

<b>Pryce v New York City Tr. Auth.</b>
2018 NY Slip Op 33100(U)
November 20, 2018
Supreme Court, New York County
Docket Number: 153054/2016
Judge: Lisa A. Sokoloff
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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CASSIUS PRYCE, DAVID ERLITZ, MICHAEL GRELLA,  
JOHN MAGNUSKI, ALLAN RABINOWITZ, PAUL  
SADOWSKI, THERESA M. WORKMAN,

Plaintiff,  
-against-

DECISION AND ORDER

NEW YORK CITY TRANSIT AUTHORITY, AND  
METROPOLITAN TRANSIT AUTHORITY,

Index #153054/2016

Mot. Seq. 001

Defendant.

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*Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:*

Papers	Numbered	NYCEF #
Defendant's Motion / Affirmation in Support	<u>1</u>	15-19
Plaintiff's Opposition/ Affirmation	<u>2</u>	22-24
Defendant's Reply Motion	<u>3</u>	26

LISA A. SOKOLOFF, J.

Defendants New York City Transit Authority ("NYCT") and Metropolitan Transportation Authority (incorrectly sued herein as "Metropolitan Transit Authority") move to dismiss the Verified Complaint pursuant to CPLR § 3211(a)(7). Plaintiffs Cassius Pryce, David Erlitz, Michael Grella, John Magnuski, Allan Rabinowitz, Paul Sadowski, and Theresa M. Workman initially alleged three separate causes of actions against Defendants: (1) breach of contract on the grounds that Plaintiffs did not receive a salary increase as required by the Defendants' Managerial Compensation Program Guide, (2) violation of the Equal Protection Clause of the New York State Constitution on the grounds that similarly situated employees received salary increases and Plaintiffs did not,

and (3) negligent misrepresentation on that grounds that Defendants misrepresented to Plaintiffs that their salaries would be raised if a new compression floor was established.

Defendants assert that Plaintiffs' complaint failed to state a cause of action for the three alleged claims. With respect to the breach of contract claim, Defendants argue that the Managerial Compensation Program Guide is merely an employee guidebook that NYCT can unilaterally change at any time and therefore not a contract between Plaintiffs and Defendants. With respect to Plaintiffs equal protection claim, Defendants contend that Plaintiffs failed to state a cause of action because Plaintiffs failed to allege that they were discriminated against on the basis of a membership in a protected class. With respect to the negligent misrepresentation claim, Defendants claim that Plaintiffs failed to state a cause of action because the parties do not have a special relationship needed to maintain a negligent misrepresentation cause of action.

Although Plaintiffs have withdrawn their equal protection and negligent misrepresentation claims, they oppose Defendants' motion to dismiss their breach of contract claim because they argue that the Managerial Compensation Program Guide does in fact constitute a contract, or at a minimum, an implied-in-fact contract. In the alternative, Plaintiffs request that if the Court finds no merit to Plaintiffs' alleged breach of contract claim, the Court should convert the action to an Article 78 proceeding on the ground that Plaintiffs pled facts that Defendants' actions were arbitrary and capricious.

### Background

Plaintiffs are employees of the New York City Transit Authority and are all currently working as Operating Managers in the Operations Planning Department. On or

about February 2002, NYCT issued a guidebook entitled "A Guide to Our Managerial Compensation Program" ("Guide") that was allegedly implemented to regulate manager's salaries as non-unionized employees as well as other employment procedures and benefits.

Among other explanatory notes, the "Introduction" to the Guide states that the Program is used to establish salary structures that reflect trends and practices and is "*designed to assist management* in attracting, rewarding, and retaining competent managers" [emphasis added]. The Introduction further states that, "[NYCT] Human Resources will issue updates to the Managerial Compensation Program Guide periodically, as required." Defendants allege that this provision authorizes NYCT to unilaterally revise the Guide and that since the Guide has been issued, NYCT Human Resources has indeed made multiple changes to the Guide.

The section of the Guide at issue here is the "Compression Program" which is "intended to maintain an appropriate salary gap between" operating supervisors, who are represented by a union, and their managers, who are not. The Guide states that the Compensation Unit will "establish, maintain, and annually review" the salary compression floors and adjust "as needed to maintain appropriate salary differentials based upon approved collective bargaining settlements."

