Appeal No. 23-CV-897

DISTRICT OF COLUMBIA COURT OF APPEALS

EAB GLOBAL, INC.,
Appellant,

v.

DISTRICT OF COLUMBIA,
Appellee.

Appeal from the Superior Court of the District of Columbia, Civil Division, Case No. 2023 CVT 000012

REPLY BRIEF OF APPELLANT EAB GLOBAL, INC.

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I. INTRODUCTION

If the Court affirms the dismissal below, EAB Global, Inc. ("EAB") is left without any remedy for its breach of contract claim against the District. Case law plainly prohibits application of the Anti-Injunction Act in situations such as this, where it would leave the plaintiff without any other available remedy. *South Carolina v. Regan*, 465 U.S. 367, 378 (1984); *Z St. v. Koskinen*, 791 F.3d 24, 30-31 (D.C. Cir. 2015). Yet the District barely acknowledges the case law and suggests only that the Landlord should be forced to pursue an administrative remedy on EAB's behalf – ignoring case law saying this is not a viable option. *South Carolina*, 465 U.S. at 378. The fact is the District entered into a contract with a non-taxpayer, knowing the non-taxpayer would have no option but to file suit to resolve a dispute arising out of the contract, and the District now self-servingly seeks to block EAB's ability to enforce the terms of their agreement.

The Court should remand on this basis alone. The Court need not consider the merits of whether the contract did or did not promise a $2.1 million abatement to EAB. Rather, the question for the Court is one of access, and whether EAB can be left with no opportunity to redress its breach of contract claim. The answer, founded in case law, is no – the Anti-Injunction Act was never intended to bar claims outright, only to funnel them to alternative remedies *where available*.

As additional grounds for finding that the Anti-Injunction Act does not apply,

EAB's breach of contract claim does not involve the assessment or collection of taxes. First, EAB's claim for past tax years involves taxes already assessed and collected, which cannot *prevent* the assessment or collection of taxes already assessed and collected. And the lawsuit further does not challenge the assessed tax liability for future years (i.e., it does not challenge the assessed value of the property and resulting tax liability) or the collection of taxes by a non-party. Rather, it is based entirely on the terms a contract between the District and EAB, a non-taxpayer. Further, even if the Anti-Injunction Act did apply, an exception would allow the case to move forward regardless.

For all of the reasons stated herein, and in EAB's opening brief, EAB respectfully requests that the Court reverse and remand the Superior Court's order to allow EAB's claims against the District to be heard on the merits.

II. ARGUMENT

A. The Superior Court Erred in Holding That the Anti-Injunction Act Applies.

1. EAB's Sole Remedy for Its Injury Is a Breach of Contract Suit.

The Supreme Court and D.C. Circuit have outrightly held that the Anti-Injunction Act does not apply in circumstances where plaintiffs lack any alternative remedy for their injuries. *South Carolina*, 465 U.S. at 378; *Z St.*, 791 F.3d at 30-31 ("[T]he Act does not apply in situations where the plaintiff has no alternative means to challenge the IRS's action…." (citing *South Carolina*)); *Cohen v. United States*,

650 F.3d 717, 726 (D.C. Cir. 2011) (quoting *South Carolina*). Despite clear precedent, the District seeks to leave EAB without any legal recourse by insisting that a refund claim is the proper remedy, knowing full well that it is not possible.

In its brief, the District agrees that *only* Beacon Capital Partners ("Landlord") – as owner of the Leased Property[1] – can pursue an administrative refund claim through the Office of Tax and Revenue ("OTR"). Br. for Appellee, at 19, *EAB Global, Inc. v. District of Columbia*, No. 23-CV-897 (D.C. Jan. 17, 2025). As an attempted workaround, the District suggests that Landlord, a disinterested third party, should somehow be required to pursue the administrative remedy on EAB's behalf.

But Landlord, by contract, is not obligated to assert any of EAB's claims. J.A. 184 § 11.3(g).[2] The U.S. Supreme Court has long recognized that the "Act was intended to apply only when Congress has provided an alternative avenue for an aggrieved party to litigate its claims on *its own behalf*." *South Carolina*, 465 U.S. at 381. Patently, and the District agrees, EAB cannot pursue a refund claim on its own behalf because it is not the owner of the Leased Property. At this juncture, the mere possibility of persuading Landlord, who stands to gain nothing, to pursue a

[1] Only "an owner may petition OTR for an administrative review of the real property's assessed value …." D.C. Code § 47-825.01a(d)(1) (emphasis added).
[2] "Landlord shall have no obligation to assist Tenant in obtaining or to obtain the Tax Abatement." J.A. 184 § 11.3(g).

refund claim that solely serves EAB's interests is incongruous with established precedent.

