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

BRIEF OF APPELLANT EAB GLOBAL, INC.

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RULE 28(a)(2) DESIGNATION

Pursuant to D.C. App. R. 28(a)(2) and 28(b), counsel for EAB Global, Inc. submit the following listed parties, amici curiae, and counsel that appeared below or will appear in this appellate proceeding:

EAB Global, Inc.	Appellant, Plaintiff below
District of Columbia	Appellee, Defendant below
Muriel Bowser, in her official capacity as Mayor of the District of Columbia	Defendant below
John Falcicchio, in his official capacity as Deputy Mayor of the Office of the Deputy Mayor for Planning and Economic Development	Defendant below
Glen Lee, in his official capacity as Chief Financial Officer and head of the Office of the Chief Financial Officer	Defendant below
Jeremy R. Girton	Counsel for Appellee
Philip T. Evans, Esq. Cynthia A. Gierhart, Esq. Holland & Knight	Counsel for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

I. JURISDICTIONAL STATEMENT

This Court has jurisdiction under D.C. Code § 11-721(a)(1) because the appeal is taken from a final judgment of the Superior Court.

II. INTRODUCTION

This case involves a corporation – EAB – which entered into a contract with the District to maintain a presence in the District in exchange for a tax abatement of $2.1 million a year assuming EAB met certain enumerated hiring targets of District residents, among other requirements. After EAB satisfied its end of the bargain in the first year of a ten-year program, the District failed to provide the $2.1 million owed to EAB. EAB sued the District for breach of contract as well as a declaratory judgment for the remaining years under the agreement, but the Superior Court dismissed the case believing the Anti-Injunction Act barred the claim and directing EAB to pursue an administrative remedy. But the suggested administrative remedy is not available to EAB (a lessee). Thus, if the dismissal is allowed to stand, EAB is left with no recourse against the District for its breach of contract. Courts have held that the Anti-Injunction Act cannot apply where, as here, it would leave a party without any other available remedy. The Act also does not apply because EAB does not seek to enjoin the assessment or collection of taxes – only to resolve its breach of contract dispute. And an exception applies to bar the Anti-Injunction Act's application. Thus, EAB respectfully requests that the Court reverse the Superior

Court's dismissal of this action and remand for further proceedings.

III. QUESTIONS PRESENTED

1. Did the Superior Court err in finding that the Anti-Injunction Act bars EAB Global, Inc.'s claim for a breach of contract under an Incentive Agreement and a Community Benefits Agreement entered into between EAB and the District of Columbia?

2. Did the Superior Court abuse its discretion in determining that EAB failed to join the Landlord as a necessary party in its breach of contract claim against the District?

IV. STATEMENT OF THE CASE

EAB Global, Inc. ("EAB") provides insights-driven technology and research services to educational and corporate institutions. J.A. 22 ¶ 18. EAB entered into an agreement with the District of Columbia whereby EAB agreed to keep its business in the District including the rental of a certain minimum square footage of office space located in the District, hire District residents as employees, and satisfy other conditions in exchange for $2.1 million-a-year paid out as a tax abatement over 10 years. After EAB satisfied the conditions for the first year, as certified by the Deputy Mayor for Planning and Economic Development ("DMPED"), the District provided only $1,259,626.70 in tax abatement for the Tax Year 2021, well short of the agreed-upon $2.1 million.

EAB filed suit against the District on October 20, 2022, alleging breach of contract and seeking declaratory judgment regarding the interpretation of the agreement. The District filed a motion to dismiss, which the Court granted, on the grounds that the Anti-Injunction Act barred EAB's claims and stating that EAB failed to join the Landlord as a necessary party. This appeal followed.

V. STATEMENT OF FACTS

A. The Agreement, Its Terms, and EAB's Compliance

In 2015, the Council of the District of Columbia ("Council"), through its enactment of the Local Jobs and Tax Incentive Act of 2015 (the "ABC Tax Abatement Act"), codified an arrangement between EAB's corporate predecessor, The Advisory Board Company ("ABC"), and DMPED. J.A. 22 ¶¶ 19, 20. The arrangement between ABC and DMPED provided ABC a 10-year, up to $60 million performance-based real property tax abatement to keep its headquarters in the District, dissuading ABC from relocation to another jurisdiction offering more advantageous terms. *Id.* ¶ 20; J.A. 47. Along with maintaining its headquarters in the District, ABC was required to satisfy certain performance-based conditions in exchange for an annual abatement, which included adding 100 District of Columbia employees to its payroll per year. J.A. 47.

