Granto v City of Niagara Falls, N.Y.
2015 NY Slip Op 32700(U)
February 20, 2015
Supreme Court, Niagara County
Docket Number: 153581
Judge: Frank Caruso
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STATE OF NEW YORK
SUPREME COURT : COUNTY OF NIAGARA

NICOLAS GRANTO,
RICHARD FLECK,
KEVIN HENDERSON, and
GEORGE McDONELL

Petitioners,

Decision and Order

vs.

Index No. 153581

CITY OF NIAGARA FALLS, NEW YORK,
Respondent.

For a judgment pursuant to Article 78 of the Civil Practice Law and Rules, compelling Respondent City of Niagara Falls, New York to designate Petitioners as detectives pursuant to Civil Service Law §58(4)(c)(ii) and for compensatory damages.

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Caruso, J.

This decision arises out of a petition filed by the petitioners requesting this Court to mandate that the respondent, City of Niagara Falls (City), designate each petitioner as a detective and provide them with the compensation and benefits commensurate with such position retroactive to the date each person served in the Roving Anti-Crime (RAC) Unit for eighteen months. Petitioners also request attorney fees and costs of this proceeding. The City has moved to dismiss said petition on procedural grounds under the statute of limitations.

All of the petitioners have been, and continue to be employed by the Niagara Falls Police Department. Further, each of them were assigned to the City's RAC Unit for a period in excess of eighteen (18) months. Said unit is alleged to have been responsible for investigations into narcotics, gambling, prostitution, robberies, gang activity and other such crimes. Their training was similar to that of detectives and they usually reported directly to a Narcotics Intelligence Division (NID) Detective Captain instead of a NID detective or patrol lieutenants of captains. Additionally, it is alleged that petitioners would regularly perform the duties of a detective.

Petitioners point to Civil Service Law §58(4)(c)(ii), as applied to the Niagara Falls Police Department, which provides that any officer temporarily assigned to perform the duties of a detective or investigator for more than eighteen months, shall be permanently designated a detective or investigator. Given the belief that those in the RAC Unit were performing the same duties as those of a detective, petitioners' attorney sent a letter dated March 14, 2014 to the City notifying them that the Civil Service Law required that said individuals should be permanently designated detectives and requested the City's compliance. No response was ever given and this petition was filed July 17, 2014.

The petitioners allege that their petition here is timely as it was to be brought within four months of denial of their demand for relief and as such denial was not given, this is not barred by

the statute of limitations. Also, they set forth the belief that the facts which gave rise to the relief requested accrued when a decision was released by the Fourth Department on a similar action, *Matter of Sykes v City of Niagara Falls*, 112 A.D.3d 1302, on December 27, 2013 so they were also timely in making their demand to the City.

The City notes that the RAC Unit was essentially disbanded on January 2, 2013, when by order of the Superintendent all the officers of the Unit were reassigned and the petitioners were sent to their former patrol duties. At that point they were no longer connected to the work being done in the Detective Bureau. The City asserts that it is this point against which a statute of limitation determination must be measured.

As the Superintendent is the highest ranking authority of the Niagara Falls Police Department and his determination is final with no opportunity for review, the point at which he issued a directive impacting the petitioners should be the starting point for CPLR §217(1) as that is when it "becomes final and binding" on the petitioners. As the assignment which formed the basis for their claim was terminated, the time should be measured from such termination date. As there was no further administrative remedies available to them, the four (4) month statute of limitations time period found in CPLR §217(1) would have run out May 2, 2013 and this petition was filed July 17, 2014, or more than fourteen months too late.

The City further argues that even if this were a case of mandamus, where the time would begin running when demand for relief is made, such a demand cannot be unreasonably delayed. They point to the Fourth Department's decision in *Densmore v. Altmar-Parish-Williamstown Central School District*, 265 A.D.2d 838 (1999) where such a delay required dismissal as barred by laches. The City believes that petitioners had knowledge of a similar case involving other officers which was appealed and decided in December 2013, and waited until that time before making their request. It

is asserted that lying in the weeds until the appellate decision was released is not a proper excuse to explain the fourteen month delay in making their demand.

The Court has considered the following: Notice of Petition dated July 16, 2014; Verified Petition verified July 3, 2014; Affidavit of Nicolas Granto sworn to June 20, 2014; Affidavit of Richard Fleck sworn to June 20, 2014; Affidavit of George McDonell sworn to June 20, 2014; Affidavit of Kevin Henderson, sworn to June 20, 2014; Memorandum of Law submitted by Sean J. MacKenzie, Esq. dated July 16, 2014; Notice of Motion dated August 22, 2014; Affirmation of Christopher M. Mazur, Esq. dated August 22, 2014 with exhibits attached thereto; Affirmation of Sean J. MacKenzie, Esq. dated September 9, 2014; Affidavit of Nicolas Granto sworn to September 9, 2014; And Memorandum of Law in Opposition by Sean J. MacKenzie, Esq. dated September 9, 2014.

