

Quintas v Pace Univ.

2004 NY Slip Op 30343(U)

July 12, 2004

Sup Ct, NY County

Docket Number: 108035/03

Judge: Ira Gammerman

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: IRA GAMMERMAN
Justice

PART 27

0108035/2003

QUINTAS, LOUIS V.

vs
PACE UNIVERSITY

SEQ 1

DISMISS ACTION

INDEX NO. _____

MOTION DATE 7/2/04

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavit _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

FILED

JUL 12 2004

NEW YORK
COUNTY CLERK'S OFFICE

**MOTION IS DECIDED IN ACCORDANCE
WITH ACCOMPANYING MEMORANDUM
DECISION.**

Dated: 7/12/04

Check one: FINAL DISPOSITION

IRA GAMMERMAN J.S.C.
 NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S)

18663

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: IAS PART 27

-----x INDEX NO. 108035/03
 Part Cal. No. 18663

LOUIS V. QUINTAS,

Plaintiff,

-against-

PACE UNIVERSITY, DAVID A. CAPUTO, GAIL
 DINTER-GOTTLIEB, and MARILYN JAFFE-RUIZ,

Defendants.

-----x
 IRA GAMMERMAN, J.H.O.:

Defendants Pace University, David A. Caputo, Gail Dinter-Gottlieb and Marilyn Jaffe-Ruiz move, pursuant to CPLR 3211(a)5) and 3211(a)(7), to dismiss the complaint in this action. Plaintiff Louis V, Quintas cross-moves, pursuant to CPLR 3212 and CPLR 3211(c) for summary judgment.

In this action, plaintiff Louis Quintas, a tenured professor of mathematics at Pace University (Pace), alleges that the university and its administrators committed a breach of contract, negligence, retaliation and age discrimination by failing to award him the title of "Distinguished Professor." The underlying facts are undisputed. Plaintiff has been employed as a tenured professor of mathematics at Pace since 1967. The terms and conditions of his employment are set forth in an annual contract of employment as well as in the 1986 Pace Faculty Handbook. In early 2002, plaintiff announced his intention to retire as a tenured professor effective August, 2003, upon the expiration of his contract for the 2002-03 academic year. Following this announcement, in April 2002, plaintiff requested that he be designated as a

“Distinguished Professor” of mathematics, which is a purely honorary title carrying no additional compensation beyond that to which a professor is otherwise entitled.

The guidelines that Pace follows for awarding this title involves the submission of nominations to the Dean of the School, in this case, defendant Gail Dinter-Gottlieb, who then decides whether to recommend the nominee to the Academic Vice President and President for appointment. Upon her review of plaintiff's application, Dean Dinter-Gottlieb decided not to recommend plaintiff for the appointment and so informed Vice-President Jaffe-Ruiz on July 7, 2002. In October, 2002 Pace's President David Caputo reviewed plaintiff's application at his request and affirmed Dean Dinter-Gottlieb's decision not to recommend plaintiff's appointment.

In the complaint, plaintiff asserts four causes of action. The first alleges breach of contract by Pace for rejecting plaintiff's request for the title of Distinguished Professor arbitrarily and without just cause. The second, third and fourth brought against all defendants, are for negligence, retaliation and age discrimination respectively, all emanating from the failure to award plaintiff the title. Initially, it should be pointed out that plaintiff disputes the validity of a document defendants have submitted in support of their motion, namely, the Criteria and Process for Appointment of Distinguished Professors dated February 2, 1998 (the Guidelines). Plaintiff alleges that the correct guidelines are found in Section 11.3 of the 1991 Faculty Handbook that state as follows:

Distinguished Professor: The University may, on rare and exceptional occasions, designate certain faculty as Distinguished Professors. Such designations are made by the President upon the recommendation of the Dean and faculty of the school and are reserved for those individuals who have clearly demonstrated continuous, extraordinary and widely recognized contributions as teachers, scholars, and members of the academic community.