The District's insistence for EAB to persuade Landlord to pursue a refund claim on its behalf is fundamentally flawed and undermines the principles recognized in *South Carolina*. First, the District's allegations that EAB misread *South Carolina* are unfounded. There is no more definitive statement than "Congress did not intend the Anti-Injunction Act to apply where an aggrieved party would be required to depend on the mere possibility of persuading a third party to assert [its] claims." 465 U.S. at 381. In *South Carolina*, the Supreme Court held that because South Carolina had no direct tax liability, it could not utilize any statutory procedure to dispute the tax—i.e., administrative refund claims. *Id.* at 378. The indicia of congressional intent demonstrate that no person should be expected to subject a disinterested individual "to the rigors of litigation…and then…rely on [them] to present the relevant arguments on [its] behalf." *Id.* at 380. Thereby, the court made clear that although other parties by virtue as taxpayers could use these procedures to raise any challenges they wished to make, South Carolina could not be compelled to rely on a third party to assert its claims. *Id.* at 381. This reading is in line with the D.C. Circuit's interpretation of *South Carolina*, where the Court summarized "the Act does not apply in situations where the plaintiff has no alternative means to challenge the IRS's action (*South Carolina*) or where the claim

has no 'implication[s]' for tax assessment or collection (*Cohen*)." *Z St.*, 791 F.3d at 30.

The case the District cites in support of its brief only strengthens EAB's arguments. *See* Br. for Appellee, at 21 (citing *Franchise Tax Bd. of California v. Alcan Aluminium Ltd.*, 493 U.S. 331, 339 (1990)). In *Franchise Tax Board of California*, the U.S. Supreme Court affirmed that being a non-taxpayer with no alternative remedy is a complete bar to the application of the Anti-Injunction Act but found that sole shareholders (non-taxpayers) who have "total control" over a subsidiary (the taxpayer) can force the subsidiary to pursue a refund procedure for the parent's benefit. 493 U.S. at 339. Here, Landlord is not a wholly owned subsidiary of EAB; Landlord has no affiliation whatsoever with EAB beyond the Lease. EAB has no control, let alone "total control," over Landlord. Thus, as supported by *Franchise Tax Board of California*, where the party asserting a claim against the government is a non-taxpayer, and it does not have total control over the taxpayer such that it can force the taxpayer to initiate a refund proceeding, the non-taxpayer is without an alternative remedy, and the Anti-Injunction Act does not apply.

The foregoing leaves no room for doubt that EAB should not be compelled to rely on Landlord to pursue its claims. EAB should therefore not be forced to depend on the impractical and inaccessible remedy of an administrative refund claim.

Even if Landlord were willing or able to pursue a refund claim on behalf of EAB, adjudicating breach of contract claims is beyond the purview of the OTR. That agency's primary function is to assess and collect taxes for "the tax year at issue"—none which are at issue in this case—not to resolve contractual disputes between private parties. D.C. Code § 47-825.01a(d)(3), (4). Even then, Landlord, being a stranger to the contract between EAB and the District, cannot bring a claim on it.[3] *See Fort Lincoln Civic Ass'n, Inc. v. Fort Lincoln New Town Corp.*, 944 A.2d 1055, 1064 (D.C. 2008) (noting that "a stranger to a contract may not bring a claim on the contract"); *see also FiberLight, LLC v. Nat'l R.R. Passenger Corp.*, 81 F. Supp. 3d 93, 105 (D.D.C. 2015) (noting that a "party cannot…enforce or challenge the terms of a contract to which" they are not a party to). Thus, the District's assertion that it does not understand why Landlord, despite not being a party to the contract, would be barred from bringing a claim demonstrates a complete disregard for fundamental contract principles.

The District seems to suggest it is acceptable to enter into a contract with EAB

[3] This is distinguishable from *Franchise Tax Board of California*, where the Court held that a subsidiary would be able to bring a foreign commerce claim (the claim the parent company wanted to raise in federal court) on its own in a refund claim. 493 U.S. at 340. But the Court made clear that "[s]hould the California courts refuse to permit the subsidiaries to raise the contentions that the parents want heard, the result under the Tax Injunction Act might well be different." *Id.* at 341. Here, OTR cannot resolve breach of contract claims, especially where the party asserting the refund claim is not even party to the contract.

and for EAB to have no way to enforce the contract simply because EAB "chose" not to have Landlord as a party to the contract. *See* Br. for Appellee, at 15. Setting aside the fact that it is not EAB's "choice" to have a third party be bound by contract. But also the District willingly entered into that contract with EAB, knowing Landlord was not a party. The District knew, or should have known, that by entering into a contract with a non-taxpayer, there would be no remedy for a dispute other than litigation.

