

Northrup v Attica Cent. Sch. Dist.

2013 NY Slip Op 30426(U)

February 28, 2013

Supreme Court, Wyoming County

Docket Number: 45083

Judge: Michael F. Griffith

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.

STATE OF NEW YORK
SUPREME COURT : WYOMING COUNTY

WILLIAM J. NORTHRUP,

Plaintiff

v

ATTICA CENTRAL SCHOOL DISTRICT, BRYCE THOMPSON, Superintendent, OFFICER SCOTT FOLSTER, OFFICER JOHN NEELEY, and OFFICER ANDRE J. DUNLAP,

Defendants

ORDER
Index No. 45083

MERLYN E. BISSELL, ESQ.
Attorney for Plaintiff

AIMEE LAFEVER KOCH, ESQ.
Attorney for Defendant School and Superintendent

BENJAMIN K. AHLSTROM, ESQ.
Assistant Attorney General

Defendant Attica Central School District and Superintendent Bryce Thompson (hereinafter ‘District’), having filed a Notice of Motion requesting an Order dismissing the Complaint as time barred and/or for failure to state a claim; and Defendants Folster, Neeley and Dunlap having filed a Notice of Motion to Dismiss the Complaint as time-barred and/or failure to state a cause of action, and the above named plaintiff, having submitted an Opposing Affidavit requesting that the defendants motion be denied, and said motions having duly come on to be heard.

Now, on reading defendant, District’s Notice of Motion, dated October 9, 2012, together

with attached exhibits, supported by the affidavit of Aimee LaFever Koch, Esq.; and the Notice of Motion of defendant's Folster, Neeley, and Dunlap, dated October 15, 2012, together with annexed exhibits, supported by the Affirmation of Benjamin K Ahlstrom, Esq., dated October 15, 2012, and the Opposing Affirmation of Merlyn E. Bissell, Esq., dated November 5, 2012, together with annexed exhibits, and after hearing Merlyn E. Bissell, Esq., attorney for the plaintiff, and Aimee LaFever Koch, Esq., attorney for defendant District, and Benjamin K. Ahlstrom, Esq., attorney for defendants Folster, Neeley and Dunlap, and due deliberation having been had herein, the following decision is rendered.

Procedurally, this action was commenced with the filing of a Summons and Complaint on September 26, 2012. The plaintiff was terminated from his employment effective April 28, 2010. He was notified of his termination by letter dated May 28, 2010. General Municipal Law § 50-e requires that a Notice of Claim be served within 90 days of the date in which the action occurred. Defendant District contends that the Notice of Claim was required to be served on them no later than August 28, 2010. The defendant District contends that at no time prior to the service of the Summons and Complaint, did the plaintiff serve upon the District a Notice of Claim upon them.

The plaintiff contends that the accrual date of the wrongful discharge did not occur on May 28, 2010, but rather was when the Grand Jury declined to indict the plaintiff. Counsel for the plaintiff contends that did not occur until the end of September, 2011 when the Order to Seal the Record was received as a final disposition of the criminal matter against Mr. Northrup. The plaintiff alleges that on October 12, 2011, a copy of a Notice of Intention to File a Claim against the State of New York was also sent to the District. As a result, counsel for the plaintiff was

contacted by the insurer of the District to inquire as to the details of the claim against the District. Counsel for plaintiff asserts that the inquiry by the insurer was a constructive waiver of further notice. Further, the plaintiff asserts that based upon the conduct of the District, the plaintiff was unable to deal with this matter in a timely manner.

General Municipal Law requires that a Notice of Claim be served within 90 days of the date in which the action occurred. It is without contention, that any notice, in any form, was not provided to the District until October 11, 2011, and that particular Notice of Intention was directed to the Court of Claims as well as the Attorney General of the State of New York, but not to the District. It is clear that to serve a Notice of Claim is a pre-condition to commencement of litigation. Additionally, there has been no motion to file a late Notice of Claim on behalf of the Plaintiff.

The plaintiff has not provided, nor is the Court aware, of any basis in law that the alleged wrongful discharge did not accrue until the Grand Jury declined to indict. It appears the latest the plaintiff was informed of his termination was by letter dated May 28, 2010. At best, the District was informed on October 11, 2011 by way of Notice of Intent to File a Claim against the Attorney General of the State of New York, not the District, which is post any 90 day Notice of Claim to be served. Further General Municipal Law § 50-i(1) requires that plaintiff commence litigation relative to their claim within one year and 90 days. The Court is unaware of any Grand Jury tolling provision and the plaintiff's cause of action fails for this reason as well. Simply, the plaintiff has failed to timely file a Notice of Claim, failed to file a motion to serve a late notice of claim, and the Statute of Limitations has expired under General Municipal Law § 50-i(1). Further, while the plaintiff may have been distressed by his employment/criminal situation, there

is no evidence he was so physically or emotionally disabled as to warrant his failure to file a timely notice of claim. Therefore, the complaint against the District is dismissed.

Turning next to plaintiff's claim against the Defendant Officers, the Officers claim that any false imprisonment/arrest and malicious prosecution actions are subject to a one year Statute of Limitations pursuant to CPLR § 215(3). The false arrest claim or false imprisonment claim accrues upon the plaintiff's release from custody. The malicious prosecution claim accrues upon the termination of the criminal prosecution in the plaintiff's favor. Thus, the latest any of these actions could have accrued, would have been at the completion of the criminal prosecution in the plaintiff's favor, as the plaintiff was released from any custody by law enforcement well prior to September, 2011.

With the statutory limitation period having expired for the false arrest/imprisonment claim (see, Salman v. Econo Lodge, 303 AD2d 923), the only remaining contention is the malicious prosecution claim. A review of the Court records indicate that on September 6, 2011, the case of the People of the State of New York vs. William J. Northrup was on the court docket. On that date, the People announced that the Grand Jury returned a "no true bill" against Mr. Northrup. Based upon that determination, a dismissal of the indictment was required. While Mr. Northrup was not present for that September 6, 2011 appearance, Mr. Bissell appeared on his behalf and stated on the record he had no opposition to the dismissal. The criminal proceeding against the plaintiff herein was terminated on that date. The court is unaware, nor has counsel provided, any case law that the case was not concluded until the sealing of the file as alleged by plaintiff's counsel. The filing of the Summons and Complaint did not occur until September 26, 2012, more than one year from the date of accrual. Therefore, the first, second and third causes

of action are dismissed against the defendant Officers.

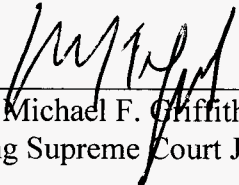
The plaintiff alleges defendant Officers are responsible for the wrongful termination of the plaintiff. This cause of action shall be dismissed as to the defendant Officers as being time barred for the same reasons as referenced hereinabove for defendant District, and that defendant Officers are not in any type of employer relationship to the plaintiff. Therefore, the fourth cause of action against the Officers is also dismissed.

NOW, THEREFORE, it is hereby

ORDERED, that the motion to dismiss the Complaint by the Defendant School District and Superintendent is granted; and the Defendant Officers' Motion to Dismiss the Complaint is granted.

Dated: Warsaw, New York
February 28, 2012

ENTER



Hon. Michael F. Griffith
Acting Supreme Court Justice