Pace submits an affidavit from Joseph Morreale, Provost and Executive Vice President for Academic Affairs that the 1991 Faculty Handbook was never implemented by the University because of certain objections raised by the faculty shortly after its distribution in early 1991. Therefore, Pace continues, to this day, to incorporate the terms of the 1986 Handbook which has no reference to the *Distinguished Professor* position. According to Mr. Morreale, since the implementation of the Guidelines in February, 1998, Pace has utilized the criteria and process reflected in the Guidelines in all cases where a faculty member sought the designation or a renewal of an earlier designation. The Guidelines state in pertinent part:

Criteria

A Distinguished Professor is a faculty member who has attained the rank of Professor and has clearly demonstrated continuous, extraordinary and widely recognized contributions as a scholar, teacher, and member of the academic community. Recommendations from nationally and internationally known scholars in the candidate's field are required.

The criteria for the designation as a Distinguished Professor are:

1. Research. Judged outstanding in the faculty member's academic discipline. This accomplishment would necessarily include, but not be limited to, publication in leading scholarly journals related to the teaching discipline.
2. Teaching. Judged outstanding by peers and students within the university, school and department. Documented by a teaching portfolio which attests to teaching excellence and continuous improvement.
3. Service. Judged outstanding in service within the university, school, department, and academic or professional organizations.

* * *

Responsibilities

The appointment as Distinguished Professor is for a renewable three to five year period. The Distinguished Professor will normally teach twelve credits per academic year, except in the School of Law where the appointment is honorific.

It is clear from the supporting documents that defendants followed these Guidelines in reaching the decision not to appoint plaintiff as Distinguished Professor. In her letter to Provost Jaffe-Ruiz, Dean Dinter-Gottlieb outlined several reasons for not supporting plaintiff's appointment, including his somewhat low ratings in teaching and research that compared unfavorably to at least 20% of his colleagues. She also noted that plaintiff had only taught one course per semester for the last two years and would be retiring the following year making it impossible for him to teach twelve credits per academic year.

Defendants maintain that plaintiff's first three causes of action are time-barred since the decision not to designate plaintiff as a Distinguished Professor must be reviewed in the context of an Article 78 proceeding that has a four month statute of limitations. They also maintain that each of these claims fails to state a cause of action and must be dismissed on that basis as well.

Internal decisions of academic institutions are most appropriately reviewed by a CPLR Article 78 proceeding. The Court of Appeals explained the rationale for this principle in New York Institute of Technology v. State Division of Human Rights, 40 NY2d 316 (1976):

The management of the university is primarily the responsibility of those equipped with the special skills and sensitivities necessary for so delicate a task. One of the most sensitive functions of the university administration is the appointment, promotion and retention of the faculty. It is for this reason that the courts...should "only rarely assume academic oversight, except with the greatest caution and restraint, in such sensitive areas as faculty

appointment, promotion, and tenure, especially in institutions of higher learning.”

id. at 322 (citing Pace College v. Commission on Human Rights, 38 NY2d 28,38 (1975)).

Recently the Court of Appeals reaffirmed this policy consideration in Maas v. Cornell University, 94 NY2d 87 (1999) observing that:

This Court’s case law reflects the policy that the administrative decisions of educational institutions involve the exercise of highly specialized professional judgment and these institutions are, for the most part, better suited to make relatively final decisions concerning wholly internal matters ...Courts retain a “restricted role” in dealing with and reviewing controversies involving colleges and universities. “In these so-called ‘university’ cases, CPLR article 78 proceedings are the appropriate vehicle because they ensure that the over-all integrity of the educational institution is maintained and, therefore, protect more than just the individual’s right to employment”. Thus, a CPLR article 78 proceeding is the route for judicial review of such matters, not a plenary action.

