

Funt v Human Resources Admin. of City of N.Y.

2008 NY Slip Op 32801(U)

October 6, 2008

Supreme Court, New York County

Docket Number: 124501/2001

Judge: Paul G. Feinman

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

SKIP FUNT

INDEX NO. 124501/2001

- v -

MOTION DATE 7/25/08

HUMAN RESOURCES ADMINI-
STRATION of the CITY of
NEW YORK

MOT. SEQ. NO. 004

MOT. CAL. NO.

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

Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits
Answering Affidavits — Exhibits — CROSS MOTION
Replying Affidavits

PAPERS NUMBERED

1

2

3

Cross-Motion: Yes No

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 1408)

Upon the foregoing papers, it is

ORDERED that the motion bearing sequence no. 004 is decided in accordance with the annexed decision and order.

ADJUDGED and ORDERED that the ~~petition~~ bearing sequence no. _____ is decided in accordance with the annexed decision, order and judgment.

ORDERED that the cross motion bearing sequence no. 004 is decided in accordance with the annexed decision and order.

ADJUDGED and ORDERED that the ~~cross petition~~ bearing sequence no. _____ is decided in accordance with the annexed decision, order and judgment.

ORDERED that the motion bearing sequence no. _____ is resolved pursuant to the terms of the parties' stipulation dated _____ and annexed hereto.

ADJUDGED and ORDERED that the ~~petition~~ bearing sequence no. _____ is resolved pursuant to the terms of the parties' stipulation dated _____ and annexed hereto.

Dated: 10/6/08

Paul G. Feinman

J.S.C.

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

MOTION/CASE IS RESPECTFULLY REFERRED TO

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART 52

-----X

SKIP FUNT,

Plaintiff,

against

Index Number 124501/2001
Mot. Submit Date July 25, 2008
Mot. Seq. No. 004

HUMAN RESOURCES ADMINISTRATION of the
CITY OF NEW YORK,

Defendant.

DECISION AND ORDER

-----X

For the Plaintiff:

Polly Eustis, Esq.
351 Broadway, 4th Floor
New York NY 10013-3902
212-334 -9002

For the Defendant:

Michael A. Cardozo, Esq.
Corporation Counsel of City of New York
By: Kimberly Conway, Esq.
100 Church Street, Rm. 2-168
New York NY 10007
212-788-0865

Papers considered in review of this motion for summary judgment and cross-motion for summary judgment:

Papers	Numbered
Notice of Motion and Affidavits Annexed	1
Cross-Motion and Exhibits Annexed	2
Affirmation in Opposition and Reply	3

PAUL G. FEINMAN, J.:

Plaintiff moves for summary judgment and defendant cross-moves for summary judgment. For the reasons set forth below, the plaintiff's motion is denied, the defendant's cross-motion granted, and the entire action dismissed.¹

According to the amended complaint, plaintiff was evicted from his apartment on April 14, 2000 after he sought and was promised assistance from the New York City Human Resources

¹Pursuant to the rules of Part 52, motions for summary judgment are to be filed within 60 days of filing the note of issue. The note of issue was filed on February 22, 2008. Plaintiff's motion was filed on April 24, 2008. Defendant's cross-motion was filed on June 24, 2008. Both motions are untimely, as the sixtieth day was April 22, 2008. Nonetheless, the court chooses to entertain the motion and cross-motion.

3]

Administration (HRA) on March 27, 2000, April 4, 2000, and thereafter; plaintiff alleges the agency gave him incorrect information, made promises it did not keep, and failed to provide him with the necessary help, all of which resulted in his eviction (Not. of Mot. Ex. 1, Am. Compl. ¶¶ 7, 8, 10, 24). In March 2000, plaintiff was pursuing various ideas to raise the rent money that he owed, including seeking a bank loan, seeking a loan from a friend, applying for a one-shot grant from HRA, seeking court adjournments, and seeking to negotiate with the landlord (Cross-Mot. Ex. D, Funt EBT 47-49, 50, 51, 55, 56). Specifically, plaintiff alleges that on April 4, 2002, when he met with the caseworker from HRA's Protective Services Administration (PSA), he was told that his particular situation, which included temporary medical disability and monies owed to him, was such that the caseworker did not think he would be evicted in the near future, and he was promised that the caseworker would get him legal assistance (Cross-Mot. Ex. D, Funt EBT 64, 65). Plaintiff testified that he relied on the caseworker's promise to provide him with someone with legal skills who could give advice as to whether he was doing things right or wrong, and perhaps help with any court proceedings or papers from his landlord, in order to buy time to figure out a way to acquire the monies he needed to pay the arrears (Cross-Mot. Ex. D, Funt EBT 66-67).² He did not believe that the caseworker would get his rent paid for him (Cross-Mot. Ex. D, Funt EBT 66).

After his eviction, plaintiff sought a fair hearing through the New York State Office of Temporary and Disability Assistance (OTDA), which was finally held on November 17, 2000 (Not. of Mot. Ex. 1, Am. Compl. ¶¶ 15-22). The fair hearing considered four issues: whether

²A warrant of eviction was issued on March 29, 2000 (Cross-Mot. Ex. J), although plaintiff testified he did not know this.