Plaintiffs allege that on January 29, 2014, NYCT raised the compression floor for Operating Managers and as a result gave some managers a salary increase, but refused to give Plaintiffs a salary increase in violation of the Guide and thus are in breach of contract.

Defendants contend that Plaintiffs' ineligibility for the compression increase was directly addressed by Human Resources. According to Defendant's Supplemental Affirmation in Support, NYCT Human Resources Vice President, Patricia Lodge, issued a June 12, 2014 memorandum ("June 2014 Memo") in response to Plaintiffs' request that the "Manager, Scheduling" position be added to the compression-eligible title list. The June 2014 Memo informed Plaintiffs that "Manager, Scheduling," their functional title, was not a compression-eligible title as it does not supervise represented operating supervisors. While some positions that do not supervise such staff have been deemed eligible for compression, those positions required an operational background to perform the work functions. However, an operational background, as Plaintiffs have, is not required to perform the analytical functions of their position. Additionally, if Plaintiffs received the increase, their salaries would exceed their peers who held the same position but had an administrative background.

### Discussion

#### I. Breach of Contract Claim

To sustain a cause of action for breach of contract, Plaintiffs must establish: (1) the existence of a valid contract; (2) plaintiff's performance of the contract; (3) defendant's material breach of the contract; and (4) resulting damages (*Second Source Funding, LLC v Yellowstone Capital, LLC*, 144 AD3d 445 [1st Dept 2016]).

Plaintiffs' breach of contract claim rests entirely on the proposition that the NYCT Managerial Compensation Program Guide constitutes a valid contract between Plaintiffs and Defendants. Defendants contend that the Guide is merely an employee manual and does not create a contract between the parties.

Two leading Court of Appeals cases support Defendants' position that in and of itself, an employee handbook does not create a contractual relationship between employer and employee. In *Lobosco v New York Tele. Co.* (96 NY2d 312, 317 [2001]), the Court of Appeals held that "[r]outinely issued employee manuals, handbooks and policy statements should not lightly be converted into binding employment agreements." The Court reasoned that doing so "would subject employers who have developed written policies to liability for breach of employment contracts upon the mere allegation of reliance on a particular provision" (*Id.* at 317) (dismissing claim based on breach of contract based on employee manual "because the explicit disclaimer of a contractual relationship contained on the facing page clearly preserve[ed the employer's] right to maintain an at-will employment relationship with plaintiff.").

Similarly, in *Maas v Cornell Univ.* (94 NY2d 87 [1999]), the Court of Appeals refused to recognize the University Campus Code as a valid contract or an implied-in-fact agreement. The court reasoned that nowhere did the university reflect an "intent that the provisions of its Code would become terms of a discrete, implied-in-fact agreement" as it was primarily informational. Moreover, the handbook stated that it could be altered at any time, which implied that the University could make changes unilaterally. The court considered that "feature ... hardly the harbinger of a legally binding set of arrangements" (*Id.* at 94).

Plaintiff argues that the promises in the Guide, coupled with a January 29, 2014 memo issued by NYCT (January 2014 Memo) stating that Defendants have established new compression floors for operating managers, form part of the essential employment understanding between managers and Defendants and "have the force of a contract"

citing to *Monaco v New York Univ.* (145 AD3d 567 [1st Dept 2016]) (reversing lower court's dismissal of petitioner's breach of contract and promissory estoppel claims, holding that policies contained in a handbook may rise to the level of an enforceable contract). In reaching its conclusion, *Monaco* cited to *O'Neill v New York Univ.* (97 AD3d 199 [1st Dept 2012]) where the petitioner, a nontenured, full-time faculty member, claimed to be terminated in retaliation. The Faculty Handbook at issue in *O'Neill* provided that appointments to nontenured positions "shall be for a definite period of time, not exceeding one academic year" (*Id.* 202).<sup>1</sup> NYU renewed petitioner's appointment annually. The Court concluded that NYU's letters renewing petitioner's employment over specific academic years, coupled with the nontenure hiring provision in the Faculty Handbook, evidenced an employment arrangement for a fixed duration, sufficient to overcome NYU's motion to dismiss.

