

Matter of Kaufman v Spitzer

2007 NY Slip Op 31095(U)

May 7, 2007

Supreme Court, Suffolk County

Docket Number: 0027877/2006

Judge: William B. Rebolini

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Short Form Order

SUPREME COURT - STATE OF NEW YORK

I.A.S. PART 7 SUFFOLK COUNTY

PRESENT:

WILLIAM B. REBOLINI
Justice

In the Matter of the Application of

Arie E. Kaufman,

Petitioner(s)

For a Judgment Pursuant to Article 78 of the Civil
Practice Law and Rules

-against-

Eliot Spitzer, Attorney General for the State of
New York,

Respondent(s)

Motion date: 10/30/06

Submitted: 2/28/07

Motion Sequence No.: 001 MD

Case Disp

Index No.: 27877-06

Attorney for Plaintiff:

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Upon the following papers numbering 1 to 7 read upon this motion for summary judgment:

Notice of Petition and supporting papers 1 - 3;

Answer and supporting papers 4 - 5;

Reply Affidavits and supporting papers 6 - 7;

it is

ORDERED that this petition by Arie Kaufman for a judgment pursuant to CPLR Article 78 annulling the decision of the Attorney General of the State of New York dated June 2, 2006 to the extent that it denied petitioner legal representation by New York State in the action Bitter v. Kaufman, (4999-03) pending in Suffolk County Supreme Court and for a further judgment declaring that the decision of the Attorney General of the State of New York denying petitioner legal representation is irrational, arbitrary and capricious and for a further judgment directing that the State indemnify and save harmless petitioner in the amount of any judgment obtained or reached in the settlement is denied; and it is further

ORDERED that the petition is dismissed.

Petitioner, Arie Kaufman (“Kaufman”) is a professor and Chairman of the Department of Computer Science and the Director of the Center for Visual Computing at the State University of New York at Stony Brook. In March 1997, Kaufman and his research assistant, Ingmar Bitter (“Bitter”), who had been conducting research involving “volume-rendering architecture” disclosed, in accordance with University requirements, a certain invention involving “perspective projection.” The State University of New York has a specific Patents and Invention Policy codified at 8 NYCRR 335.28, which provides in pertinent part, that any invention obtained by or through the State University belongs to the university, and in exchange for inventor’s agreement to such, the inventor shall be entitled to proceeds from the management and licensing of such invention to the extent of forty percent of the gross royalty paid.

As relevant to the instant controversy, Kaufman and Bitter executed the necessary “New Technology Disclosure” form on March 10, 1997 and one day later executed a form entitled “Inventors’ Agreement” wherein the parties agreed that Kaufman would receive 99 % of the inventors’ share of the royalties and Bitter would receive 1% of such royalties. Bitter, a non party to this action, later sued Kaufman claiming that this agreement was a product of fraud and misrepresentation. That matter is presently remanded to the trial calendar with a motion for summary judgment pending.

By letter dated March 23, 2004, Kaufman requested defense and indemnification from the State of New York with respect to that action pursuant to Public Officers Law Section 17. The Office of the Attorney General responded by letter dated June 2, 2006 denying Kaufman’s request for legal representation on the ground that the litigation in question involved a private contract in which the State had no involvement or input. Kaufman thereafter commenced the instant Article 78 proceeding challenging this denial.

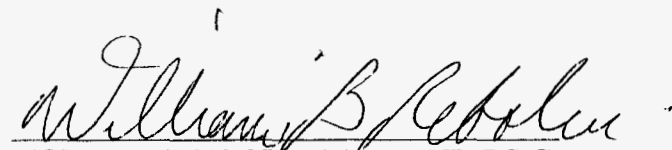
Public Officers Law Section 17(2)(a) provides in pertinent part: “* * * the state shall provide for the defense of the employee in any civil action or proceeding in any state or federal court arising out of any alleged act or omission which occurred or is alleged to have occurred while the employee was acting in the scope of his public employment or duties* * *”

It is for the Office of the Attorney General, in the first instance, to determine whether Kaufman was acting within the scope of his employment and therefore entitled to legal representation and such determination will only be set aside if it is arbitrary and capricious and lacks a factual basis in the record (see In the Matter of DeRespiris, 251 AD2d 503, 674 NYS2d 716 [2d Dept. 1998]; In the Matter of Schenectady Police Benevolent Association v. City of Schenectady, 299 AD2d 717, 750 NYS2d 666 [3d Dept. 2002]). ““An employee’s actions are not within the scope of employment unless the purpose in performing such actions is to further the employer’s interest, or carry out duties incumbent upon the employee in furthering the employer’s business’. In other words, ‘where an employee’s conduct is brought on by a matter wholly personal in nature, the source of which is not job related, his actions cannot be said to fall within the scope of his employment’” (In the Matter of Schenectady Police Benevolent Association v. City of Schenectady supra quoting Stavitz v. City of New York, 98 AD2d 529, 471 NYS2d 272).

Under the circumstances here, it cannot be said the decision of the Office of the Attorney General was arbitrary and capricious. While the parties to the Inventor’s Agreement may have

used a form provided by either the University or the Research Foundation, this is insufficient to transform Kaufman's act of entering a private contract for purely personal gain into an act to further the employer's interest. Indeed, neither the University nor the Research Foundation had any interest in this act other than the ministerial function of knowing how to divide the royalty payments. Nor can it be said that the division of the royalties was a duty incumbent upon Kaufman in furthering the business of the University. Rather, while it is a required piece of paperwork in the invention disclosure process, the Inventor's Agreement, is a document executed solely to further the private interests of the parties and not the interest of the employer.

Dated: May 7, 2007


HON. WILLIAM B. REBOLINI, J.S.C.