HRA's failure to act on plaintiff's March 2000 application for various forms of public assistance was correct; whether it acted correctly on September 21, 2000, and on September 30, 2000, when it determined to discontinue the benefits; and whether its failure to act on plaintiff's application for assistance to pay rent arrears was correct (Not. of Mot. Ex. 2, unnumbered p. 1). The decision, dated December 20, 2000, determined in relevant part that HRA was incorrect in its failure to act on plaintiff's application for payment of rent arrears, and reversed it, and directed the agency "to process . . . the application."³

Plaintiff filed a notice of claim upon the City of New York on December 15, 2000 (Pl. Aff. in Opp. Ex. 8). The notice of claim indicates that the "accident" occurred on March 27, 2000 to December 12, 2000, and is "still ongoing," involved HRA, and in part concerned the "illegal removal from home without notice, without proper actions by PSA/HRA," and that there were "several issues including medical, benefits" and "no full trial held; benefits denied and cut without notice; closed case without not[ice]; Discontinuation." It also states there was a "false arrest" on April 14, 2000. The injury is described in part as "loss of property, residence, imprisoned, loss of medication, injury to health, physical well being."

Plaintiff then commenced this action. According to the amended complaint, he claims that because of HRA's negligence, he became homeless, was without work, and suffered psychological and physical injuries (Not. of Mot. Ex. 1, Am. Compl. ¶ 25). Defendant interposed its answer about March 19, 2002, and included defenses that HRA is not a suable

³The decision also determined that HRA was incorrect when it failed to act on plaintiff's March 2000 application for Public Assistance, Medical Assistance, and Food Stamp benefits, and reversed the two determinations in September 2000 that discontinued benefits (Not. of Mot. Ex. 2, Dec. after Fair Hearing, Dec. 20, 2000 at unnumbered pp. 7-8).

entity; failure to state a cause of action, and that the action is barred “by the applicable statutes of limitations” (Pl. Aff. in Opp. Ex. 7, Ver. Ans.).

Plaintiff moves for summary judgment on the grounds that the fair hearing decision which found HRA acted in error is res judicata, and that the City is liable for damages based on the special relationship that existed between plaintiff and the municipal caseworker who made promises to him about the help he would receive, on which plaintiff relied. Defendant City cross-moves for summary judgment and dismissal of the complaint. It argues that the fair hearing, at which a representative from HRA failed to appear or provide the case file, did not address plaintiff’s negligence and damages claims and is not res judicata; that there was no special relationship between the City agency and plaintiff such that liability could adhere to the City, and that plaintiff’s claims are barred because he filed his notice of claim more than 90 days after the claim arose, that is April 14, 2000, the date of his eviction.⁴

A motion for summary judgment is a drastic measure and to be used sparingly (*Wanger v Zeh*, 45 Misc 2d 93 [Sup. Ct., Albany County], *aff’d* 26 AD2d 729 [3rd Dept 1965]). Summary judgment is proper when there are no issues of triable fact (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]). Issue finding rather than issue determination is its function (*Sillman v Twentieth Century Fox Film Corp.*, 3 NY2d 395 [1957]). The evidence will be construed in the light most favorable to the one moved against (*Corvino v Mount Pleasant Centr. Sch. Dist.*, 305 AD2d 364, 364 [2d Dept 2003]; *Bielat v Montrose*, 272 AD2d 251, 251 [1st Dept. 2000]).

To prevail on a summary judgment motion, the moving party must produce evidentiary

⁴Ninety days from April 14, 2000, would have been July 13, 2000.

proof in admissible form sufficient to warrant the direction of summary judgment in his or her favor (*GTF Mtkg, Inc. v Colonial Aluminum Sales, Inc.*, 66 NY2d 965, 967 [1985]). Once this burden is met, the burden shifts to the opposing party to submit proof in admissible form sufficient to create a question of fact requiring a trial (*Kosson v Algaze*, 84 NY2d 1019 [1995]). A party opposing summary judgment must lay bare its proofs so that the matters raised in the pleadings are shown to be real and capable of being established upon trial (*W.W. Norton & Co. v Roslyn Targ Literary Agency, Inc.*, 81 AD2d 798 [1st Dept. 1981]). Bare conclusory allegations are insufficient to defeat a motion for summary judgment (*see, Thanasoulis v National Assn. for the Specialty Foods Trade, Inc.*, 226 AD2d 227 [1st Dept 1996]; *Lee v Weinstein*, 116 AD2d 700 [2d Dept], *lv denied* 68 NY2d 601 [1986]). It is insufficient to offer suspicions, surmises, and accusations (*Zuckerman v City of New York*, 49 NY2d 557, 557 [1980]).