Here, Plaintiffs are at-will employees and the Guide contains no mandatory or language of promise with respect to compression adjustments.

Plaintiffs argue that often in these sorts of cases, the employee is alleging a breach of contract claim for an unlawful termination based upon a handbook or manual whereas their claim is for compensation. Plaintiffs cites to *Miloscia v B.R. Guest Holdings, LLC* (94 AD3d 563 [1st Dept 2012]) and *Romanello v Intesa Sanpaolo S.p.A.* (48 Misc 3d 1215(A) [Sup Ct, NY Co 2015]) for the proposition that although an employee may not maintain an action for breach of contract based upon provisions contained in an employee manual where the manual provides that the employment is at-will (*Miloscia* at 564), a

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<sup>1</sup> In New York, where the term of employment is for an indefinite period of time, it is presumed to be a hiring at will that may be freely terminated by either party at any time for any reason or no reason (*LoBosco*, at 316).

contract claim based on compensation rather than termination may proceed. However, neither case is applicable. The plaintiff in *Romanello* sued for accrued sick days and vacation days and the plaintiff in *Miloscia* sued for health insurance benefits. They were allowed to proceed with their breach of contract claim because they were suing "for agreed compensation for fully completed past services" (*Miloscia* at 564-565, quoting *Falcone v EDO Corp.*, 141 AD2d 498, 499 [1988]).

Plaintiffs here are not suing for agreed compensation for past services, but for a salary adjustment for future services which is not a breach of contract claim. Moreover, the January 2014 Memo specified that only an "operating manager in a compression-eligible position whose salary is lower than the new compression floor will receive an increase to the new minimum" [emphasis added] and the June 2014 Memo explained why Plaintiffs do not fulfill the compression-eligibility requirements.

## II. Article 78 Proceeding

Because Plaintiffs' breach of contract cause of action is dismissed, the court will evaluate Plaintiffs' claim as a cause of action under CPLR article 78. Pursuant to CPLR § 103(c), courts have the discretion to convert a plenary action to a CPLR article 78 proceeding (*Walsh v New York State Thruway Auth.*, 24 AD3d 755, 756 [2nd Dept 2005]). However, the Court is restricted from doing so because Plaintiffs' request is time-barred. Under CPLR § 217(1), a proceeding pursuant to CPLR article 78 must be commenced within four months from the time the determination being challenged becomes final and binding (*Portlette v Metropolitan Transit*, 25 AD3d 389 [1st Dept 2006]). A challenged determination is final and binding when it has an impact on the petitioner (*Matter of Edmead v McGuire*, 67 NY2d 714, 716 [1986]), e.g., when a request

for reinstatement is unequivocally denied (*Matter of Drake v Reuter*, 27 AD3d 736 [2006]).

Plaintiffs' complaint alleges that a salary compression increase was granted on January 29, 2014 and Plaintiffs were entitled to that salary increase as of November 4, 2015, which Defendants subsequently refused to provide. NYCT Human Resources responded to Plaintiffs' request for a review of their compression eligibility in a June 12, 2014 memorandum. Plaintiffs filed their complaint on April 11, 2016, more than four months after NYCT refused to apply the compression salary increase to Plaintiffs' title.

Accordingly, it is

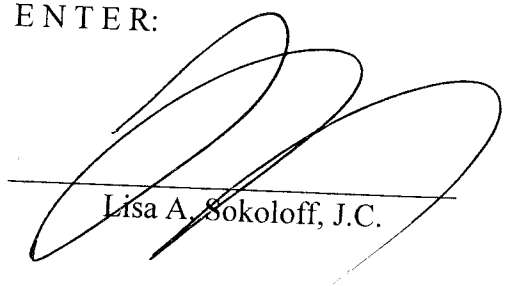
ORDERED, Plaintiffs' request to convert the first cause of action to an Article 78 proceeding is denied because it is time-barred by CPLR § 217(1);

ORDERED, that Defendants New York City Transit Authority and Metropolitan Transportation Authority's motion for an Order pursuant to CPLR § 3211(a)(7) dismissing the complaint is granted.

Any other requested relief not expressly granted is denied.

Dated: November 20, 2018  
New York, New York

ENTER:

  
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Lisa A. Sokoloff, J.C.

CHECK ONE:

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<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

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