Brown v State of New York
2015 NY Slip Op 32599(U)
May 27, 2015
Supreme Court, Erie County
Docket Number: I2014-810534
Judge: Donna M. Siwek

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

UNIQUE BROWN by her parent and natural guardian Denise Stevens; FINA BELL, SIRMANUEL BELL, and MARK BELL by their parents and natural guardians Russell and Tammy Bell; SAMANTHA CRUZ by her parent and natural guardian Maria Dalmau; GISELLE ALOMA JACOBS by her parent and natural guardian Ingrid Johnson-Jacobs; TISHAWN WALKER by his grandmother and legal guardian Michelle Emanuel; and NORTHEAST CHARTER SCHOOLS NETWORK, INC.,

Plaintiffs,

v.

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THE STATE OF NEW YORK; ANDREW M. CUOMO as Governor of the State of New York; NEW YORK STATE ASSEMBLY; NEW YORK STATE SENATE; ROBERT L. MEGNA, as Budget Director of the State of New York; NEW YORK STATE DIVISION OF THE BUDGET; NEW YORK BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK; and JOHN B. KING, JR., as Commissioner of the Education and President of the University of the State of New York,

Defendants,

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SIWEK, J.,

MEMORANDUM DECISION

This Memorandum Decision will address the defendants, The State of New York, Andrew M. Cuomo as Governor of the State of New York, New York State Assembly, New York State Senate, Robert L. Megna, as Budget Director of the State of New York, New York State Division of the Budget, New York Board of Regents of the University of the State of New York, and John B. King, Jr. as Commissioner of Education and President of the University of the State of New York ("Defendants") motion pursuant to CPLR §3211(1), (3) and (7) seeking dismissal of the complaint of Unique Brown by her parent and natural guardian Denise Stevens, Fina Bell, Sirmanuel Bell, and Mark Bell by their parents and natural guardians Russell and Tammy Bell, Samantha Cruz by her parent and natural guardian Maria Dalmau, Giselle Aloma Jacobs by her parent and natural guardian Ingrid Johnson-Jacobs, Tishawn Walker by his grandmother and legal guardian Michelle Emanuel, and Northeast Charter Schools Network, Inc. ("Plaintiffs").

Plaintiffs commenced this action for declaratory and injunctive relief against the Defendants alleging unconstitutional denial of facilities funding to public charter school students in Buffalo and Rochester, New York. The Plaintiffs are seven individual students who attend public charter schools in Buffalo and Rochester, New York; Plaintiff Northeast Charter Schools

Network ("NECSN") is an advocacy organization comprised of member charter schools, including those in Buffalo and Rochester. Each of the charter schools attended by the individual plaintiffs is a member of NECSN. Plaintiffs seek a declaration that the New York Charter School funding formula is unconstitutional and seek injunctive relief enjoining defendants from withholding facilities funding from charter schools.

The Plaintiffs allege that the State's funding scheme for charter schools, which does not provide facilities financing, violates the State's obligation to provide a "sound basic education" to every student; denies the plaintiffs equal treatment under the law; has a disparate and disproportionate impact on the education of minority students and is, therefore, unconstitutionally discriminatory.

The New York Constitution Education Article requires the legislature to "provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated." (N.Y. Const. Art. XI §1) This Article has been interpreted to require the provision of a "sound basic education". A "sound basic education" is defined as the "basic literary, calculating and verbal skills necessary to enable children to eventually function productively as civic participants capable of voting and serving on a jury". *Campaign for Fiscal Equity v. State of N.Y.,* 86 N.Y.2d ("CFE I").

> Children are entitled to a minimally adequate physical facilities and classrooms which provide enough light, space, heat and air to permit children to learn. Children should have access to minimally adequate instrumentalities of learning such as desks, chairs, pencils and reasonably current textbooks. Children are also entitled to minimally adequate teaching of reasonably up-to-date basic curricula such as reading, writing, mathematics, science and social studies, by sufficient personnel adequately trained to teach those subject areas." See, *CFE I*, 86 N.Y.2d at 317.

