

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D36231
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_____AD3d_____

Argued - September 18, 2012

REINALDO E. RIVERA, J.P.
CHERYL E. CHAMBERS
L. PRISCILLA HALL
SHERI S. ROMAN, JJ.

2011-01209

DECISION & ORDER

Westchester County Correction Officers Benevolent
Association, Inc., et al., appellants, v County of
Westchester, et al., respondents.

(Index No. 22156/07)

Bartlett, McDonough & Monaghan, LLP (Carol R. Finocchio, New York, N.Y., of
counsel), for appellants.

Robert F. Meehan, County Attorney, White Plains, N.Y. (Frederick Sullivan and
Justin R. Adin of counsel), for respondents.

In an action to recover damages for breach of contract, the plaintiffs appeal from a
judgment of the Supreme Court, Westchester County (Smith, J.), dated December 7, 2010, which,
upon an order of the same court (Colabella, J.) entered January 22, 2010, inter alia, denying that
branch of their cross motion which was for summary judgment on the complaint, and upon the
granting of the defendants' motion pursuant to CPLR 4401, made at the close of evidence, for
judgment as a matter of law, is in favor of the defendants and against them, dismissing the
complaint.

ORDERED that the judgment is affirmed, with costs.

The plaintiffs, the Westchester County Correction Officers Benevolent Association,
Inc., and individually named retired correction officers, commenced this action to recover damages
for breach of contract based on the defendants' failure to pay the individual plaintiffs benefits
equivalent to those provided by the Worker's Compensation Law for loss of earning capacity due
to permanent partial disability. The plaintiffs contend that any correction officer who has been
receiving disability benefits pursuant to General Municipal Law § 207-c and who then receives a
disability retirement pension upon the County of Westchester's application is entitled, upon

October 24, 2012

Page 1.

WESTCHESTER COUNTY CORRECTION OFFICERS BENEVOLENT
ASSOCIATION, INC. v COUNTY OF WESTCHESTER

retirement, to benefits equivalent to those provided by the Workers' Compensation Law for loss of earning capacity due to permanent partial disability. The plaintiffs argue that the parties' intention at the time that the collective bargaining agreement (hereinafter the CBA) was negotiated was to assure that the correction officers were afforded all of their rights under the Workers' Compensation Law. The plaintiffs admit in the complaint that the CBA "is silent as to awards for permanent partial disability." The defendants contend, inter alia, that, since the CBA is silent as to such awards, the correction officers are not entitled, upon retirement, to Workers' Compensation awards for permanent partial disability.

The Supreme Court properly denied that branch of the plaintiffs' cross motion which was for summary judgment on the complaint. A breach of contract cause of action fails as a matter of law in the absence of any showing that a specific provision of the contract was breached (*see Trump on the Ocean, LLC v State of New York*, 79 AD3d 1325, 1326). Here, the plaintiffs failed to identify a specific provision in the CBA that requires the defendants to pay benefits equivalent to those paid pursuant to the Workers' Compensation Law for loss of earning capacity due to permanent partial disability. Accordingly, the plaintiffs failed to establish their prima facie entitlement to judgment as a matter of law.

The Supreme Court properly granted the defendants' motion pursuant to CPLR 4401, made at the close of evidence, for judgment as a matter of law. "[W]hen the terms of a written contract are clear and unambiguous, the intent of the parties must be found within the four corners of the contract, giving practical interpretation to the language employed and the parties' reasonable expectations. Thus, a written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms" (*Dysal, Inc. v Hub Props. Trust*, 92 AD3d 826, 827). Furthermore, "[i]nterpretation of an unambiguous contract provision is a function for the court, and matters extrinsic to the agreement may not be considered when the intent of the parties can be gleaned from the face of the instrument. A court should not imply a term which the parties themselves failed to include" (*2632 Realty Dev. Corp. v 299 Main St., LLC*, 94 AD3d 743, 745 [internal quotation marks and citations omitted]). Here, the CBA is complete, clear, and unambiguous on its face. The specific provisions of the CBA do not provide for the retirement benefits sought by the plaintiffs, and their reliance upon generalized language in the CBA is unavailing (*see generally Modulars by Design v DBJ Dev. Corp.*, 174 AD2d 885, 886).

The plaintiffs' remaining contentions are without merit.

RIVERA, J.P., CHAMBERS, HALL and ROMAN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court