

Savvis v New York City Dept. of Educ.

2014 NY Slip Op 31918(U)

July 16, 2014

Supreme Court, Richmond County

Docket Number: 102043/08

Judge: Thomas P. Aliotta

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND**

DEBRA SAVVIS,

Plaintiff,

against-

**THE NEW YORK CITY DEPARTMENT OF
EDUCATION and INTERMEDIATE
SCHOOL 2,**

Defendants.

X

DCM PART C2

Present:

HON. THOMAS P. ALIOTTA -

DECISION AND ORDER

Index No. 102043/08

Motion No. 1344-001

The following papers numbered 1 to 4 were fully submitted on the 22nd day of May, 2014.

	Papers Numbered
Notice of Motion for Summary Judgment, (Affirmation and Memorandum of Law in Support).....	1
Plaintiff's Affirmation in Opposition.....	2
Defendants' Reply Memorandum of Law.....	3
Other Papers.....	4

Upon the foregoing papers, the motion for summary judgment of defendant The New York City Department of Education (hereinafter "DOE") and Intermediate School 2 (hereinafter "I.S. 2") is granted, and the complaint is dismissed¹.

¹ To the extent relevant, "I.S. 2" is a public school within the City of New York which operates under the jurisdiction of the DOE, and is plaintiff's former place of employment. As a non-suable entity, however (*see* Education Law, art 52-A), the complaint as against it is essentially a nullity (*cf.* CPLR 3211[a][5], [7]).

SAVVIS v THE NEW YORK CITY DEPARTMENT OF EDUCATION, et ano

As alleged in the complaint, plaintiff, a former Dean of Discipline at I.S. 2, was compelled to resign her position in or about September of 2007 as a direct result of, *e.g.*, the unlawful discriminatory practices of her Assistant Principal and immediate supervisor, who persisted in harassing her with unwelcome and explicit comments of a sexual nature² that operated cumulatively to create a hostile work environment.

It is undisputed that following her resignation, plaintiff lodged a Notice of Claim with the City of New York (hereinafter the “City”) by the service of same upon the City Comptroller in purported compliance with section 50-e of the General Municipal Law, basing her claim on allegations of sexual harassment and gender discrimination by her Assistant Principal commencing in or about January of 2007. Following the rejection of her claim on the ground, *inter alia*, of her failure to provide “the date, location and description of the alleged accident and the manner in which the claim arose” (Defendants’ Exhibit “D”), plaintiff commenced this action against the DOE and I.S. 2 on or about May 13, 2008, by the filing of a summons and complaint. The DOE answered under date of July 2, 2008, noting specifically (in paragraph 21 thereof), its denial of plaintiff’s claim to have “duly served a Notice of Claim upon defendants ... pursuant [to] ... Section 3813 [of the Education Law]” (*see* Defendants’ Exhibits “C”, “F”), while simultaneously acknowledging her service of a Notice of Claim upon the City under General Municipal Law § 50-e.

Section 3813 of the Education Law pertinently provides as follows:

- (1) No action or special proceeding, for any cause whatever
..., relating to district property or property of schools
... or involving the rights or interests of any such
district or ... school shall be prosecuted or maintained

² Some of which were allegedly overheard by fellow staff-members and students.

SAVVIS v THE NEW YORK CITY DEPARTMENT OF EDUCATION, et ano

against any school district, board of education, board of cooperative educational services or school ... unless it shall appear by and as allegation in the complaint ... that a written verified claim upon which such action or special proceeding is founded was presented to the governing body of said district or school within three months after the accrual of such claim, and that the officer or body having the power to adjust or pay said claim has neglected or refused to make an adjustment or payment thereon for thirty days after such presentment ...”.

In moving for summary judgment and dismissal of the compliant, the DOE argues that the City is a separate legal entity and, therefore, plaintiff's failure to present *it*, rather than the Comptroller, with a Notice of Claim prior to the commencement of this action constituted a fatal defect, *i.e.*, a failure to comply with a necessary pre-condition to the maintenance of an action against the DOE under Education Law § 3813(1) (*see e.g. Agostinello v Great Neck Union Free Sch. Dist.*, 102 AD3d 638, 639). Plaintiff effectively concedes her lack of compliance with section 3813(1), but argues that the action falls within a narrow, judicially-created exception to the statutory requirement of prior notice in cases where the action seeks, *inter alia*, to vindicate a public interest, such as the elimination of work-place discrimination (*see Union Free School Dist. v New York State Human Rights Appeals Bd.*, 35 NY2d 371). While the foregoing need not preclude the simultaneous enforcement of plaintiff's purely private rights, including the recovery of lost wages, the case law is clear that an action brought purely to redress individual grievances would still require, *e.g.*, the timely service of a Notice of Claim upon the DOE before an action could be commenced (*see Education Law § 3813[1]; Mills v County of Monroe*, 59 NY2d 307, 308-309 [notice of claim required in an action for damages predicated upon the alleged violation of state laws prohibiting work-place discrimination under, *e.g.*, section 296 of the Executive law,

SAVVIS v THE NEW YORK CITY DEPARTMENT OF EDUCATION, et ano

in a case where vindication of a matter of public interest was found to be lacking]; *see also* Sangermano v Board of Coop Educ. Servs. of Nassau Country, [action commenced against school district for racial discrimination in violation of the State Human Rights Law (Executive Law § 296) dismissed for lack of compliance with the notice requirement of Education Law § 3813(1), where the action was brought seeking purely private relief, *i.e.*, damages and reinstatement of the claimant to her former position]; Hoger v Thomarin, 189 AD2d 1048, 1049) [plaintiff's first action properly dismissed for failure to comply with Education Law § 3813(1) where the only relief sought was reinstatement to her former position and money damages]).