Because EAB is left with no means to enforce the agreement but initiating this legal action, the Anti-Injunction Act does not apply.

2. The District's Assertion that the Suit Seeks to Enjoin the Assessment or Collection of Taxes Is Incorrect.

The Anti-Injunction Act does not apply because assessments and collections are of no concern to this dispute. *See Cohen*, 650 F.3d at 725. First, EAB's suit would not affect the assessment or collection of taxes that have already been assessed and collected. *Id.* at 725-26 (finding that the Anti-Injunction Act did not apply to a case where taxes have already been assessed and collected because "[t]he money is [already] in the U.S. treasury"). Second, EAB does not dispute the amount in controversy—the assessment—or whether it was proper.[4] Indeed, the crux of this

[4] The District incorrectly claims that this suit will impact future tax assessments and collections. However, future assessments will proceed as required by law. Enforcing the agreed $2.1 million tax abatement does not affect these matters but ensures that the parties honor their agreement.

dispute concerns the interpretation and enforcement of the contractually agreed tax abatement between EAB and the District of $2.1 million. Hence, the outcome of this litigation will have no impact on the assessed value of the Leased Property. Finally, the District's portrayal of a collection issue is misguided and defies reason because this matter has no bearing on the collection of taxes. EAB is not a taxpayer; rather, Landlord is. Thus, a non-taxpayer cannot influence the collection of taxes when it bears no tax liability. Such an unfounded claim distracts from the core issue at hand—reclaiming the full $2.1 million the District contractually owes EAB.

To determine the applicability of the Anti-Injunction Act, the reviewing court must examine "the face of the taxpayer's complaint," especially the relief requested and "the thing sought to be enjoined." *CIC Servs., LLC v. Internal Revenue Serv.*, 593 U.S. 209, 218 (2021) (finding that a challenge to IRS tax reporting requirements is not prohibited by the federal Anti-Injunction Act, even though the suit could ultimately prevent the collection of tax penalties). Accordingly, the Anti-Injunction Act applies when the "target of a requested injunction is a tax obligation—or stated in the Act's language, when that injunction runs against the 'collection or assessment of a tax.'" *Id*.

EAB's complaint and Prayer for Relief are clearly stated: EAB asked the court for a declaratory judgment and a finding that the District breached its contract with EAB by failing to pay the full $2.1 million annual abatement agreed upon for Tax

Year 2021 in light of EAB's full compliance with its contractual obligations. J.A. 39. Despite the foregoing, the District resorted to rationalizations and argued that EAB's breach of contract claim is merely a label and does not necessarily mean it constitutes a breach of contract claim per se. Br. for Appellee, at 23. This argument stemmed from the misguided notion that because the complaint mentions the word "tax" allegedly "more than 100 times" it must automatically imply that the case centers around real property taxes. *Id.* The District cited *District of Columbia v. United Jewish Appeal Fed'n of Greater Washington, Inc.* for support contending that the Anti-Injunction Act did not apply because "the trial court was without jurisdiction to enjoin the taxes even though it had jurisdiction over the quiet-title action." 672 A.2d 1075, 1079 (D.C. 1996). But the District chose to ignore the fact that the court negated jurisdiction because the case concerned the collection of *past due (i.e., unpaid) taxes*. Unlike in *United Jewish Appeal*, taxes for past years *have* been paid, and there is no possible assessment or collection issue for taxes already in the District's coffers. At a minimum, the suit for breach of contract over past years' taxes should not have been dismissed. For future years, the issue at hand is not about the assessment or collection of taxes, but rather about ensuring that the terms of the agreement are honored as intended by both parties. Furthermore, the District overlooked the court's emphasis that the term "tax" is not a talisman that automatically strips the trial court of jurisdiction to address wrongs

intertwined with tax issues. *Id.* at 1080.

Moreover, the District attempted to reinforce its argument by referencing excerpts from a Ninth Circuit case, which are ultimately unpersuasive. According to the District, the court in *Bright v. Bechtel Petroleum, Inc.*, held that a breach of contract action against an employer "was barred by the federal Anti-Injunction Act" because it could be "viewed as one to restrain collection (through withholding) of federal income tax." 780 F.2d 766, 770 (9th Cir. 1986). However, the employee's complaint was dismissed on 12(b)(6) grounds because it was clearly meritless: the employee complained that his employer should not have withheld taxes from his paycheck, because it resulted in payment less than the agreed-upon salary, and alleged "breach of contract and a gross violation of Christian principles." *Id.* at 769. Only in dicta, and briefly, did the court mention that such claims were also often barred by the Anti-Injunction Act. *Id.* at 770. The case hardly provides illumination to the facts at issue here.