However, by the end of 2017, prior to any abatements being sought or awarded, ABC sold its healthcare business and spun-off its education business, EAB,

into a separate legal entity. J.A. 22, ¶ 20; J.A. 47. Given these structural changes, EAB proposed that in exchange for a proportionate share of the unused and previously budgeted tax abatements established under the ABC Tax Abatement Act, it would create new jobs for District of Columbia residents and provide community benefits to the District of Columbia Public Schools and District of Columbia-based non-profit organizations. J.A. 22, ¶ 21. Championing EAB's proposal, in February 2019, the Council amended the ABC Tax Abatement Act and enacted the Local Jobs and Tax Incentive Amendment Act of 2018 (the "EAB Tax Abatement Act"). D.C. Code § 47-4665.06; J.A. 22, ¶ 22. Akin to its predecessor, the EAB Tax Abatement Act is a *performance-based*, job-creation law with the purpose of helping the District meet its public policy goals of increasing the hiring rate of District of Columbia residents through incentives to District-based employers. J.A. 41; J.A. 22, ¶ 22. The Tax Abatement Act provides that "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 Date, then the abatement for each tax year ***shall equal*** $2.1 million" for a period of ten years.[1] D.C. Code § 47-

[1] D.C. Code§ 47-4665.06(c)(2) and (3) also codify the implications should EAB fail to meet its hiring targets: "If [EAB]'s annual total of Net New District FTE Hires is less than the requirements for the Accumulated New District Resident FTE Hires for the same period, but [EAB] exceeds the total employment baseline, then the abatement for each such tax year ***shall be*** calculated based on the ratio of actual Net New District FTE Hires to the requirement for Accumulated New District Resident Hires as of the annual reporting date;" and "[i]f there are fewer FTEs than the total

4665.06(c)(l) (emphasis added); J.A. 45; J.A. 47.

On July 1, 2019, EAB and the District entered into an Incentive Agreement and a Community Benefits Agreement[2] (collectively, the "Agreements"), which memorialized the original terms of D.C. Code § 47-4665.06. J.A. 103; J.A. 111. The Agreements essentially established that, subject to the terms to the EAB Tax Abatement Act, EAB ***shall be entitled*** to receive an aggregate maximum real property tax abatement of $21 million over the ten-year term of the Agreements capped at $2.1 million each year, as long as it meets certain annual obligations as measured on the applicable Annual Reporting Date. J.A. 22, ¶¶ 32, 33. Pursuant to the Incentive Agreement, EAB was entitled to receive the annual maximum abatement if it (1) executed a lease in the District of Columbia with an initial term of no less than 10 years and a net rentable area of at least 148,750 square feet, (2) maintained 434 employees eligible for full employee healthcare and benefits and hired 35 new District of Columbia residents each year as full-time employees,[3] and

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employment baseline as of the annual reporting date, then the abatement for each such tax year ***shall be*** zero."

[2] On August 17, 2021, EAB and the District amended and restated the Community Benefits Agreement, providing that EAB was to perform additional services to support the District of Columbia. This change, however, had no impact on the method by which EAB was to receive the annual tax abatement, nor did it alter or adjust the $2.1 million annual tax abatement.

[3] The Incentive Agreement provides that by the end of the term, EAB must have had hired an aggregate of 350 District of Columbia residents to receive the maximum Abatement of $21 million.

(3) fulfilled its other obligations under the Agreements. *Id.* ¶ 30. If, however, EAB failed to meet its performance hiring targets, its $2.1 million tax abatement for that tax year was to be reduced pro rata. *Id.* ¶ 34; J.A. 103.