There are two ways to examine the circumstances of this case with respect to timeliness of the claim brought. One is in the nature of certiorari to review a determination and the other being mandamus to compel an action. It is unclear as to which category this set of circumstances falls under and it is unnecessary for this Court to answer that question as the petitioner's claim is untimely under both theories.

First the Court must determine when this cause of action could have accrued. The petitioners were all in the RAC Unit allegedly performing the duties of a detective until the unit was disbanded in January of 2013. At that point all of the petitioners were reassigned to duties which clearly did not involve the duties of a detective. It was at this point where the petitioners knew, or should have known, that they were not being permanently designated as a detective under Civil Service Law §58(4)(c)(ii). The Court rejects the petitioners' argument that the action accrued when the Fourth Department issued their decision on *Sykes*. As petitioners themselves note, the standard is when the petitioners should have known of the ***facts*** which give a right to relief. See *Tilt v. Krone, et al.*, 31 A.D.2d 561, 562 [3rd Dept. 1968]. The facts did not change from January 2, 2013 to

December 27, 2013. At best this could be considered as a reasonable excuse for delay as a defense to laches, which is discussed below.

Therefore, certiorari review would require an action to be brought within four months of January 2, 2013. See CPLR 217(1). As this petition was filed on July 17, 2014, it is clearly not within four months of when the action accrued and is therefore barred under the statute of limitations for a certiorari review.

With regard to mandamus, the four month statute of limitations begins to run upon refusal after demand of the petitioner to perform its duty. See CPLR 217(1). However, a petitioner cannot unreasonably delay in making this demand once the right to make the demand accrues or within a reasonable time after the facts giving rise to the action are known. (See *Devens v. Gokey*, 12 A.D.2d 135 [4th Dept. 1961]). A lengthy delay, if not coupled with a satisfactory explanation or excuse, could be fatal under the doctrine of laches. (See *Densmore v Altmar-Parish-Williamstown Cent. School Dist.*, 265 A.D.2d 838 [4th Dept. 1999]).

Here, the petitioner does not actually give a specific excuse for the delay as they took the position that there was no delay as the action accrued when the *Sykes* case was decided by the Fourth Department. As mentioned above, this Court does not share that view of the accrual of the action, but will accept waiting for appellate review as a proffered excuse for the delay in making their demand of the City. The petitioners note the similarity of the situation that they share with the petitioners in the *Sykes* case. It should be noted that in *Sykes*, the petitioners were successful at the trial level after an evidentiary hearing and the standard for appellate review was that it was supported by a fair interpretation of the evidence when viewed in the light most favorable to the petitioners.

The First and Second Departments have dealt with the question of whether waiting for law to become settled was a legitimate excuse and have decided the issue in the negative. (See *People*

ex rel. Finn v. Greene, 87 A.D. 346 [1st Dept. 1903]; *People ex rel. Croft v. Keating*, 49 A.D. 123 [1st Dept. 1900]; *People ex rel. Reith v Polk*, 138 A.D. 497 [2nd Dept. 1910]). While these cases are certainly not recent, this Court chooses to follow their wisdom. Here, the facts at issue either caused, or should have caused the petitioners to believe they had a right to the relief requested and this is not denied. The case which they were waiting for a decision on appeal had been successful for their position at the trial level so there was no reason to have the belief that their action was barred. Similar to *People ex rel. Finn*, supra, it could possibly have been argued if a similar case had been unsuccessful that waiting for reversal by an appellate court may qualify as a legitimate excuse for delay. This was not the case here however.

Additionally, although still not considered a reasonable excuse in the cases cited above, here there was no question of law to be settled by the Fourth Department. As noted above, the appeal examined the facts of the case and determined that the result was fair when applied to the law. As is often repeated in the legal profession, the facts of every case, no matter how similar, are almost always different from one another. There is nothing proffered to say that the facts of this case would come to the same result after a full hearing as the *Sykes* case. Since it is the facts which drive each case, the petitioners should have made their demand when the facts presented themselves, or within a reasonable time thereafter.

As there is no reasonable excuse for delay before the Court, it must now be determined if fourteen months is a lengthy enough delay for this proceeding to be barred by laches. In *Densmore v Altmar-Paris-Williamstown Cen. School Dist.*, 265 A.D.2d 838, 839 (4th Dept. 1999), the Court declared that

> "[t]he reasonable time requirement for a prompt demand should be measured by the four-month State of Limitations of CPLR article 78, and thus a demand should be made no more than four months after the right to make the demand arises."

Here the demand was made ten months later than would be deemed appropriate with no reasonable excuse for delay making this proceeding barred by laches.

Therefore, for the reasons stated above, the respondent's cross-motion is granted and the petition is hereby dismissed in its entirety.

This decision shall constitute the Order of the Court.

FRANK CARUSO
Supreme Court Justice

Dated: February____, 2015
Niagara Falls, New York

GRANTED

FEB 20 2015

BY_____
PATRICIA HALL
COURT CLERK