

Stewart v State of New York
2012 NY Slip Op 34008(U)
September 17, 2012
Court of Claims
Docket Number: Claim No. None
Judge: Thomas H. Scuccimarra
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Synopsis

Late claim relief denied.

Case information

UID: 2012-030-564
Claimant(s): LANCASTER STEWART
Claimant short name: STEWART
Footnote (claimant name) :
Defendant(s): THE STATE OF NEW YORK
Footnote (defendant name) :
Third-party claimant(s):
Third-party defendant(s):
Claim number(s): NONE
Motion number(s): M-81489
Cross-motion number(s):
Judge: THOMAS H. SCUCCIMARRA
Claimant's attorney: LANCASTER STEWART, PRO SE
HON. ERIC T. SCHNEIDERMAN
Defendant's attorney: ATTORNEY GENERAL OF THE STATE OF NEW YORK
BY: ELLEN S. MENDELSON
ASSISTANT ATTORNEY GENERAL
Third-party defendant's attorney:
Signature date: September 17, 2012
City: White Plains
Comments:
Official citation:
Appellate results:
See also (multicaptioned case)

Decision

The following papers were read and considered on claimant's motion for late claim relief:

1 - 11 Notice of Motion, Statement Supporting late Claim and Statement of Proposed Claim by Lancaster Stewart, Claimant, and attached papers [filed May 7, 2012]; Notice of Motion, Proposed Claim Form; Pages 13 and 14 of Statement of Proposed Claim by Lancaster Stewart, Claimant [filed June 11, 2012]; Notice of Motion, Statement Supporting Late Claim and Statement of Proposed Claim by Lancaster Stewart, Claimant, and attached papers [filed July 9, 2012]; Notice of Motion, Page 2 of Statement of Proposed Claim (to be attached to papers filed July 9, 2012) by Lancaster Stewart, Claimant [filed July 9, 2012]

12 Affirmation in Opposition by Ellen S. Mendelson, Assistant Attorney General [filed June 15, 2012]

13 Answer to Affirmation in Opposition by Lancaster Stewart, Claimant [filed July 9, 2012]

14 Affirmation in Opposition to Amended Notice of Motion by Ellen S. Mendelson, Assistant Attorney General [filed July 16, 2012]

Lancaster Stewart alleges that he was wrongfully terminated from his employment as a Supervising Risk Management Specialist at the New York State Insurance Department [NYSID] as a result of fraudulent disciplinary charges filed against him by his employer on May 25, 2009 and March 11, 2010. He asserts that in January 2009 he complained to the New York State Inspector General about "NYSID's negligent pension supervision and CMB [Capital Markets Bureau] management malfeasance." [Proposed Claims, filed May 7, 2012; July 9, 2012]. He states "[a] few months later CMB management complained about Stewart to NYSID agency labor relations representative Scott Gollop, who negligently wrote and served Stewart a Notice of Discipline . . . dated May 25, 2009 . . . comprised [of] three disciplinary charges that were factually incorrect." [*Ibid.*]. According to claimant, these charges were resolved by a stipulation of settlement, and he returned to work in July 2009, when "CMB management undertook a harassment campaign, pursuant to which Stewart's coworkers withheld services and made intentional workflow errors that were subsequently mischaracterized as disciplinary violations by Stewart." [*Ibid.*]. Mr. Stewart states he wrote another letter dated November 10, 2009 to the Superintendent of Insurance complaining about negligent pension supervision, was told such was being reviewed and would be responded to in a December 4, 2009 letter from the Deputy General Counsel, but was thereafter placed on involuntary leave of absence⁽¹⁾ for a mental and physical examination on December 23, 2009. [*Ibid.*].

On March 1, 2010 Mr. Stewart was found fit to perform his duties and returned to the office. After an interrogation held on March 8, 2010 pursuant to Article 33 of the Agreement between the State and claimant's union, the Public Employees Federation [PEF], claimant was "negligently" given a Notice of Discipline dated March 11, 2010 and suspended. [*Ibid.*]. He asserts that most of the charges occurred after his complaints about management misconduct in November 2009, and that only one charge predated his alleged complaints, and that that charge was disproved during the arbitration hearing (although the arbitrator ruled otherwise).