id. at 92 (citing Gertler v. Goodgold, 107 AD2d 481 (1st Dept. 1985)). Plaintiff maintains that the appointment of a Distinguished Professor is not in the same category as decisions regarding tenure and other faculty appointments. He argues that the decision involving an appointment as Distinguished Professor is far more weighty and significant than routine actions taken by a university but plaintiff offers no authority nor any persuasive rationale for such a distinction. The appointment of a Distinguished Professor necessitates precisely the kind of professional judgment envisioned in the courts’ consistent deference to the decisions of university administrators. Plaintiff maintains that none of the cases cited by defendants actually foreclose the possibility of a plenary action, in particular, New York Institute of Technology v. State Division of Human Rights, 40 NY2d 316, *supra* where the court stated that only rarely should courts become involved in matters involving faculty appointment, promotion and tenure. Plaintiff

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argues that the phrase “only rarely” indicates that under certain situations it is appropriate for the courts to allow a plenary action. However, in the later Court of Appeals decision, Maas v. Cornell University, 94 NY2d 87, supra, the court was unequivocal in stating that the appropriate route for judicial review was in the context of an Article 78 proceeding. Moreover, the Appellate Division has consistently held that a university’s “academic and administrative decision...may be reviewed only in a CPLR article 78 proceeding,” Demas v. Levitsky, 291 AD2d 653, 660 (3rd Dept. 2002); see also Risley v. Rubin, 272 AD2d 198 (1st Dept. 2000).

While it is clear that plaintiffs first three causes of action, alleging breach of contract, negligence and retaliation must be dismissed for failure to comply with the four month statute of limitations applicable to an Article 78 proceeding, all three causes of action are also subject to dismissal on other grounds.

Breach of Contract

Plaintiff has failed to identify any contractual provision that Pace breached by denying him the appointment of Distinguished Professor. He alleges that his contract incorporates the terms of the 1991 Pace Faculty Handbook that does refer to the Distinguished Professor rank. However, as discussed earlier, Provost Joseph Morreale stated that the 1931 handbook was never implemented by the university and all of plaintiff’s contracts, including the one for the academic year 2001-2002, expressly incorporated the terms of the 1986 handbook. Even if the 1991 handbook did apply to plaintiff’s contract, the description included in this handbook merely describes the rank of Distinguished Professor and in no way indicates any contractual right to the title. In the absence of any contractual basis for the rights plaintiff is seeking, the breach of contract cause of action must be dismissed.

Negligence

In this second cause of action plaintiff seeks recovery for loss of potential future income, damage to his reputation, both within and outside of the Pace academic community, personal humiliation, and mental pain and suffering. However, the Worker's Compensation Law provides the sole remedy for injuries sustained by an employee resulting from negligence of the employer. Such injuries can be mental as well as physical, Silberstein v. Advance Magazine Publishers, Inc., 988 F Supp 391 (S.D.N.Y. 1997). Indeed, in Maas, supra, the Appellate Division ruled that claims virtually identical to those plaintiff asserts here, namely loss of income, injury to reputation and mental stress were barred by the exclusivity provisions of the Workers' Compensation Law, Maas v. Cornell University, 253 AD2d 1 (3rd Dept.) aff'd 94 NY2d 87 (1999). Plaintiff, in his opposition papers, alleges that Pace engaged in deliberate and intentional conduct implying intentional infliction of emotional distress which is not how the negligence claim is **pleaded**. In any event, such a claim requires conduct "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency", Murphy v. American Home Products Corp. 58 NY2d 293 (1983). Plaintiff has in no way alleged actions by Pace which would come close to this standard. Therefore, the negligence cause of action must be dismissed as barred by the exclusivity provision of the Workers' Compensation Law.