Adhering to the Incentive Agreement, on or round July 31, 2019, EAB entered into a more than 10-year lease agreement ("Lease") with an affiliate of Beacon Capital Partners ("Landlord"), to lease commercial office space in the building located at 2445 M Street, NW, Washington, DC 20037 ("Leased Property" or "Property"). *Id.* ¶ 36. The Leased Property consisted of 149,666 square feet, larger than the size required by both the EAB Tax Abatement Act and the Incentive Agreement. *Id.* The Lease, which was provided to DMPED as part of its review of EAB's performance under the Incentive Agreement, specifically contemplates how the tax abatement EAB is entitled to receive is to be conveyed from the property owner to EAB, providing that Landlord will transfer to EAB any abatement it receives from the District.[4] *Id.*

[4] On November 14, 2018, Wharton Berger, Executive Director of the Office of Economic Development Finance, testified during a Public Hearing of the Committee on Finance and Revenue discussing the enactment of Bill 22-918, which thereafter became the EAB Tax Abatement Act, that "[t]he District will credit the abatement to the owner of the commercial property that EAB will lease[,]" and "[t]he abatement amount should be $2.1 million per year to total $21 million over 10 years …. To receive the full $21 million abatement, EAB anticipates increasing the number of full-time District resident employees by 35 annually over a 10-year time span to achieve the 350 net new full-time employed District residents. If the company fails to meet this target, the abatement will be reduced as required by the Bill." *See* https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/release_content/attachments/EAB

B. The District's Breach of Contract

On December 1, 2020, after completion of the first year covered by the EAB Agreements, DMPED's General Counsel, Susan C. Longstreet, certified that "[p]ursuant to D.C. Code Sec. 47-4665.06, et seq., the Office of the [DMPED] certifies [that EAB] has complied ***with all the terms*** of the [EAB Tax Abatement Act] as well as with the [Agreements] entered into on June 18, 2019," and was therefore eligible for the abatement for Tax Year 2021. J.A. 118 (emphasis added); J.A. 22, ¶ 37. Moreover, on December 18, 2020, Ms. Longstreet wrote again that "[p]ursuant to D.C. Code § 47- 4665.06(c)(l), DMPED certifies that [EAB] ***exceeded*** the total employment baseline and met its annual requirement for the Accumulated New District Resident Hires. DMPED has reviewed EAB's [Agreements] for Tax Abatement Annual Report and found that EAB has complied with ***all*** the requirements satisfactorily." J.A. 22, ¶ 38; J.A. 119 (emphasis added). As certified by DMPED, EAB exceeded the Total Employment Baseline and met the applicable annual requirements for the Accumulated New District Resident Hires. Thus, according to the EAB Tax Abatement Act and the Agreements, the tax abatement for such tax year "***shall equal*** $2,100,000.00," but the District of Columbia Office of Tax and Revenue ("OTR") unilaterally decided to issue only a portion of the tax abatement amount to which they allege EAB was entitled to for that year.

%20Global%20Inc%20Testimony%20%20B22-918.pdf.

J.A. 22, ¶ 40. On March 12, 2021, Landlord notified EAB that it had received the Tax Year 2021 invoice for the Leased Property, which reflected that the tax abatement applied only to the portion of the building EAB leased, 48.48%. *Id.* As a result, EAB received only $1,259,626.70 for the Tax Year 2021, not the $2.1 million established by agreement and on which EAB relied.[5] *Id.* ¶ 46.

C. Current Litigation

On October 20, 2022, EAB filed a Complaint in the Civil Division of D.C. Superior Court for Declaratory Relief and Monetary Damages against the District, Muriel Bowser in her official capacity as Mayor of the District of Columbia, John Falcicchio in his official capacity as Deputy Mayor, and Glen Lee in his official capacity as Chief Financial Officer and head of the Office of the Chief Financial Officer (OCFO) ("Defendants"). In the Complaint, EAB asserted that the Defendants breached the contract with respect to the Agreements and is therefore entitled to the full amount of $2,100,000.00 as an annual real property tax abatement provided that EAB complies with the conditions set forth in the EAB Tax Abatement Statute and the Agreements. On December 16, 2022, Defendants filed a Motion to Certify to the Tax Division on the basis that the underlying claims raised by EAB

[5] The estimated tax for the building was $2,598,239.89, with 48.48%, or $1,259,626.70, abated as attributable to EAB. J.A. 22, ¶ 46. The remaining $1,338,613.19 in property taxes assessed on the rest of the building not leased by EAB was not abated.

pertained to the assessment of an annual tax abatement. EAB filed an Opposition to the Motion to Certify on December 20, 2022. On January 20, 2023, the Honorable Judge Milton C. Lee, Jr. certified the case to the Tax Division of D.C. Superior Court as "[the] Tax Division has exclusive jurisdiction to review all claims for review of assessments of tax made by the District of Columbia" and the case centered on a "contract for a tax abatement." J.A. 316. On May 23, 2023, the District by and through the OTR, filed a Motion to Dismiss the Complaint, which EAB opposed on June 13, 2023. On September 28, 2023, the Honorable Judge Laura A. Cordero granted the District's Motion to Dismiss the Complaint, holding that EAB was barred by the Anti-Injunction Act.[6] J.A. 1. This appeal followed.

