

Cuavers v New York City Dept. of Educ.
2008 NY Slip Op 30591(U)
February 29, 2008
Supreme Court, New York County
Docket Number: 0112128/2007
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

EILEEN A. RAKOWER

PRESENT:

J.S.C.

PART Part 5

Justice

Index Number : 112128/2007

CUAVERS, CALVIN

VS.

NYC DEPARTMENT OF EDUCATION

SEQUENCE NUMBER : # 001

DISMISS COMPLAINT

INDEX NO. 112128-07

MOTION DATE

MOTION SEQ. NO. #001

MOTION CAL. NO. _____

_____ here read on this motion to/for _____

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

FILED

MAR 03 2008

NEW YORK COUNTY CLERK'S OFFICE

ACCOMPANYING DECISION / ORDER

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

Dated: 2/29/08

EILEEN A. RAKOWER J.S.C.

J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate

DO NOT POST

REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 5

-----X
CALVIN CUAVERS,

Plaintiff,

Index No.
112128/07

Mot. Seq. No. :
001

- against -

Decision and
Order

NEW YORK CITY DEPARTMENT OF EDUCATION
Defendants.

FILED
MAR 13 2008
NEW YORK
COUNTY CLERK'S OFFICE

-----X
HON. EILEEN A. RAKOWER

Plaintiff brings this action seeking "equitable relief and money damages in the sum of \$2,000,000.00." Plaintiff alleges that he and defendant the New York City Department of Education ("DOE") entered into a contract dated March 12, 2001, and that DOE breached that contract with him on January 10, 2003. Plaintiff filed a summons and complaint on September 12, 2007, but the contents fail to identify the breach or further identify the "equitable relief" sought. DOE moves to dismiss pursuant to CPLR 3211(a)(7), based on plaintiff's failure to file a timely notice of claim. Plaintiff opposes.

Plaintiff was employed as a special education teacher by DOE until he was suspended on September 29, 2000 for disciplinary reasons. He was reinstated pursuant to a stipulation dated March 8, 2001 and signed by the parties on March 12, 2001. The stipulation states, in relevant part:

The grievant's termination is rescinded; he will be reinstated immediately with back pay and made whole. The District will request that the grievant be removed from the ineligible list . . .

Further, it states that “[t]his is the entire agreement of all parties with regard to this matter.”

The DOE argues that a search of its database was conducted and that no notice of claim was filed in connection with plaintiff’s claim. Thus, the DOE argues that pursuant to New York Education Law §3813(1), plaintiff’s claim must be dismissed.

CPLR 3211 states, in relevant part:

(a) a party may move for judgment dismissing one or more causes of action asserted against him on the ground that:

(7) the pleading fails to state a cause of action

New York Education Law §3813(1) states, in relevant part:

No action or special proceeding, for any cause whatever . . . relating to district property . . . or involving the rights or interests of any district or any such school shall be prosecuted or maintained against any school district, board of education . . . unless it shall appear by and as an allegation in the complaint or necessary moving papers that a written verified claim upon which such action or special proceeding is founded was presented . . . within three months after the accrual of such claim. In the case of an action . . . for monies due arising out of a contract, accrual of such claim shall be deemed to have occurred as of the date payment for the amount claimed was denied.

The court, on a motion to dismiss an action pursuant to CPLR 3211(a)(7), must accept the factual allegations of the complaint as true, accord the plaintiff all favorable inferences which may be drawn therefrom, and determine only whether the facts as alleged fit within any cognizable legal theory. (*Leon v. Martinez*, 84 NY2d 83[1994]). The sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law. (*Guggenheimer v. Ginzburg*, 43 N.Y.2d 268[1977]).

Plaintiff’s complaint states:

13. At all times herein mentioned, defendant NEW YORK CITY

DEPARTMENT OF EDUCATION derived substantial revenue from interstate or international commerce.

14. On or about March 12, 2001, the plaintiff and the defendant entered into a Contract for good and valuable consideration.

15. On or about January 10, 2003, and continuing thereafter, defendant NEW YORK CITY DEPARTMENT OF EDUCATION failed to comply with the terms, conditions and obligations called for on its part under said Contract.