Charter schools are publicly funded (See Education Law §2856(1)(a)). The Plaintiffs allege that Buffalo and Rochester charter school students receive approximately 60 cents on every dollar of spending per pupil versus students in traditional district schools. (Complaint ¶7) Funding of charter schools is determined by a formula based on the amount of per pupil operational funding that the student's home school district receives. The complaint alleges that charter schools receive less funding than traditional public schools because they do not receive facilities funding to cover the cost of renting, purchasing, renovating, constructing or repairing school buildings. (Complaint ¶8) Plaintiffs allege that the lack of funding results in a failure to provide a "sound basic education". The complaint alleges that the Legislature recognized the funding disparity, and in the Spring of 2014, enacted legislation providing either rent-free facilities access or additional per pupil facilities funding but only for certain charter schools located in New York City. (Complaint ¶53)

The complaint alleges that the existing funding formula results in many charter schools lacking facilities, hinders their ability to invest in professional development initiatives and curriculum programs and diverts dollars away from preparing students for Common Core standards; and limits their ability to admit and serve wait-listed students from failing traditional public schools in Buffalo and Rochester.

Decision

1. Justiciability

We first consider whether this case presents a justiciable controversy. We concur with plaintiffs that the allegation that the constitutional rights of the individual plaintiffs are being

violated presents a justiciable controversy properly before the Court. School finance litigation has been prolific in the State and the Court of Appeals has affirmed the principle that the Judiciary may exercise its jurisdiction to safeguard constitutional rights which are infringed upon by the Legislature. In *Bd. of Ed. Levittown Free Union Sch. Dist. v. Nyquist*,, 57 N.Y.2d 27 at 39 (1982), the Court of Appeals wrote:

> With full recognition and respect, however, for the distribution of powers in educational matters among the legislative, executive and judicial branches, it is nevertheless the responsibility of the courts to adjudicate contentions that actions taken by the Legislature and the executive fails to conform to the mandates of the Constitutions which constrain the activities of all three branches.

See also, Campaign for Fiscal Equity, Inc. v. State of New York, 86 N.Y.2d 307 (1995) *("CFE I")*; *Hussein v. State*, 19 N.Y.3d 899 at 900 (2012); *Campaign for Fiscal Equity, Inc. v. State of N.Y.*, 100 N.Y.2d 893 (2006) ("CFE II"); *Campaign for Fiscal Equity v. State of N.Y.*, 8 N.Y. 3d at 27 (2006) ("CFE III");.

A declaratory judgment action is well suited to interpret and safeguard constitutional rights and review the acts of other branches of government to preserve the constitutional rights of its citizenry. *CFE II*, 100 N.Y.2d at 931.

> The courts are, of course, well suited to adjudicate civil and criminal cases and extrapolate legislative intent... They are, however, also well suited to interpret and safeguard constitutional rights and review challenged acts of our co-equal branches of government – not in order to make policy but in order to assure the protection of constitutional rights. That is what we have been called upon to do by litigants seeking to enforce the State Constitution's Education Article. See, *CFE II* 100 N.Y.2d at 925.

As the Court of Appeals later reiterated in *Hussein, supra,* "though we have neither the authority, nor the ability, nor the will, to micromanage education financing... it is the province of the Judicial branch to define, and safeguard, rights provided by the New York State Constitution, and

order redress for violation of them." 19 N.Y.3d at 901 quoting *CFE II,* 100 N.Y.2d at 925. In view of the foregoing, we find defendants' argument that the complaint presents non-justiciable policy questions unavailing.

2. Standing/Capacity

We find that the plaintiffs have met their burden of demonstrating that they have standing and capacity to bring this action, and we deny defendants' motion to dismiss pursuant to CPLR §3211(a)(3). See, *N.Y. State Ass'n of Nurse Anesthetists v. Novello*, 2 N.Y.3d 207 (2004); *Soc'y of Plastics Indus. v. County of Suffolk.*, 77 N.Y.2d 761 (1991); *Uhlfelder v. Weinshall*, 47 A.D.3d 169 (1st Dept. 2007).