An arbitrator's decision dated October 13, 2010 confirmed that the department had just cause for terminating Mr. Stewart as charged in the notices of discipline and had probable cause to suspend him without pay, thus claimant was found not entitled to back pay or benefits. [Notice of Motion, filed July 9, 2012, Exhibit 1]. The arbitrator found that claimant was guilty of all the charges and the underlying specifications, including charges that he had violated policies governing workplace violence, had failed to conduct himself in an appropriate and professional manner, violated confidentiality policy, and failed to comply with managerial or supervisory directives. It is suggested in Mr. Stewart's submission that the decision was thereafter modified and back pay was ordered for a portion of the period during which he was suspended however no copy of any new determination has been submitted with any of the numerous submissions made by claimant during the pendency of the present motion. Significantly, the contract between the State and PEF provides in Article 34.4(d)(4) that "the decision and award of the arbitrator shall be final and binding consistent with the provisions of CPLR Article 75." [See Notice of Motion, filed May 7, 2012, Exhibit A].

Elsewhere in the proposed claims Mr. Stewart submitted he writes that the Arbitrator was negligent in reaching his determination, breached the agreement between the State and the PEF by allowing certain witnesses, and that the transcript made of the multiple days of hearing was inaccurate among other errors. He also "believes" that during the July 30, 2010 hearing the labor relations representative asked claimant about past problems with private companies, which the representative could not have known about unless "NYSID had invaded Stewart's privacy by eavesdropping on his electronic communications or otherwise prying into Stewart's private affairs." [Proposed Claims filed May 7, 2012, July 9, 2012].

Claimant alleges that the State of New York has since installed "surveillance devices on Stewart's telephone, computer and throughout Stewart's residence and has been manipulating the conversation of people speaking to Stewart on the telephone, by email and in person in his neighborhood; and by so doing the State of New York has caused and continues to cause Stewart emotional distress." [*Ibid.*]. His suspicions are based upon observed "body language" by his roommate, and his roommate's girlfriend as they walked past the foyer in claimant's building; a telephone suggestion by a friend to make a smoothie from lettuce and tomato, which "happened to be unused vegetables in [claimant's] refrigerator" that claimant had "not disclosed" to the friend; his observation of a clerk in a hardware store eating oranges in the same fashion that Mr. Stewart ate oranges, among other things. [*Ibid.*]. Mr. Stewart states that because of the wrongful termination he became financially insolvent, was ineligible for unemployment compensation, his house is in foreclosure, and he was unable to "afford an attorney to file suit against the architect, developer, real estate broker and their associates who Stewart believes falsely described

[his] residence . . . as a brick structure when Stewart purchased the property from them." [Proposed claim attached to Notice of Motion filed June 11, 2012].

The causes of action Mr. Stewart claims to be alleging are for "negligence, breach of contract, wrongful firing, and invasion of privacy." [Notice of Motion filed May 7, 2012]. Claimant concedes that the time periods for bringing a cause of action based upon the whistleblower statutes⁽²⁾ have expired, and that therefore the time within which to seek late claim relief in the Court of Claims with regard to such causes of action have expired. [Answer to Affirmation in Opposition by Lancaster Stewart, filed July 9, 2012]. He seeks damages in the amount of "\$10 million" for "lost wages & benefits; creditor law suit & expenses; mortgage refinancing forfeiture and consequential damages; investment manager job forfeiture; forfeiture of legal claims against 3rd parties & invasion of privacy damages." [Proposed Claims, filed May 7, 2012; July 9, 2012].

In order to determine an application for permission to serve and file a late claim, the Court must consider, "among other factors," the six factors set forth in Court of Claims Act §10(6). The Court is afforded considerable discretion in determining whether to permit the late filing of a claim, thus the presence or absence of any particular factor is not dispositive. A copy of the proposed claim⁽³⁾, should accompany the motion, allowing the court to ascertain the nature of the claim, including a date of accrual, location of the alleged incident, and what injuries are alleged. *See* Court of Claims Act §11(b); 22 NYCRR §206.6.

