

Hochstadt v City of New York
2007 NY Slip Op 32069(U)
July 5, 2007
Supreme Court, New York County
Docket Number: 0106430/2007
Judge: Karen Smith
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: SMITH
Justice

PART 62

HOCHSTADT, JOY

INDEX NO. 106430/07

MOTION DATE 07/05/07

- v -
N.Y.C. DEPARTMENT OF EDUCATION,
ET AL.

MOTION SEQ. NO. 01

MOTION CAL. NO. _____

The following papers, numbered 1 to 7 were read on this motion ~~to~~ for a preliminary injunction

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits <u>Summary of Complaint</u>	<u>1-3</u>
Answering Affidavits — Exhibits <u>Memorandum</u>	<u>4-5</u>
Replying Affidavits <u>Memorandum</u>	<u>6-7</u>

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is denied in accordance with the attached Memorandum decision and order

FILED
JUL 11 2007
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 7/5/07

KSS
HON. KAREN SMITH J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
 DO NOT POST REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 62

-----X

JOY HOCHSTADT,

Plaintiff,

-against-

Index no.: 106430/2007
Motion seq.: 001
Motion date: 07/05/2007

CITY OF NEW YORK, DEPARTMENT OF EDUCATION,
JOEL KLEIN, CHANCELLOR; EMPOWERMENT SCHOOLS,
ERIC NADELSTERN, CEO; REGIONS 9/10 OPERATIONS
CENTER PHIL CROWE,

Defendants.

DECISION AND ORDER
FILED
JUL 11 2007

-----X

PRESENT: KAREN S. SMITH, J.S.C.:

NEW YORK
COUNTY CLERK'S OFFICE

Plaintiff's motion for various items of declaratory relief during the pendency of this action is denied.

Plaintiff (hereafter referred to as "Hochstadt") brought this action against her employer. In Hochstadt's complaint, she demands relief consisting of; 1) two temporary restraining orders, 2) a preliminary injunction, 3) three permanent injunctions, 4) the reversal of any disciplinary action taken against her by her employer (which, at the time of the filing of the instant action, appears to be pending but not concluded) and reinstatement for allegedly lost work time, 5) unspecified damages for pain, suffering and humiliation and 6) reimbursement for the expenses of the instant action. Hochstadt bases her complaint upon alleged violations of §47, §47-a and §47-b of the New York State Civil Rights Law.

Simultaneously with the service of the summons and complaint herein, Hochstadt served the instant order to show cause requesting that the court issue an order making eight specific declarations together with such other and further relief as the court deems just. The requests for

the declarations are asserted in paragraphs which also contain details of the manner in which Hochstadt feels she has been discriminated against, descriptions of why Hochstadt believes the declarations are necessary and directions as to how the declarations should be implemented. The requested declarations are; 1) a declaration that it is; "...implicit in Defendant's own Medical Exam Report ... that Dr. Hochstadt is 'disabled', 2) a separate declaration that Dr. Hochstat; "...comes under the definition of a 'person with a disability' as used in the statutory language of ... Civil Rights Law ... §47(1)", 3) a declaration that; "...[d]efendants ... NOT deny her entry to her assigned workplace ... solely because she is accompanied by her...Service Dog...", 4) two separate additional declarations that Hochstadt; "...may NOT be discriminated against based on her disability...", 5) a declaration that Hochstadt; "... must maintain a constant and continuous partnership relationship with her service dog ...", 6) a declaration that Hochstadt; "...has the same right to a safe evacuation according to the evacuation plan in place for 333 Seventh Avenue ... as all other employees, in the event of an emergency" and 7) a declaration that, between May 9, 2007 and the granting of the court's order, Hochstadt; "... was effectively and unlawfully locked out of the workplace...".

The purpose of a preliminary injunction is to maintain the status quo during the pendency of an action where the failure to do so might ultimately impair the value of any final judgment in the action. "A mandatory injunction should not be granted, absent extraordinary circumstances, where the status quo would be disturbed and the plaintiff would receive the ultimate relief sought, pendente lite" (*St. Paul Fire and Marine Insurance Company v York Claims Service, Inc.*, 308 AD2d 347 [1st Dept, 2003] [internal citations omitted]). Of the requested declarations, only the one identified in item 3) above would not alter the status quo or constitute the grant of

the ultimate relief sought in this action. Since no extraordinary circumstances have been shown herein, item 3) is the only one of Hochstadt's requests which is appropriate for consideration on an application for an injunction.

However, assuming *arguendo* Hochstadt's requests for declarations were proper, it has long been settled that, in order to prevail on a motion for a preliminary injunction, the movant bears the burden of establishing a likelihood of success on the merits, irreparable injury and that the balance of the equities tips in the movant's favor (see Weinstein, Korn and Miller, 1 New York Civil Practice: CPLR P 6312.01). The failure to establish any of the three elements results in the denial of the requested injunction.

A movant must first establish a viable a cause of action upon which there is a likelihood of prevailing. In the instant matter, Hochstadt has premised her entire complaint upon the defendants' alleged failures to comply with §47, §47-a and §47-b of the Civil Rights Law. §47-c of the Civil Rights Law provides that a failure to comply with those sections constitutes a "violation". The statute further provides that, under certain circumstances, such violations are punishable by a fine. The language of the statute contemplates the prosecution of violations on behalf of the People of the State of New York and contains no indication of any authorization or support for any private right of action. Neither Hochstadt's motion papers nor her summons and complaint offer any showing that, as a private citizen seeking to vindicate her private interest, Hochstadt has standing to assert a cause of action based upon §47, §47-a or 47-b of the Civil Rights Law. Moreover, even if Hochstadt had shown her entitlement to bring a private action to enforce the statute, the only relief the statute offers is a fine, not an injunction. Thus, in the instant motion papers, Hochstadt has not shown she has asserted a cause of action upon which

she will be likely to succeed on the merits. Accordingly, it is;

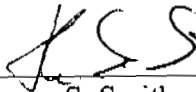
ORDERED that the instant motion requesting various declarations during the pendency of this action is denied, and its is further;

ORDERED that any relief granted during the pendency of this motion is hereby vacated and of no further force or effect.

The foregoing constitutes the decision and order of this court.

Dated: July 5, 2007

ENTER:



Hon. Karen S. Smith, J.S.C.

FILED
JUL 11 2007
NEW YORK
COUNTY CLERK'S OFFICE