VI. SUMMARY OF THE ARGUMENT

The Superior Court erred in finding that EAB's claims against the District are barred by the Anti-Injunction Act. First, EAB has no other available remedy other than to pursue a lawsuit. EAB is a lessee, not the "Owner" of the Property, and it therefore cannot initiate an administrative proceeding against the District. Even if it

[6] Before filing this appeal, both parties filed cross motions for summary disposition: (1) on August 23, 2024 EAB filed a Motion for Summary Reversal; (2) on September 13, 2024 the District filed an Opposition to EAB's Motion for Summary Reversal and a Cross Motion for Summary Affirmance; (3) on October 4, 2024 EAB filed a Reply in Support to its Motion for Summary Reversal and an Opposition to the District Cross Motion for Summary Affirmance, and (4) on October 9, 2024 the District filed a Reply in Support of its Cross Motion for Summary Affirmance. Both motions were denied on October 17, 2024.

could, OTR is not the proper jurisdiction to resolve a breach-of-contract dispute. Because no other remedies are available to it, the Anti-Injunction Act cannot bar EAB's suit.

Additionally, the Anti-Injunction Act is meant only to bar actions that seek to enjoin assessment or collection of taxes. EAB's suit does neither. The assessment on the Property is not in dispute, and the Landlord pays the taxes every year. EAB instead seeks to enforce the terms of a contract, the outcome of which will have no effect on the overall tax assessment of the Property, nor will it interfere with the collection of any taxes.

Further, even if the Anti-Injunction Act were to apply, an exception allows suits to move forward regardless, if it is certain the government cannot prevail and EAB would suffer irreparable injury. Both prongs are met here, because the District cannot prevail on the collection of taxes where the collection is not in dispute. The only question is whether the District owes EAB money, not the other way around. And, as discussed above, if EAB's suit is dismissed, it is left without any recourse to pursue its breach-of-contract claim, leaving it irreparably injured.

Finally, the Superior Court abused its discretion in dismissing the action, in part, for failure to join the Landlord as a necessary party. First, the Landlord is not a necessary party; it is not a party to the contract that forms the basis of the action. The Court said the Landlord was a necessary party only for the administrative

proceeding, *not* for the Superior Court action. Second, the Court was required to order the Landlord be joined as a party prior to dismissing the suit, which it failed to do.

For all of these reasons, explained in more detail below, the trial court's order should be reversed, reinstating the action, and remanded for further proceedings.

VII. STANDARD OF REVIEW

The Court of Appeals reviews an order granting a motion to dismiss *de novo*, the same standard a trial court is required to apply; it must "accept the allegations of the complaint as true and construe all facts and inferences in favor of the plaintiff." *In re: Estate of Curseen*, 890 A.2d 191, 193 (D.C. 2006); *Hoff v. Wiley Rein, LLP*, 110 A.3d 561, 564 (D.C. 2015). All "uncertainties or ambiguities in the complaint must be resolved in favor of the pleader." *Hillbroom v. PricewaterhouseCoopers LLP*, 17 A.3d 566, 573 (D.C. 2011). "[R]eview of a trial court's determination that a non-party should be joined under Rule 19(a) is for abuse of discretion." *Dist. Cablevision Ltd. P'ship v. McLean Gardens Condo. Unit Owners' Ass'n*, 621 A.2d 815, 816 (D.C. 1993).

VIII. ARGUMENT

The Anti-Injunction Act provides that "[n]o suit shall be filed to enjoin the assessment or collection by the District of Columbia or any of its officers, agents, or employees of any tax." D.C. Code § 47-3307. However, the Act was never intended

to apply to situations – as here – where no other available remedy exists for the Plaintiff if the suit were dismissed. Thus, the Act cannot apply to bar EAB's suit and leave EAB without any redress for its breach of contract claim against the District. Additionally, EAB's suit against the District of Columbia would not enjoin the assessment or collection of any tax; therefore, the Superior Court erred in holding that the Anti-Injunction Act required dismissal of EAB's complaint. Further, the Superior Court abused its discretion in holding that EAB failed to join its landlord as a necessary party. The landlord is not a party to the contract between EAB, and the District and is not needed to award complete relief to the parties, nor does Landlord have an interest relating to the subject of the action. The Superior Court's order dismissing EAB's complaint should be reversed.