Although it is debatable whether the application is timely, the Court has assumed such because of the amorphous nature of claimant's complaints including any accrual date.

Claimant avers that the State has notice and an opportunity to investigate "because NYSID deliberately orchestrated the misconduct giving rise to the claim by negligently or intentionally filing false disciplinary charges . . .", that the claim is meritorious, that the State is not substantially prejudiced because "it knowingly instigated and orchestrated the misconduct giving rise" to the claim, and that he was unaware of filing deadlines because the State of New York's "unclean hands" related to the allegedly deliberate failure to timely calculate or remunerate claimant for back pay (which was apparently received).

Defendant has opposed the application for late claim relief based on untimeliness, lack of merit and the availability of an alternate remedy among other things.

Claimant does not offer any reasonable excuse for the delay and, in circular reasoning, indicates that the State's alleged misfeasance provides the State with notice and suggests a lack of prejudice. Such does not constitute notice to the State of the potential for its liability, which is the purpose of the notice requirement. There does not appear to be any particular prejudice to the State.

More significantly for the purposes of late claim analysis, claimant has not established the appearance of merit. A claim appears to be "meritorious" within the meaning of the statute if it is not patently groundless, frivolous or legally defective and a consideration of the entire record indicates that there is reasonable cause to believe that a valid cause of action exists. Matter of Santana v New York State Thruway Auth., 92 Misc 2d 1 (Ct Cl 1977).

The proposed claims and the voluminous submissions on the motion contain a series of allegations stemming from Mr. Stewart's termination from employment, and the proceeding surrounding such termination governed by the strictures of the negotiated agreement between his union and the State of New York. Judicial review of an arbitration proceeding is available in accordance with Civil Practice Law and Rules §7511. It is axiomatic that the Court of Claims is a Court of limited jurisdiction, that may only exercise subject matter jurisdiction in cases or controversies for money damages in which the State of New York - or certain public authorities not relevant here

- is a party. Court of Claims Act §9. The Court of Claims does not have jurisdiction over a proceeding to challenge or vacate an arbitration award. Court of Claims Act §9.

Claimant acknowledges that the time period within which to bring a proceeding pursuant to Civil Practice Law and Rules §7511 has expired as well but wants the Court to consider late claim relief for "damages resulting from the claims enumerated in the revised Statement of Proposed Claim" filed July 9, 2012. [See Answer to

Affirmation in Opposition filed July 9, 2012]. However claimant has chosen to characterize the causes of action in his claim, it is nonetheless the termination from employment and the arbitration proceeding which form the gravamen of his claim. With regard to alleged causes of action for negligence or breach of contract or other unspecified misfeasance, claimant has failed to adequately set forth facts to show how his claim may have the appearance of merit and, what facts are set forth, suggest that the claim was more appropriately subject to judicial review in State Supreme Court.

As noted, the alternate remedy was a proceeding pursuant to Civil Practice Law and Rules §7511.

Accordingly, after carefully considering all the pertinent factors under Court of Claims Act §10(6), and in the exercise of the Court's discretion, claimant's motion for permission to serve and file a late claim is in all respects denied.

September 17, 2012

White Plains, New York

THOMAS H. SCUCCIMARRA

Judge of the Court of Claims

1. Pursuant to Civil Service Law §72(5).

2. The Court of Claims has had subject matter jurisdiction over so-called whistleblower claims brought pursuant to Civil Service Law §75-b (which incorporates Labor Law §740 provisions for public employees) since the Court of Claims Act was amended to include Court of Claims Act §9(13) setting forth such jurisdiction. [See L2010, c 316, §1]. The statute of limitations for such actions, if brought in State Supreme Court, is one (1) year after the alleged retaliatory personnel action [See Civil Service Law §75-b (3)(c); Labor Law §740 (4)(a)], where no collectively negotiated agreement is involved. The terms of the collectively negotiated agreement, if applicable, govern what further action may be taken by an employee after engaging in the arbitration procedure. See Civil Service Law §75-b(3) (a) and (b).

3. Court of Claims Act §10(6) states in pertinent part: "The claim proposed to be filed, containing all of the information set forth in section eleven of this act, shall accompany such application . . ."

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