

**Sedhom v SUNY Downstate Med. Ctr.**

2018 NY Slip Op 30137(U)

January 23, 2018

Supreme Court, New York County

Docket Number: 155837/2017

Judge: Robert D. Kalish

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

**PRESENT: Hon. \_\_\_\_\_ Robert D. KALISH**  
*Justice*

**PART 29**

**LAILA N. SEDHOM, PhD, RN,**

**INDEX NO. 155837/2017**

**Plaintiff,**

**MOTION DATE 12/11/17**

**- v -**

**MOTION SEQ. NO. 002**

**SUNY DOWNSTATE MEDICAL  
CENTER, and DAISY CRUZ-RICHMAN,**

**Defendants.**

The following papers, numbered 19–24, were read on this motion for leave to amend the complaint.

Notice of Motion – Memo of Law in Support – Exhibit A – Memo of Law in Opposition – Memo of Law in Reply | Nos. 19–24

Motion by Plaintiff Laila N. Sedhom, PhD, RN (“Dr. Sedhom”) pursuant to CPLR 3025 (b) for leave to amend her complaint against Defendants SUNY Downstate Medical Center (“SUNY Downstate”) and Daisy Cruz-Richman (“Dr. Cruz-Richman”) is granted.

**BACKGROUND**

Dr. Sedhom alleges that she worked for SUNY Downstate for over 36 years and has held the position of tenured professor and associate dean. Dr. Sedhom further alleges that Dr. Cruz-Richman was her direct supervisor. Dr. Sedhom further alleges that she opted into an early retirement incentive program effective December 31, 2010.

Dr. Sedhom alleges that Defendants asked, and Dr. Sedhom agreed, that Dr. Sedhom would return as a full-time professor and associate dean effective August 1, 2011. Dr. Sedhom further alleges that she remained tenured upon her return and that tenured faculty at SUNY Downstate may not be fired. Dr. Sedhom further alleges that her employment was not at-will. Dr. Sedhom further alleges that SUNY Downstate sent her a letter, on June 22, 2017, falsely stating that her

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

position was a temporary appointment and that her employment would end effective July 7, 2017.

In the instant action, commenced on June 27, 2017, Dr. Sedhom alleges that Defendants unlawfully discriminated against her based on her age and caregiver status, created a hostile work environment, wrongfully terminated her, breached her contract and the covenant of good faith and fair dealing, and committed misrepresentation, fraud, and negligent and intentional infliction of emotional distress. Defendants filed their answer to the complaint on August 23, 2017, and asserted eleven additional or affirmative defenses.

Dr. Sedhom moved this Court pursuant to CPLR 3124 to compel Defendants to produce certain documents. By an order dated December 12, 2017, this Court denied Plaintiff's motion because Dr. Sedhom "failed to appear for oral argument on the motion." (NY St Cts Elec Filing [NYSCEF] Doc No. 25.)

In the instant motion, Dr. Sedhom seeks leave pursuant to CPLR 3025 (b) to supplement her complaint based upon: (1) new facts related to retirement benefits of Dr. Sedhom was not aware as of June 27, 2017; and (2) new facts and claims pursuant to her alleged submission of a discrimination charge to the Equal Employment Opportunity Commission ("EEOC") on August 1, 2017, and a "right to sue" letter from the EEOC in response dated September 27, 2017.

Dr. Sedhom now alleges in her papers with respect to the retirement benefits that SUNY Downstate seized \$136,865.13, representing approximately six years of employer retirement plan contributions (the "Contributions"), from her retirement plan account, administered by proposed new defendant Teachers Insurance and Annuity Association of America ("TIAA"). Dr. Sedhom argues that she relied to her detriment upon that these contributions were made and that she was allegedly 100% vested in her contributions to the retirement program. Dr. Sedhom further alleges that SUNY Downstate illegally seized the funds in violation of her due process rights.

Dr. Sedhom alleges further with respect to the EEOC right to sue letter that the EEOC process contemplates the addition of claims pursuant to a plaintiff's receipt of such a letter. Dr. Sedhom argues that she has exhausted her administrative remedies with the EEOC and now seeks to bring causes of action under both the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101, et seq., and the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621,

et seq., relating to her status as a caregiver to her disabled husband and to age discrimination, respectively.

In sum and substance, Dr. Sedhom argues that a grant of leave to amend her complaint should be freely given and would not subject Defendants to undue prejudice or surprise.

In their opposition papers, Defendants argue that the theories Dr. Sedhom puts forth as to why she seeks to add claims and defendants are palpably insufficient and lacking in merit. Defendants further argue that the proposed due process amendments fail because the proposed amended complaint fails to allege that Dr. Sedhom had a protected property interest in the Contributions. Defendants further argue that the Contributions were recouped by the State Comptroller, not SUNY Downstate, pursuant to the 2010 retirement incentive law (S07909, Ch. 105, Laws of 2010 § 11). Defendants argue that the statute provides that a state employee who retires and received an enhanced benefit, then returns to service and rejoins a public retirement system, must forfeit additional employer contributions or repay any additional contribution, with interest.