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

1. EAB Has No Other Remedy for Its Injury Other Than a Breach of Contract Suit, so the Anti-Injunction Act Cannot Bar the Suit.

Interpreting the federal Anti-Injunction Act,[7] the U.S. Supreme Court and D.C. Circuit have held that the Anti-Injunction Act "does not apply at all where the

[7] The District of Columbia Court of Appeals has stated that "[b]ecause the District's Anti-injunction Act is 'very similar' to the federal Anti-Injunction Act, 26 U.S.C. § 7421(a) ... federal court decisions interpreting and applying section 7421(a) are 'persuasive when construing our own.'" *See District of Columbia v. Craig*, 960 A.2d 946, 953 n. 7 (D.C. 2007) (quoting *District of Columbia v. United Jewish Appeal Fed'n*, 672 A.2d 1075, 1079 n. 3 (D.C. 1996)).

plaintiff has no other remedy for its alleged injury." *Z St. v. Koskinen*, 791 F.3d 24, 31 (D.C. Cir. 2015); *see also South Carolina v. Regan*, 465 U.S. 367, 381 (1984); *Cohen v. United States*, 650 F.3d 717, 726 (D.C. Cir. 2011). When a refund action does not provide a viable "alternative avenue" for plaintiff's grievance, the Anti-Injunction Act cannot bar plaintiff's suit. *South Carolina*, 465 U.S. at 376-81.

EAB cannot pursue an administrative refund remedy through OTR. 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). EAB is not the owner of the Property; it is only leasing office space.[8] Thus, EAB does not have standing itself to petition OTR for an administrative review of the tax assessment for the Property. And Landlord – the owner of the Property – is under no obligation to challenge the assessment on EAB's behalf; to the contrary, the Lease indicates that "Landlord shall have no obligation to assist Tenant in obtaining or to obtain the Tax Abatement." J.A. 135 § 11.3(g).

For a similar lack-of-standing reason, the U.S. Supreme Court held that the State of South Carolina could not utilize alternative state court remedies, because its bondholders, rather than the state itself, are the ones who incur tax liability. *South*

[8] The definition of "Owner" extends to lessees only when they have a 30-year (or more) lease. *See* D.C. Code § 47-802(5). EAB's lease is for 150 months (12.5 years), with the option, if certain conditions are met, for only one 10-year extension (or two five-year extensions). *See* J.A. 135 at Ex. 1, § 3.2; § 32.2. Thus, EAB is not an "Owner."

Carolina, 465 U.S. at 367. Because South Carolina could not, itself, pursue alternative remedies, the Anti-Injunction Act could not bar South Carolina's suit. *Id.* Particularly relevant to this case, the Court held: "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 his claims." *Id.* Here, EAB would have to rely on the mere possibility of Landlord asserting EAB's claims, which Landlord, by contract, has already indicated it is *not* obligated to do. Thus, the Anti-Injunction Act cannot bar EAB's claims, because the suggested alternative administrative remedy is not available to it.

Even if Landlord were willing to assert EAB's claims, it would likely be barred from doing so. OTR has the authority only to change a tax assessment or classification, and only for "the tax year at issue." D.C. Code § 47-825.01a(d)(3), (4). OTR cannot determine whether a breach of contract occurred, award monetary damages, or issue an order affecting future tax years – all of which are remedies sought in EAB's complaint. *See* J.A. 41. Moreover, while the Landlord is the necessary party to pursue an OTR administrative remedy, the Landlord is not a party to the contract. The Landlord would need to argue that EAB is entitled to the full $2.1 million-per-year abatement based on contract interpretation – for a contract to which the Landlord is not a party. OTR could not possibly resolve the breach-of-contract dispute at issue here; it is not the proper venue for this dispute.

The District willingly entered into an agreement with EAB, and the District now proposes that EAB have no way to enforce it. EAB has no other available remedy other than to file suit. The Anti-Injunction Act therefore cannot apply.