Accordingly, in any effort to determine the necessity of complying with the three-month notice of claim requirement of section 3813(1) of Education Law, it is incumbent upon the Court to attempt to distinguish those proceedings which seek the enforcement of purely private rights and duties, from those brought, *e.g.*, to vindicate a public interest (*see* Matter of Cayuga-Onondaga Countries Bd. of Coop Edu. Servs. v Sweeney, 89 NY2d 395, 400). The provisions of section 3813(1) are applicable to the former but not the latter (*id.*).

Here, the factual allegations of the complaint relate almost exclusively to the alleged misconduct of plaintiff's supervisor at I.S. 2, and its purported role in creating a hostile work environment. Thus, plaintiff's causes of action seek damages for "economic loss", the "severe and lasting embarrassment, humiliation and anguish" which she was forced to endure, and "other consequential damages and expenses", each of which is predicated on *her* claims of sexual discrimination and harassment and/or subjection to a hostile work environment in purported violation of the Human Rights Law (Executive Law § 296[7]), and section 8-107(7) of the

SAVVIS v THE NEW YORK CITY DEPARTMENT OF EDUCATION, et ano

Administrative Code of the City of New York. Particularly telling in this regard is plaintiff's ad damnum clause, wherein she seeks (1) "pecuniary damages including but not limited to lost wages and benefits"; (2) "[c]ompensatory damages [for] professional humiliation, embarrassment and emotional distress in the amount of Two Million (\$2,000,000.00) Dollars"; (3) "[p]unitive damages"³; and (4) "[a]n award of attorneys' fees, costs and disbursements of this action". In the opinion of this Court, all of the above rather clearly establishes that plaintiff brought this suit solely to recover monetary damages to redress *her* perceived injury resulting from the purported misconduct of her immediate supervisor, as it fails to articulate any claim of a factual nature or any prayer for relief that could vindicate a public interest, *e.g.*, the "protect[ion] of an important right ... [or] relief for a similarly situated class of the public ... whose resolution would directly affect the rights of [a] class or group ... deserving of special treatment" (Mills v County of Monroe, 59 NY2d at 311; *see* Union Free School Dist. v New York State Human Rights Appeals Board, 35 NY2d 378-380 [challenge to a school district's pregnancy leave policy and procedures affecting a large number of similarly situated teachers held exempt from the prior notice requirement of Education Law § 3813(1)]).

Stated more succinctly, the allegations of the complaint do not purport in any way to affect the rights of anyone other than plaintiff herself and, as such, may not be seized upon to insulate her from the need to file a notice of claim as a condition precedent to the commencement of suit

³ In this regard, it is worthy of note that exemplary or punitive damages may not be imposed upon a municipality based on an employee's misconduct in the absence of express legislative authorization to the contrary (Krohn v New York City Police Dept., 2 NY3d 329, 326). Here, Section 296 of the Executive Law does not contain an unambiguous expression of any legislative authorization to subject, *e.g.*, the City, to punitive damages in an action predicated on gender-based discrimination (*id.*).

SAVVIS v THE NEW YORK CITY DEPARTMENT OF EDUCATION, et ano

against the DOE (*see* Education Law § 3813[1]). Here, as in Mills v County of Monroe (59 NY2d at 312), “it is clear that plaintiff’s action was not brought to vindicate a[ny] public interest, [at least] insofar as that principle would entitle her to a complete waiver of the [statutory] notice requirement. [Rather h]er allegations of actionable conduct on the part of the [DOE] refers only to conduct that relates to her ... [and] seeks relief only in the form of [,e.g.,] money damages for *her* loss of wages and damage to her reputation. Inasmuch as the disposition of plaintiff’s claim was not intended to nor could it directly affect or vindicate the rights of others, her action is properly characterized as one seeking the enforcement of [purely] private rights” to which Section 3813(1) of the Education Law applies (emphasis in original).

The case of Lane-Weber v Plainedge Union Free School Dist. (213 AD3d 515) is not to the contrary, as it involved issues of the proper statute of limitations to be applied to plaintiff’s claims of discrimination against a school district and, to the extent relevant, noted in apparent dicta that the notice of claim requirements in section 3813(2) of the Education Law applied solely to tort claims against a teacher or staff member. Manifestly, a claim brought under Executive Law § 296 is not a tort action (*see* Sangermano v Board of Coop Educ. Servs. of Nassau County, 290 AD2d at 498).

Accordingly, it is

ORDERED that defendants’ motion for summary judgment is granted and the complaint is dismissed; and it is further

ORDERED that the Clerk enter judgment accordingly.

E N T E R ,

SAVVIS v THE NEW YORK CITY DEPARTMENT OF EDUCATION, et ano

/S/
HON. THOMAS P. ALIOTTA
J.S.C.

Dated: July 16, 2014