As to the individual plaintiffs, we find that the allegations that the State's funding methodology deprives them of a sound basic education, violates their right to equal protection of the law and is discriminatory, sufficiently allege harm. As the Court of Appeals held in *Hussein, supra*, there is "no reason to close the courthouse doors to parents and children with viable constitutional claims". *Hussein, supra. See also, NYSIR v. State*, 2014 WL 6453786 (N.Y. Sup. Ct. 2014) The individual plaintiffs have alleged an injury, i.e. that they are receiving a substandard education as a result of the lack of facility funding. The charter schools contend they are forced to take monies which would otherwise go to supporting a sound basic education for their students and are forced to direct it to facilities expenditures. They cite test scores that demonstrate out-performance of their traditional district counterparts but nonetheless, performance which is still below state averages and constitutionally inadequate. Such allegations establish that the plaintiffs have a recognizable stake in the proceeding and its outcome to make

the dispute capable of judicial resolution. See, *Comm. Bd. 7 of Borough of Manhattan v. Schaffer*, 84 N.Y.2d 148 (1994). We further note that plaintiffs may establish that the claims are of a "sufficient nexus to fiscal activities of the State" and may obtain standing without having to demonstrate an injury-in-fact. (*Saratoga County Chamber of Commerce v. Pataki*, 100 N.Y.2d 801 (2003).

We find that NECSN has established that it has the capacity to sue because its membership, which includes charter schools in Buffalo and Rochester, has capacity to bring this action against the defendants. Despite the defendants' argument that as political subdivisions, charter schools lack the capacity to sue, we agree with plaintiffs that a charter school is a political subdivision only for purposes provided for in the school's charter and in the Education Article and does not lack the capacity to sue by virtue of that designation. Further, charter schools have the capacity to bring an action like the one at bar because the challenged funding method adversely affects the charter school's proprietary interest in a specific fund of monies. *City of N.Y. v. State*, 86 N.Y. 2d at 291-292; *Purcell v. Regan*, 126 A.D.2d 849 (3d Dept. 1987). The essence of the plaintiffs' claims is that charter schools have an interest in the monies allocated in the State Education Budget and Reform Act of 2007 to provide a sound basic education.

Under the Education Law, a charter school is not prohibited from bringing constitutional claims against the State. Moreover, the Education Law expressly incorporates the Not-For-Profit Corporation Law, which also gives charter schools the right to "sue and be sued" as "natural persons". See N.Y. Educ. Law §2853(1)(b) and 216-a; N.Y. Not-For-Profit Corp. Law §202(1)(2).

Having established that individual charter schools would have capacity to bring this

challenge, we consider whether the NECSN has standing. Organizational standing requires that at least one member of the organization has standing to sue, that the organization is representative of the interests sought to be protected and that individual members would not be required to participate in the action. See, *New Yorkers for Students' Educational Rights v. The State of New York*, 2014 WL Westlaw 6453786 (2014). The charter school members of NECSN meet these criteria and, therefore, NECSN has standing.

3. Proper Defendants

The defendants do not dispute that the State of New York is a proper party, but argue that the action should be dismissed against Governor Cuomo, State Education Commissioner John B. King, Jr., the Board of Regents, the Division of Budget, and its Director, Robert L. Megna. We grant the defendants' motion as to all of the defendants but for the State of New York.

Upon review of the parties' submissions and discussion during oral argument, the only defendant whose inclusion was controverted is Governor Cuomo. We find that the complaint fails to state a cause of action against the Governor. While the State Constitution does provide that 'the executive power shall be vested in the Governor' (N.Y. Const. Art. IV §1) who "shall take care that the laws are faithfully executed" (N.Y. Const. Art. IV §3) it does not follow however that the Governor is a necessary or proper party to every suit raising a challenge to the constitutionality of a State statute. *Wang v.* Pataki, 164 F. Supp. 406 (S.D.N.Y. 2001); *Caprio v. N.Y. State Dep't of Taxation and Finance*, 37 Misc. 3d 964 (N.Y. County 2012), *rev'd. on other grounds*, 117 A.D.3d 168 (1st Dept. 2014). To the contrary, where the legislative enactment provides that entities other than the executive branch of the State are responsible for the

implementation of the statute, no claim against the Governor lies. See, *Wang v. Pataki*, 164 F. Supp. 2d 406 (2001). Plaintiffs' assertions that the Governor has a hand in the formation of educational policy and the budget and while he is ultimately responsible for the supervisory of relevant executive agencies, in and of itself does not make him a proper party in a suit challenging the constitutionality of a state statute. See, *Wang, supra; Warden v Pataki*, 35 F. Supp. 2d 354 (S.D.N.Y.) *aff'd. Chan v. Pataki*, 201 F. 3d 430 (2d Cir. 1999), *cert. den.* 531 U.S. 849 (2000). Because the plaintiffs have failed to articulate any allegations which connect Governor Cuomo to the claims raised in their complaint other than his general responsibility to ensure that the laws are faithfully executed (Const. Art. IV, §1), authority over departments of the Executive branch (Exec. Law §30) and responsibility for the budget process (State Fin. Law §20), the branch of the defendants' motion seeking summary judgment dismissing the claims against Governor Cuomo is granted.