2. The Suit Does Not Seek Enjoin Assessment or Collection of Taxes.

The Anti-Injunction Act prohibits suits to enjoin the assessment or collection of taxes. D.C. Code § 47-3307. The Court reasoned: "[I]f equity is permitted to restrain the collection of taxes as the parties sorted through their respective rights, the burden of meeting the financial short-fall would rest on the shoulders of innocent taxpayers in the form of additional taxes and/or inferior or reduced public services." *Barry v. Am. Tel. & Tel. Co.*, 563 A.2d 1069, 1076 (D.C. 1989). In other words, the potential harm in having a government shortfall is too great to allow a pause in tax payments while litigation is pending. Instead, the taxpayer must first pay the assessed taxes, and then challenge the assessment or collection after the fact, seeking a refund. *See District of Columbia v. Craig*, 930 A.2d 946, 954 (D.C. 2007).

Here, EAB does not seek to enjoin any tax assessment or collection, so the act does not apply. *See Cohen*, 650 F.3d at 725. The tax *assessment* – i.e., the amount of taxes owed based on assessed property value – levied on EAB's landlord is not in dispute. EAB does not challenge that the amount assessed was proper, nor does EAB seek to influence any future assessments on the Leased Property. If EAB were to ultimately prevail in its breach of contract claim, there would be no change to the

assessed value on the Leased Property.

The same is true for the *collection* of taxes on the Leased Property. EAB pays no property taxes directly to the District because it rents rather than owns the Leased Property. Instead, the Landlord, as the owner, pays the taxes on the Leased Property and passes any abatements on to EAB pursuant to a contractual arrangement spelled out in the Lease. So EAB's suit cannot stop the collection of taxes when EAB does not itself pay any property taxes to the District; there is simply no tax collection at issue to enjoin. And there is no allegation that the Landlord has not paid the full amount of taxes owed in past years. The current litigation seeks money owed *from the District* to EAB for breach of contract; it would not result in the stoppage of payments from the Landlord to the District.

EAB filed two counts in the civil action below, for (i) a declaratory judgment and (ii) breach of contract. Regarding the first count, a declaratory judgment would not enjoin the assessment or collection of future taxes. When determining whether the federal Anti-Injunction Act applies, the Supreme Court looks to "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 barred by the federal Anti-Injunction Act, even though the suit could ultimately prevent the collection of tax penalties). Here, EAB seeks a declaration from the Court that the

contract that the District and EAB entered into is performance-based and that EAB is entitled to the full contracted-for $2.1 million when it met the performance-based measures outlined in the contract for 2020, making it eligible for the full $2.1 million paid by way of abatement during tax year 2021. *See* J.A. 22, at Prayer for Relief ¶¶ 1, 3, 4. The Complaint never asks the Court to enjoin the Landlord from having to pay the assessed taxes owed on the property. It is assumed the Landlord would continue to pay the full assessed value every year as it has done, regardless of the outcome of the case. The Court, instead, is asked to interpret the contract language to determine whether the District each year should, after taxes are paid, award the full $2.1 million to EAB in the form of an abatement if EAB fulfills the terms of the contract.

The Anti-Injunction Act also does not apply to the second count for breach of contract. The Landlord already paid the taxes owed on the Property for past years, and the District issued an abatement short of the contracted-for $2.1 million. EAB's breach of contract count is simply asking to litigate past actions. EAB's suit would not affect the assessment or collection of taxes that have already been assessed and collected. *Cf. Cohen*, 650 F.3d at 725 (finding the Anti-Injunction Act did not apply to a case where "[t]he IRS previously assessed and collected the excise tax at issue. The money is in the U.S. treasury …."). The harm contemplated in *Barry* – that innocent taxpayers would have to shoulder the burden of a financial shortfall –

simply does not exist when the taxes have already been paid and all that remains is a breach of contract dispute. *See* 563 A.2d at 1076.

Because EAB's suit would not affect the assessment or collection of taxes, the Anti-Injunction Act does not apply. *See Cohen*, 650 F.3d at 725.