The District cannot now circumvent its contractual obligations and shirk its responsibilities by ignoring the fact that this dispute centers around the interpretation and enforcement of the terms of the agreement, and not assessment and collection of taxes. The District and EAB entered into a performance-based agreement that entitled EAB to the full contracted-for $2.1 million annual

abatement.[5] Because the District issued an abatement short of the contracted-for $2.1 million, EAB is now entitled to litigate past breach of contract actions. Therefore, since EAB's suit would not affect the assessment or collection of taxes, the Anti-Injunction Act does not apply.

B. Even if the Anti-Injunction Act Was Deemed Applicable, An Exception That Would Allow the Suit to Proceed Applies.

As EAB explained in its opening brief, the Anti-Injunction Act is not an absolute bar to the Court's jurisdiction to hear tax assessment and collection issues. *District of Columbia. v. E. Trans-Waste of Maryland, Inc.*, 758 A.2d 1, 14 (D.C. App. 2000). There is an exception if the Court finds that "under no circumstances could the Government ultimately prevail," and that there is "irreparable injury and inadequacy of a legal remedy." *Id.* at 13 (citing the "*Williams Packing* test," established in *Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1, 6–7 (1962)). All things considered, EAB meets both factors.

The first factor is indeed satisfied as the agreed-upon terms are clear: "If [EAB] exceeds the total employment baseline and meets the annual requirements for the Accumulated New District Resident Hires, as measured on the annual reporting

[5] The statute and Incentive Agreement make clear that "[i]f [EAB] exceeds the total employment baseline and meets the annual requirements for the Accumulated New District Resident Hires, as measured on the annual reporting date, then the abatement for each tax year ***shall equal*** $2.1 million." D.C. Code § 47–4665.06(c) (emphasis added); J.A. 105.

date, then ***the abatement for each tax year shall equal $2.1 million***." D.C. Code 47–4665.06(c)(1) (emphasis added); *see also* J.A. 105. The contract never mentioned calculating a proportionate share of the building to come up with a to-be-determined dollar amount. It mentioned a specific dollar amount, and that amount was not abated, in violation of the terms of the contract.

The District's brief incorrectly assumes the government would have to write a check to EAB for the remainder if EAB's *pro rata* tax liability is below $2.1 million. *See* Br. for Appellee, at 25-26. But that is not so. If the property at issue owed $2,598,239.89 in taxes for Tax Year 2021, then the District should have simply subtracted the $2.1 million owed to EAB, and the remaining roughly $500,000 would have been paid by Landlord to the District in taxes. EAB is not claiming the abatement is "refundable," as alleged in the District's brief. *See id.* The full $2.1 million abatement is below the fully assessed tax liability for the property; no refund is needed or requested if the terms of the contract are honored.

In regard to the second factor, the District firmly maintains that an administrative refund claim is the sole permissible legal remedy. Br. for Appellee, at 24. Notwithstanding, the District contends that such a claim can be initiated solely by Landlord, as the recorded taxpayer. Such statement paradoxically supports EAB's position. The District *admits* there is no way for EAB to pursue the remedy that the District claims is required, essentially conceding that it cannot ultimately prevail in

this argument. Without any possibility of redress, EAB's injuries are, by definition, irreparable. And EAB's remedy under a refund suit is not only "inadequate" but impossible.

Therefore, since EAB is left without any available remedy and will be irreparably harmed by being denied any potential redress for its claims against the District, the exception applies, allowing EAB's suit to proceed.[6]

III. CONCLUSION

For all of the reasons stated herein, EAB Global, Inc. respectfully requests that the Court reverse the Superior Court's dismissal of EAB's suit and remand for further proceedings.

[6] Because the District agrees that the Court erred in dismissing the action below based on failure to join a necessary party without first analyzing whether joinder was feasible, EAB does not separately address joinder in this Reply brief. However, one clarification is needed: the District states that "EAB concedes that Beacon would be a necessary party to any tax refund action." Br. for Appellee, at 29. To be clear, EAB stated that Landlord is a necessary party (indeed, the *only* party) who can initiate an *administrative* refund proceeding with OTR, pursuant to D.C. Code § 47-825.01a(d)(1). EAB never indicated, and does not believe, that Landlord is a necessary party to its breach of contract claim in D.C. Superior Court.

Date: February 7, 2025

Respectfully Submitted,

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CERTIFICATION ABOUT TYPEFACE

Consistent with Rule 32(a)(3) and 32(a)(4), this brief was prepared using Times New Roman 14-point font with its margins at 1 inch on all four sides.

CERTIFICATE OF SERVICE

I hereby certify on February 7, 2025, a copy of the foregoing was sent via the Court's e-filing service to all counsel of record.

/s/ Cynthia A. Gierhart
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