Retaliation

Plaintiff maintains that the denial of his application for appointment as Distinguished Professor was retaliatory in nature because of his participation in a departmental grievance against Dean Dinter-Gottlieb and his resignation from a faculty committee to protest an honor awarded her. New York law allows employees with a cause of action for alleged retaliation to

bring suit under two sets of circumstances. Firstly, under N.Y. Excc.Law § 296(1)(e) where an employer retaliates against an employec who complains of discrimination, and secondly, under N.Y. Labor Law §§ 215, 740 where the retaliation is against a “whistle-blower” regarding violations of health and safety regulations or other specific labor law provisions. Plaintiff does not allegc that the grievance against Dean Dinter-Gottlieb had anything lo do with workplace discrimination or any other recognized form of protected activity. Therefore the retaliation claim must be dismissed on the additional ground that it fails to state a claim for relief.

Age Discrimination

The fourth cause of action alleges that Pace, in not appointing plaintiff Distinguished Professor, discriminated against him on the basis of age inasmuch as he had announced his intention to retire as of August, 2003. Plaintiff’s rationale for this claim is that he was informed by defendants that, as someone who was about to retire, he would be unable to fulfill the twelve points of teaching required by such an appointment. While plaintiff had not reached the mandatory retirement age of seventy, his planned retirement was part of an incentive plan offered by Pace. Plaintiff maintains that such a teaching requirement is discriminatory because it would not permit a retiring professor to attain the appointment. Defendants assert that the Guidelines that it follows in awarding the appointment are not intended to discriminate against my candidate on the basis of his or her age but rather reflect the judgment of the university that a Distinguished Professor should be actively involved in teaching to benefit the entire univcrsity community. In any event, when Prcsident Caputo informed plaintiff that he would not recommend his appointment, he explained his decision as follows:

There is no doubt you are an outstanding contributor to the growth of

knowledge in your field of mathematics. Based on the material provided in that area, you meet the criteria described in the University's guidelines involving research. In the area of service you have completed a variety of tasks which are impressive and reach distinguished status. Your teaching, while above average and deservedly well recognized, does not meet the standard required for appointment as a Distinguished Professor of Mathematics...The the University Guidelines are very clear that a candidate must have sustained accomplishments and outstanding ratings in all three areas to receive the title of Distinguished Professor.

In his affidavit, President Caputo indicated that in declining plaintiff's application, the minimum course load requirement played no role in his decision which would have been the same even if plaintiff was not about to retire.

The New York Human Rights Law prohibits an employer from discriminating against an employee because of his age. N.Y. Exec. Law §296(1). To prevail on a claim of age discrimination, plaintiff must plead and prove that the employment action alleged to be discriminatory was "actually motivated" by age. Devlin v. Transportation Communications International Union, 2002 WL 41 3919 (SDNY, 2002), citing Hazen Paper Co. v. Biggins, 507 US 604 (1993). Here, plaintiff does not allege that defendants refused to grant him the appointment because of his age. Rather, he alleges, correctly, that Dean Dinter-Gottlieb based her decision in part because plaintiff was already teaching a diminished course load and would be retiring at the end of the academic year. However, this was only one factor used in reaching the decision not to appoint plaintiff, the more pertinent factors being his low performance rating. In fact, President Caputo, in his letter to plaintiff denying him the appointment, made it clear that a candidate must have outstanding ratings in all three areas, pursuant to the Guidelines, in order to be successful. It is clear that the reasons for denying plaintiff the appointment had nothing to do

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with his age but rather his teaching performance. Further, the requirement under the Guidelines that a Distinguished Professor teach twelve credits per academic year appears to be a legitimate, age-neutral consideration not suggestive in any way of age discrimination. Plaintiff has not alleged any facts to sustain a claim under the New York Human Rights Law and the fourth cause of action must be dismissed.

Accordingly, it is

ORDERED that the cross-motion for summary judgment is denied; and it is further

ORDERED that the motion to dismiss is granted and the complaint is dismissed with costs and disbursements to defendant as taxed by the Clerk of the Court; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: 7/12/04

FILED
JUL 12 2004

ENTER:

[Signature]

J.H.O.

IRA GAMMERMANN