16. The defendant continues to be in default under the said Contract despite due demand to cure said default.

17. Defendant NEW YORK CITY DEPARTMENT OF EDUCATION received notice of the claim within ninety days of said breach.

18. Plaintiff was irreparably damaged by defendant's said breach.

19. Due to defendant's breach of Contract, plaintiff is entitled to equitable relief.

20. Due to defendant's breach of Contract, plaintiff is entitled to damages in the sum of \$2,000,000.00.

WHEREFORE, the plaintiff demands judgment awarding equitable relief and money damages in the sum of \$2,000,000.00, together with interest and the costs and disbursements of this action, and such other and further relief as to this Court seems just and proper.

Initially, plaintiff provides no showing that he filed a timely notice of claim. Plaintiff argues that no such notice was required pursuant to New York Education Law, since this action seeks equitable relief.

"A notice of claim is not a condition precedent to a special proceeding properly brought pursuant to CPLR article 78, in the nature of mandamus, seeking judicial enforcement of a legal right derived through enactment of positive law." (*Sharpe v. Sturm*, 28 A.D.3d 777 [N.Y.A.D. 2 Dept., 2006]). "The pertinent distinction is

between actions and proceedings which on the one hand seek only enforcement of private rights and duties and those on the other in which it is sought to vindicate a public interest; the provisions of subdivision 1 of section 3813 are applicable as to the former but not as to the latter.” (*Union Free School Dist. No. 6 of Towns of Islip and Smithtown v. New York State Appeal Bd.*, 35 N.Y.2d 371 [1974])

Plaintiff asserts here that his claim for monetary damages is merely incidental to his claim for equitable relief. He cites to *Ruocco v. Doyle*, 38 AD2d 132 (2nd Dept., 1972) for support. The Court in *Ruocco* specifically found that

since his action does not involve a claim for monetary damages but only for a declaration of his status as a tenured nonresigned employee, the service of a notice of claim pursuant to section 3813 of the Education Law is not a condition precedent to the institution or maintenance of the action. *Id.*, at 134.

Here, by contrast, the thrust of plaintiff’s action is not one for declaratory relief.

Statements in a pleading must be sufficiently particular to give the court and parties notice of what is to be proved and the material elements of each cause of action. (*see* CPLR §3013). Here, plaintiff’s complaint fails to sufficiently state the relief he seeks. The mere inclusion of the words “demands judgment awarding equitable relief” in the summons and complaint without any substance as to what such demand includes does not make this an action for equitable relief.

Plaintiff now, for the first time and in opposition to this motion, provides a sworn affidavit dated November 21, 2007, providing substantive allegations. Specifically, Mr. Cuavers states:

This is an action for breach of contract. I was employed as a special education teacher by defendant NEW YORK CITY DEPARTMENT OF EDUCATION. On March 8, 2001, a stipulation pertaining to a prior disciplinary action was made between myself and defendant NEW YORK CITY DEPARTMENT OF EDUCATION. In said stipulation, the within parties agreed that I would be reinstated with back pay and made whole. However, I was never made whole by defendant NEW YORK CITY DEPARTMENT OF EDUCATION and as such, I never received tenure. On June 15, 2001, I was terminated by defendant NEW

YORK CITY DEPARTMENT OF EDUCATION as a non-tenured teacher. Further, I recently learned that I cannot reach as high a pay scale now as a therapist for autistic children as if I had received tenure and remained employed by defendant NEW YORK CITY DEPARTMENT OF EDUCATION.

Plaintiff claims to have suffered monetary damages, reflected by his current pay scale in another job, as a result of having been terminated in June of 2001 as a non-tenured teacher. The court notes that this is the first mention of tenure, as the complaint and the stipulation upon which it is founded, are silent on the issue of plaintiff's tenure status.

The court does not agree that monetary damages are merely incidental. This constitutes an action for breach of contract, for \$2,000,000.00 in damages as a result of said breach, and a notice of claim must have been timely filed as a precedent to this proceeding. Further, as this action is now time barred, plaintiff cannot seek leave to file a late notice of claim.

Wherefore, it is hereby

ORDERED that defendant the New York City Department of Education's motion to dismiss is granted and the complaint is dismissed; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

All other relief requested is denied.

DATED: February 29, 2008



EILEEN A. RAKOWER, J.S.C

FILED
MAR 03 2008
NEW YORK
COUNTY CLERK'S OFFICE