4. The Motion to Dismiss

The court is mindful of its well-settled responsibility on a motion made pursuant to CPLR §3211(a)(7). In considering the sufficiency of the complaint subject to a motion to dismiss for failure to state a cause of action under CPLR § 3211(a)(7), we must determine whether, accepting as true the factual averments of the complaint, plaintiff cannot succeed upon any reasonable view of the facts stated. We must accord plaintiffs the benefit of all favorable inferences which may be drawn from the complaint, without expressing our opinion as to whether they can ultimately establish the truth of their allegations before the trier of fact. See, *CFE I, supra*. 86 N.Y.2d at 318. When assessing the sufficiency of a complaint in light of a

CPLR §3211(a)(7) motion to dismiss, we must afford the pleadings a liberal construction, accept the allegations of the complaint as true and provide plaintiff... the benefit of every possible favorable inference. *CFE I, supra.* 86 N.Y.2d at 318 Our sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law, a motion for dismissal will fail. *Sokoloff v. Harriman Estates Dev. Corp.*, 96 N.Y.2d 409 (2001); *Nonnon v. City of New York*, 9 N.Y.3d 825 (2009); *Leon v. Martinez*, 84 N.Y.2d 83 (1994); *Meyer v. Stout*, 45 A.D.3d 1445 (4th Dept. 2007).

It has been stated that "when a party moves to dismiss a complaint pursuant to CPLR §3211(a)(7), the standard is whether the pleading states a cause of action, not whether the proponent of the pleading has a cause of action." *Guggenheimer v. Ginzburg*, 43 N.Y.2d 268, 275 (1977). Put another way, "whether a plaintiff can ultimately establish its allegations is not part of the calculus." *EBCI, Inc. v. Goldman, Sachs & Co.*, 5 N.Y.3d 11, 19 (2005). Here, in the absence of evidentiary material submitted a defendant in support of a motion to dismiss, the sole criterion for our consideration is simply whether the plaintiffs have stated a cause of action, not whether the plaintiffs have a cause of action. *Guggenheimer, supra.*

In *CFE I*, the Court of Appeals wrote "only recently we recognized the right of plaintiffs to seek redress, and not have the courthouse doors closed at the very inception of an action, where the pleading meets a minimal standard necessary to resist dismissal of a complaint." *CFE I* at 318; *Armstrong v. Simon & Schuster*, 85 N.Y.2d 373 (1995); *Leon, supra.*

With this framework in mind, we, like the Court of Appeals in *CFE I* find that

> on the basis of these factual allegations, and the inferences to be drawn therefrom,

> we discern a properly stated cause of action sufficient to survive a motion to dismiss and to permit... the action to go forward. Taking as true the allegations in the complaint, as we must, plaintiffs allege and specify gross educational inadequacies that, if proven, could support a conclusion that the State's public school financing system effectively fails to provide for a minimally adequate educational opportunity. *CFE I* 86 N.Y.2d at 319; *Hussein, supra.* 19 N.Y.3d 899.

The complaint sufficiently pleads claims for violation of the Education Article of the New York Constitution; violation of the Equal Protection Clause of the New York Constitution; and a claim for disparate impact discrimination.

Finally, with respect to that portion of the motion made pursuant to CPLR §3211(a)(1), dismissal is not appropriate as the defendants have failed to proffer documentary evidence which "utterly refutes" plaintiffs' factual allegations to conclusively establish a defense as a matter of law. *Goshen v. Mut. Life Ins. Co.*, 98 N.Y.2d 314, 326 (2002); *Leon v. Martinez,* supra; *Widewaters Prop. Dev. Co. v. Katz*, 38 A.D.3d 1220 (4th Dept. 2007).

This is the Decision of the Court. Submit Order on notice.

Hon. Donna M. Siwek
Justice of the Supreme Court

Dated: May 27, 2015