3. Even if the Anti-Injunction Act Applied, an Exception Applies.

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); *see also Tolu Tolu v. District of Columbia*, 906 A.2d 265, 271 (D.C. 2006) (quoting *E. Trans-Waste* for the proposition that the Anti-Injunction Act does not "absolutely bar[ ] the door to any consideration whatever of waiver or estoppel, should the court be faced with uniquely 'exceptional and stringent' circumstances"). 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, then it need not apply the Anti-Injunction Act. *E. Trans-Waste of Maryland*, 758 A.2d at 13 (citing the "*Williams Packing* test," established in *Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1, 6–7 (1962)).

Here, the two factors are met. Regarding the first factor, there are no circumstances under which the Government would prevail on an assessment or collection issue, resulting in money owed to the Government, because there is no

assessment or collection issue for the Court to determine, as discussed above. The Government does not seek payment from EAB, so there is no circumstance under which the Government would be awarded payment by EAB.[9]

Regarding the second factor, EAB would be irreparably harmed because an appeal to OTR would be impossible and leave EAB without any available remedy. Both the District and the Tax Division contend that the proper course is for EAB to pursue an "administrative refund claim" through OTR, as provided in D.C. Code § 47-811.02. But there is no legal remedy available to EAB through OTR, for all of the reasons discussed above, including the fact that EAB is not a property owner. If the Court affirms dismissal of EAB's claims, EAB is left without any available remedy and will be irreparably harmed by being denied any potential redress for its breach-of-contract grievance against the District. Thus, the exception applies, and EAB's suit should be allowed to continue.

B. The Superior Court Erred in Holding That EAB's Landlord Was a Necessary Party.

A party is considered necessary or indispensable if "in that person's absence, the court cannot accord complete relief among existing parties" or "that person

[9] Regardless, as noted by this Court, the Supreme Court established in *South Carolina*, 465 U.S. 367 – discussed in section VIII(A)(1) of this brief – "where no alternative remedy [exists], the petitioner need not meet the first prong of the *Williams Packing* test." *Tolu Tolu*, 906 A.2d at 277 n.4. As discussed in section VIII(A)(1), no alternative remedy exists for EAB's claims.

claims an interest relating to the subject of the action" and proceeding with the action without the party would impede that party's interest or duplicate an existing party's obligations. Super. Ct. R. Civ. P. 19(a)(1).

In the breach-of-contract suit between EAB and the District, the Landlord is not a necessary party. The Superior Court's holding that the Landlord was a necessary party was premised on its immediately preceding incorrect holding that EAB must pursue an administrative refund proceeding in lieu of suit. *See* J.A. 1 (finding "the Property Owner appears to be a necessary party *to file a tax appeal*" (emphasis added)). The Landlord may be needed to file an *administrative* proceeding as the owner of the property, as discussed above, but the breach of contract dispute before the Superior Court has only two necessary parties – the parties to the contract (EAB and the District). The Landlord is not a party to the contract and therefore is not a necessary party to the suit.

As indicated in EAB's lease with the Landlord, EAB's agreement with the District "shall have no negative impact on Landlord or any other tenant, it being agreed that Landlord is simply a pass-through entity with respect to the Tax Abatement…." J.A. 135 § 11.3(b). The tax abatement issued by the District flows through the Landlord to EAB. Pursuant to Rule 19, "complete relief" can be awarded to EAB in the absence of Landlord's presence in the suit, as any amounts paid by the District would simply flow through Landlord to EAB (or possibly directly to

EAB, if through a court order). Landlord has no interest in the suit because it is merely a pass-through entity and has no claim to the tax abatement itself.

Further, a trial judge must conduct the following three-part analysis before dismissing a suit for failure to join a necessary party: (1) decide whether "'joinder would be desirable for a just adjudication of the action …'"; (2) "'order that [such a] person be made a party' if feasible"; (3) if the party cannot be joined, consider "'whether in equity and good conscience the action should proceed among the parties before it ….'" *Raskauskas v. Temple Realty Co.*, 589 A.2d 17, 20 (D.C. 1991). The Superior Court abused its discretion by not conducting this analysis; it did not even reference the test. The court *must* first order joinder of the party and then – only if unsuccessful – proceed to the third step. *Id.* at 20-22 (reversing dismissal where trial judge did not order joinder prior to dismissing action). "Mere speculation about an absent party's possible defenses cannot form the basis for concluding joinder is infeasible" *Id.* at 22. The court never ordered that Landlord be joined or conducted any part of three-part test; therefore, the court's dismissal for failure to join the Landlord was an abuse of discretion.

IX. 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.

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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 December 5, 2024, 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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