case before this Court (Matter of Abramski v New
York State Educ. Dept., 134 AD3d 1183 [2015], lv dismissed and
denied 27 NY3d 1044 [2016]). Claimants are retired employees of
the West Park Union Free School District Number Two, Town of
Esopus, Ulster County (hereinafter the District). The District
is a special act school district created by special legislation
in 1973 for the purpose of educating children of a residential
treatment facility (see Education Law § 4001 [8]; L 1967, ch 566,
as amended by L 1973, ch 744). Due to a significant decline in

enrollment, the residential treatment facility announced its closing in January 2011 and the Board of Education of West Park Union Free School District (hereinafter the Board) resolved to dissolve the District. The Board notified the State Education Department (hereinafter SED) of its decision to cease operation. Thereafter, SED informed the Board of its determination that the close-down tuition rate would not cover certain long-term contractual obligations, such as claimants' lifetime health and dental insurance coverage, and eventually the Board stopped meeting those obligations. This Court has since determined that SED's determination in that regard was not arbitrary, capricious or affected by an error of law (Matter of Abramoski v New York State Educ. Dept., 134 AD3d at 1185).

Meanwhile, in a CPLR article 78 proceeding and plenary action initiated by claimants, Supreme Court (McNamara, J.) issued an order of default judgment against the Board and the District's superintendent awarding past and future compensatory damages, plus postjudgment interest, in the amount of \$515,357.06 for claimant Maureen Abramoski and \$216,687.45 for claimant Joanne Petrelli as to their breach of contract claims regarding their insurance coverage. Now, in this parallel Court of Claims action, claimants seek monetary damages from defendant for the cost of obtaining alternative insurance coverage, on allegations of, among other things, tortious interference with petitioners' contracts with the District. Thereafter, the Court of Claims (DeBow, J.) granted defendant's motion for summary judgment dismissing the claim. Claimants appeal, and we affirm.

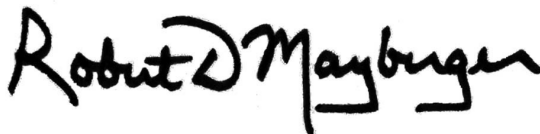
The Court of Claims properly granted defendant's motion for summary judgment. The courts of this state have uniformly rejected tortious interference claims when the alleged interference is a discretionary act taken by a public official in performance of public duties that are "justifiable pursuant to statutory command" (Cristo Bros. v Troy Urban Renewal Agency, 116 AD2d 793, 794 [1986], affd for reasons stated below 68 NY2d 819 [1986]; see Tango v Tulevech, 61 NY2d 34, 40 [1983]; Montano v City of Watervliet, 47 AD3d 1106, 1110 [2008]; 4430 N. Bailey, Inc. v Town of Amherst, 9 AD3d 853, 854 [2004]; Franbilt, Inc. v New York State Thruway Auth., 290 AD2d 705, 707 [2002]; MLI Indus. v New York State Urban Dev. Corp., 205 AD2d 998, 999

[1994])). Here, defendant put forth prima facie evidence that the only action that SED took that affected claimants' contracts was its determination that the close-down tuition rate would not cover certain outstanding long-term debt obligations of the District, such as claimants' insurance. Statute and regulation tasked the Commissioner of Education to make a discretionary determination as to the costs covered by the close-down tuition rate (see Education Law § 4405 [4] [a]; 8 NYCRR 200.9 [f] [1] [i]). As claimants' submissions failed to raise an issue of fact as to whether SED made a discretionary determination that was justified pursuant to statutory command, the court properly granted defendant's motion for summary judgment dismissing the claim (see Montano v City of Watervliet, 47 AD3d at 1110; 4430 N. Bailey, Inc. v Town of Amherst, 9 AD3d at 854; Franbilt, Inc. v New York State Thruway Auth., 290 AD2d at 707; MLI Indus. v New York State Urban Dev. Corp., 205 AD2d at 999; Cristo Bros. v Troy Urban Renewal Agency, 116 AD2d at 794; see generally Matter of Abramowski v New York State Educ. Dept., 134 AD3d at 1185-1186). Claimants' remaining arguments have been considered and are without merit.

Peters, P.J., Egan Jr., Lynch and Devine, JJ., concur.

ORDERED that the order is affirmed, without costs.

ENTER:

A handwritten signature in black ink, reading "Robert D. Mayberger". The signature is written in a cursive, flowing style with a large, stylized 'R' and 'M'.

Robert D. Mayberger
Clerk of the Court