General Municipal Law § 50-e, which applies to tort claims against a public corporation, requires that a notice of claim must be served on the entity within 90 days after the claim arises (Gen. Mun. L. §50-e[1][a]). The purpose of a notice of claim is to provide a municipal authority with the opportunity to investigate the claim (*Goodwin v New York City Hous. Auth.*, 42 AD3d 63, 68 [1st Dept. 2007]). The notice must set forth the time, the place, and the manner in which the claims arose (*O'Brien v Syracuse*, 54 NY2d 353, 358 [1981]). Where the filing would be more than 90 days after the occurrence, the claimant must seek the court's permission to file a late notice of claim (Gen. Mun. L. §§ 50-e[5]). However, the late filing of the notice of claim must be accomplished within the statute of limitations period, i.e., not more than one year and 90 days after the cause of action accrued, unless the statute of limitations was tolled (Gen. Mun. L. §§ 50-e[5]; 50-i). The New York courts have "consistently treated the year-and-90-day provision

[*7]

contained in section 50-i as a statute of limitations” (*Campbell v City of N.Y.*, 4 NY3d 200, 203 [2005]).

Plaintiff argues unpersuasively that the City acknowledged receipt of the notice of claim and should therefore be precluded from asserting, more than seven years later, that the notice was untimely. The general rule is that the doctrine of estoppel is not applicable to agencies of the State acting in a governmental capacity, and thus the City’s failure to inform a claimant that a notice of claim was untimely, and proceeding with the litigation, will not trigger a finding of an estoppel (*see, Rodriguez v City of N.Y.*, 169 AD2d 532, 533 [1st Dept. 1991]).⁵ Plaintiff also argues, without citing any case law to support his argument, that his claim only accrued on November 17, 2000, the date of the fair hearing, because only on that date was it clear that HRA was found to have acted incorrectly. However, the general rule is that a cause of action accrues in tort upon injury, even where the aggrieved party is ignorant of the wrong or injury (*see, Ackerman v Price Waterhouse*, 84 NY2d 535, 541 [1994]). He also argues that he was informed that his remedy was to seek a fair hearing, and that his pursuit of an administrative remedy should not preclude him from now seeking damages in a plenary action. Despite what plaintiff characterizes as an inherent unfairness, the court is constrained by the General Municipal Law as well as case law, and cannot allow him to pursue a claim that was untimely noticed against the municipality.

Even were the notice of claim timely filed, plaintiff’s argument concerning the res

⁵This is not to say that in pursuing years of litigation, including the taking of depositions and motion practice, the City has wasted a great deal of taxpayer money, and its attorney’s time and energy, let alone plaintiff’s and plaintiff’s attorney’s time and energy.

judicata effect of the fair hearing decision is inapposite. The fair hearing decision held that HRA's "failure to act on [plaintiff's] application for assistance to pay rent arrears is not correct and is reversed." It was an administrative fair hearing and therefore did not address plaintiff's claims sounding in negligence. Moreover, the principle of governmental immunity for negligent acts or omissions of municipal agents or employees provides that when official action involves the exercise of discretion or expert judgment in policy matters, and is not exclusively ministerial, a municipal defendant generally is not answerable in damages for the injurious consequences of that action (*see, Mon v City of New York*, 78 NY2d 309 [1991]; *see also, Arteaga v State of New York*, 72 NY2d 214, 216 [1998]; *Tango v Tulevech*, 61 NY2d 34, 40 [1983]).

Plaintiff argues that there was a special relationship established between him and the agency, and that the City can therefore be held liable for the discretionary acts of its employees (*see Kovit v Estate of Hallums*, 4 NY3d 499 [2005]). As set forth in *Kovit*, the finding that there is a special relationship based on a municipality's assumption of a duty requires "(1) an assumption by a municipality, through promises or actions, of an affirmative duty to act on behalf of the injured party; (2) knowledge on the part of a municipality's agents that inaction could lead to harm; (3) some form of direct contact between the municipality's agents and the injured party; and (4) that party's justifiable reliance on the municipality's affirmative undertaking" (4 NY3d at 506). Here, plaintiff does not satisfy the first or fourth prong. He does not establish that HRA assumed an affirmative duty to act on his behalf broader than what it normally undertook on behalf of a similarly placed individual. As concerns the prong of reliance, plaintiff did not testify one way or another about his actions following his meeting on April 4, 2000, with the caseworker. He testified that he knew that the promise of a legal person to talk to did not mean

that this person would pay his rent, but only that he would have the ear and mind of someone who would know whether he was doing things right. This is insufficient to show that plaintiff was "lulled" into "a false sense of security and [] induced [] to relax his own vigilance or to forego other available avenues of protection" (*Cuffy v New York*, 69 NY2d 255, 261 [1987]). Plaintiff does not establish his right to summary judgment on the complaint. Defendant establishes that summary judgment and dismissal of the complaint warranted. It is


ORDERED that the plaintiff's motion for summary judgment is denied; and it is further

ORDERED that the defendant's cross-motion for summary judgment is granted and the complaint is dismissed with costs and disbursements to defendant as taxed by the Clerk of the Court upon the submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly.

This constitutes the decision and order of the court.

Dated: October 6, 2008
 New York, New York



 J.S.C.

HON. PAUL G. FEINMAN