Defendants argue that the ADEA and ADA claims should be barred due to sovereign immunity and may only be heard, if at all, in the Court of Claims. Defendants further argue that Dr. Sedhom has failed to state a cause of action under the ADA because her proposed amended complaint does not “allege[] circumstances sufficient to create a reasonable inference that she [was terminated] because of her [caregiver] relationship with the disabled person[, her husband].”

Defendants further argue that leave to add proposed new defendant Maria Silas (“Ms. Silas”) and allegations as to her should not be granted because the facts alleged in the proposed amended complaint do not suggest unlawful conduct by Ms. Silas.

In her reply papers, Dr. Sedhom reiterates that leave to amend should be freely given and that Defendants have no claim of prejudice or surprise. Dr. Sedhom then argues that Defendants were apprised of her pending ADA and ADEA claims in the original complaint and by the EEOC process. Dr. Sedhom further argues that her proposed due process complaints relate to evidence unknown to her when she filed the original complaint. Dr. Sedhom further argues that Defendants’ opposition arguments are premature, that this is not a motion for summary judgment, and that the amendments serve judicial economy.

## DISCUSSION

CPLR 3025 provides

“(b) Amendments and supplemental pleadings by leave. A party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just including the granting of costs and continuances. Any motion to amend or supplement pleadings shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading.”

“As a general rule, leave to amend a pleading should be freely granted in the absence of prejudice to the nonmoving party where the amendment is not patently lacking in merit . . . , and the decision whether to grant leave to amend a complaint is committed to the sound discretion of the court.” (*Davis v South Nassau Communities Hosp.*, 26 NY3d 563, 580 [2015] [internal quotation marks omitted]; see also *Y.A. v Conair Corp.*, 154 AD3d 611 [1st Dept 2017] [holding that leave should be granted “absent . . . surprise resulting therefrom”].) “To obtain leave, a plaintiff must submit evidentiary proof of the kind that would be admissible on a motion for summary judgment.” (*Velarde v City of New York*, 149 AD3d 457, 457 [1st Dept 2017].) “[P]laintiff need not establish the merit of its proposed new allegations, but simply show that the proffered amendment is not palpably insufficient or clearly devoid of merit.” (*MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499, 500 [1st Dept 2010].)

Here, Dr. Sedhom submits as evidentiary proof on the instant motion a copy of the EEOC right to sue letter. She also submits her proposed amended complaint and memorandum of law. In opposition, Defendants do not submit any evidentiary proof. Upon review of the proposed amended complaint and the arguments in the parties’ papers, the Court finds that Defendants would not suffer undue prejudice or surprise if it grants Dr. Sedhom leave to amend her complaint at this time.

The Court finds further, in its sound discretion, that Dr. Sedhom’s proposed amendments and supplements are not based upon theories that are palpably insufficient or devoid of merit for the purposes of the instant motion. “If the opposing party wishes to test the merits of the proposed added cause[s] of action . .

[it] may later move for summary judgment upon a proper showing. (*Lucido v Mancuso*, 49 AD3d 220 [2d Dept 2008].)

In arriving at the instant decision, the Court does not make any conclusions regarding any jurisdictional issues raised by the parties in their moving papers.

**CONCLUSION**

Accordingly, it is

ORDERED that motion by Plaintiff Laila N. Sedhom, PhD, RN (“Dr. Sedhom”) pursuant to CPLR 3025 (b) for leave to amend her complaint against Defendants SUNY Downstate Medical Center (“SUNY Downstate”) and Daisy Cruz-Richman (“Dr. Cruz-Richman”) is granted, and the amended complaint in the proposed form annexed to the moving papers shall be deemed served upon SUNY Downstate and Dr. Cruz-Richman upon service of a clean copy thereof and upon service of a copy of this order with notice of entry thereof; and it is further

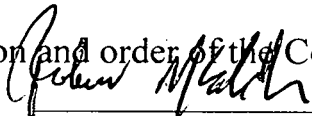
ORDERED that Plaintiff serve the summons and amended complaint (a clean copy of the proposed amended complaint) upon new defendants TIAA and Maria Silas per the CPLR within 20 days of the entry of this order; and it is further

ORDERED that all defendants named in the amended complaint shall serve an answer to the amended complaint or otherwise respond thereto within 20 days from the date of service of the amended complaint upon them; and it is further

ORDERED that counsel are directed to appear for a preliminary conference in Part 29, located at 71 Thomas Street, Room 104, New York, New York 10013-3821, on Tuesday, May 1, 2018, at 9:30 a.m.

The foregoing constitutes the decision and order of the Court.

Dated: January 23, 2018  
New York, New York

  
J.S.C.  
**HON. ROBERT D. KALISH**

1. Check one:.....

2. Check if appropriate:..... MOTION IS:

3. Check if appropriate:.....

- CASE DISPOSED       NON-FINAL DISPOSITION
- GRANTED     DENIED     GRANTED IN PART     OTHER
- SETTLE ORDER       SUBMIT ORDER
- DO NOT POST     FIDUCIARY APPOINTMENT     REFERENCE