

Glenn v New York City Dept. of Educ.

2015 NY Slip Op 30819(U)

April 3, 2015

Supreme Court, Bronx County

Docket Number: 303321/14

Judge: Elizabeth A. Taylor

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX IA 2
O'NEIL GLENN,

Plaintiff,

-against-

Index No. 303321/14

DECISION/ORDER

Present:
HON. ELIZABETH A. TAYLOR

THE NEW YORK CITY DEPARTMENT OF
EDUCATION a/k/a THE BOARD OF EDUCATION OF
THE CITY SCHOOL DISTRICT OF THE CITY OF
NEW YORK, and DENNIS M. WALCOTT, as Chancellor
of the City School District of the City of New York, and
LISA LUFT, individually and in her official capacity, and
KARALYNE SPERLING, individually and in her official
capacity,

Defendants,

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

No	On Calendar of	PAPERS NUMBERED
	Notice of Motion-Order to Show Cause - Exhibits and Affidavits Annexed-----	1-2
	Answering Affidavit and Exhibits-----	3-4
	Replying Affidavit and Exhibits-----	
	Affidavit-----	
	Pleadings -- Exhibit-----	
	Stipulation -- Referee's Report --Minutes-----	
	Filed papers-----	

Upon the foregoing papers, this motion has been referred to me for disposition by the Supreme Court Justice at IA part 3, pursuant to the published rules of IA part 3 and the Administrative Judge.

Motion pursuant to CPLR §§ 3211(a)(5) and 3211(a)(7) for an order dismissing the amended complaint, on the grounds that it is partially barred by the statute of limitations and the doctrine of collateral estoppel, and otherwise fails to state a cause of action, is granted to the following extent.

On June 17, 2014, plaintiff commenced this plenary action pursuant NYSHRL § 296 and NYCHRL § 8-107, to seek relief due to alleged discriminatory and retaliatory treatment by the defendants.

Plaintiff, a veteran employee of New York City Board of Education, was hired as a probationary Assistant Principal at Bronx Engineering and Technology Academy (BETA), while contemporaneously employed as coach of athletics at John F. Kennedy High School (JFK). Plaintiff, a Caribbean Black, alleges that beginning the 2011-2012 academic year, principals Sperling (BETA) and Luft (JFK), both Caucasian, undertook a racially motivated and systematic campaign of discriminatory acts that subjected him to disparate treatment because of his race, a hostile work environment, and retaliation for complaining about the alleged discrimination. Consequently, plaintiff alleges that he suffered from, among other things: 1) verbal attacks, using racial slurs; 2) his reputation being compromised among his peers and colleagues; and 3) an unsatisfactory rating which led to his termination.

One of the many affidavits plaintiff submitted in support of his claim that defendants Luft and Sperling created a hostile work environment is from a visiting/opposing coach Eric Duemler. Mr. Duemler avers that on January 28, 2012:

"...in the midst of the Kennedy Challenge basketball tournament...[he] witnessed Coach Glenn being berated by Lisa Luft. During their conversation, [he] observed Lisa Luft abrasively accusing Mr. Glenn about lying to her. She shouted '...YOU'RE (Glenn) LYING ABOUT NOT USING THE FIFTH FLOOR...I DON'T WANT ANYONE UP THERE...JUST DO AS I TELL YOU...YOU'RE NOT IN CHARGE OF THIS EVENT...THIS IS MY EVENT.' Coach Glenn responded, 'Principal Luft, as I have already informed you, we are not authorized to use the fifth floor and none of the participants of this event have been to the fifth floor...' Coach Glenn went on to say 'Principal Luft, School Safety is aware that we do not have a permit to use that floor and I have informed all of our guests of the restriction to the gym and locker room....' At the end of the conversation...[and when Luft] was approximately 4 or 5 feet away from Coach Glenn [] she uttered, 'I'M GOING TO FIX THIS LYING NIGGER....'"

Plaintiff alleges that Principal Luft convinced Principal Sterling to join in this attack against him. Plaintiff further alleges that Principal Sterling turned one of his routine counseling sessions with subordinate Davrie Brown into a complaint that plaintiff committed misconduct in undertaking the counseling of Mr. Brown for time and attendance violations. Mr. Glenn avers that Principal Sterling "told [him] that defendant Luft warned her to be careful because [Glenn] could hurt [Sterling's]...unborn child, and husband to be."

Thereafter, plaintiff claims that he filed a formal complaint against defendants Luft and Sperling, describing their alleged racially-motivated hostile work environment. According to plaintiff, after he filed the complaint, principals Luft and Sperling "intensified the harassment against [him]." Plaintiff avers that he was removed as coach of the bowling and basketball teams, but when they could not find a replacement coach for the basketball team, Principal Luft reluctantly allowed plaintiff to resume coaching the team. Principal Luft allegedly "interfered with [plaintiff's] ability to succeed and persisted in tainting [his] reputation in the athletic community." Plaintiff was terminated on September 13, 2013.

Defendants argue that the claims based upon termination should be dismissed, as plaintiff is collaterally estopped from re-litigating the same exact issue of discrimination underlying his "U-rating and discontinuance" that he previously litigated in the article 78 proceeding.

In his article § 78 petition, plaintiff sought expungement of the unsatisfactory

rating he received in his position as an assistant principal, reinstatement to that position and a declaration that terminating his probationary status in the position was arbitrary and capricious. On July 11, 2014, Justice Cynthia Kern found that plaintiff "[failed] to meet his burden to demonstrate that his U-rating and the discontinuance of his probationary employment were motivated by racial discrimination and taken in bad faith.

Justice Kern noted that:

"[e]ven accepting petitioner's allegations that Luft and Sperling were motivated by discriminatory animus when they reported the incidents of misconduct to SCI for investigation as true, this does not support a finding that the ultimate determination to sustain the U-rating and discontinue [plaintiff's] probationary employment were taken in bad faith as there are no allegations of discriminatory animus on the part of the OSI investigator, the Chancellor's Committee or the ultimate decision maker, Superintendent Lindsey."

As Justice Kern found that plaintiff failed to demonstrate that his termination was based on racial discrimination, he is barred from re-litigating the reasons or any alleged damages resulting from his termination, including lost wages. *Thomas v. City of New York*, 239 Ad2d 180 (1st Dept. 1997). Accordingly, the portions of plaintiff's complaint regarding his termination, and resulting damages, are dismissed.

Next, defendants argue that plaintiff's NYSHRL and NYCHRL claims of workplace discrimination and/or retaliation should be time-barred as plaintiff has not alleged that he suffered any discrimination and/or retaliation on or after June 17, 2013.

It is undisputed that claims for workplace discrimination and/or hostile work environment, which may involve a series of acts not actionable on their own, may properly include acts outside the one year period for purposes of establishing a hostile

environment, provided that an act contributing to the claim occurs within the filing period. See *National Railroad Passenger Corp. v. Morgan*, 536 US 101, 117 (2002). Plaintiff alleges that there is at least one act within the statutory time period.

Accordingly, the branch of defendants' motion to dismiss, on the ground that plaintiff's claims for workplace discrimination and/or hostile work environment are time-barred, is granted to the extent that within 30 days of service of this order with notice entry upon plaintiff, plaintiff shall file and serve upon the defendants, an amended summons and complaint, indicating the alleged acts of discrimination and/or retaliation that occurred after June 17, 2013.

The foregoing shall constitute the decision and order of this court.

Dated: APR 03 2015



A.J.S.C.

Elizabeth A. Taylor