

Panella v State of New York

2018 NY Slip Op 33591(U)

September 5, 2018

Supreme Court, Oneida County

Docket Number: EFCA2018-000197

Judge: Norman W. Seiter

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This opinion is uncorrected and not selected for official publication.

**STATE OF NEW YORK, SUPREME COURT
ONEIDA COUNTY**

Joseph P. Panella,

Plaintiff,

ORDER AND JUDGMENT

-v-

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The State of New York, The Office of Court
Administration of the State of New York,
The Honorable Lawrence Marks, In his Professional
Capacity only, As Chief Administrative Judge of
the State of New York,

RJI No.: 32-18-0269

Defendants.

The Plaintiff, Joseph P. Panella, having commenced this action on January 19, 2018, by e-filing a Summons and Complaint with the Oneida County Clerk and, thereafter, having served a copy of the Summons and Complaint on the Office of the Attorney General and the Defendants, the State of New York, the Office of Court Administration of the State of New York, the Honorable Lawrence Marks, in his professional capacity only, as Chief Administrative Judge of the State of New York; and

The Defendants having made a pre-Answer Motion to Dismiss the Complaint, dated April 5, 2018, by e-filing and serving a Notice of Motion and Affirmation of Sean B. Virkler, Esq. in Support of the Motion, along with a Memorandum of Law in Support of the Motion dated April 5, 2018, by Sean Virkler, Esq., on the grounds that the court does not have subject matter jurisdiction over the issues presented; and

The Plaintiff having submitted an Affidavit by Joseph Panella, dated June 20, 2018, in opposition to the motion and an Affidavit of Stephanie A. Palmer, Esq. in opposition to the motion dated June 20, 2018; and

The Defendants having e-filed and served a Reply Affirmation by Sean B. Virkler, Esq. dated June 26, 2018, in further support of their motion; and

The motion to dismiss having come before the Court on June 28, 2018, on submission; and

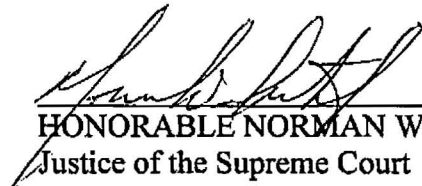
The Court having issued a written Decision on the motion on July 26, 2018, a copy of which is attached, dismissing the action on the grounds that the court lacks jurisdiction over the defendants, as the issues presented are against the defendants for decisions made in their governmental capacity, resulting in plaintiff's request for monetary damages, which falls under the jurisdiction of the New York State Court of Claims, and as further set forth in the attached Decision on Motion;

Now, it is hereby,

ORDERED, that the motion to dismiss is granted and the case is dismissed in its entirety.

September
Dated: ~~August~~ 5, 2018
Oswego, New York

ENTER


HONORABLE NORMAN W. SEITER, JR.
Justice of the Supreme Court

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

JOSEPH P. PANELLA,

Plaintiff

vs.

DECISION ON MOTION

**THE STATE OF NEW YORK;
THE OFFICE OF COURT ADMINISTRATION
OF THE STATE OF NEW YORK;
THE HONORABLE LAWRENCE MARKS,
In his Professional Capacity only
As CHIEF ADMINISTRATIVE JUDGE
OF THE STATE OF NEW YORK,**

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Defendants

Hon. Norman W. Seiter, Jr., J.S.C.

The above captioned matter is before this court pursuant to defendants' pre-Answer Motion to Dismiss the Complaint asserting that this court does not have subject matter jurisdiction over the issues presented and, in the alternative, that if this is, in fact, a request for equitable determinations, that same should have been commenced as an Article 78 proceeding. Plaintiff asserts, in response, that this action is properly before this court and that the pending Motion should be in all respects denied.

The Motion was made returnable on submission, and the following documents have been considered by this court:

| <u>NYSCEF Document Number</u> | <u>Document Description</u> |
|-------------------------------|--|
| 16 | Notice of Motion (Amended) |
| 17 | Affidavit or Affirmation in Support |
| 18 | Exhibits(s) |
| 19 | Memorandum of Law in Support |
| 21 | Affidavit or Affirmation in Opposition to Motion |
| 22 | Affidavit or Affirmation in Opposition to Motion |
| 23 | Memorandum of Law |
| 25 | Affidavit or Affirmation in Reply |

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Having reviewed the submissions by counsel on behalf of the parties, this court makes the following decision.

Facts

The plaintiff in the above-captioned action was formerly the Chief Clerk of the Oneida County Combined Courts, who was initially appointed in 1993 and was thereafter upgraded a number of times and became Chief Clerk IV, a management confidential position, paygrade JG 32, in 1999. The papers submitted outline the income compression that occurred in 2008, and the facts and circumstances of the plaintiff's retirement with an incentive in November of 2010. The plaintiff asserts that he is entitled to recomputation of his pension in light of the portion of his salary that was deferred from 2008 until the date of his retirement, and that he is entitled to approximately \$39,000.00 in withheld wages and compensation for lost fringe benefits. Plaintiff in his Complaint further requests a directive that the defendant make payment to him for the amounts alleged due, his counsel fees, and expenses of litigation including costs.

Defendants have now moved, by special appearance, to dismiss the Complaint pursuant to CPLR 3211(a)(2) and (8), asserting that this court lacks personal and subject matter jurisdiction and that the issues presented may only be determined in the Court of Claims. In the alternative, defendants assert that plaintiff's request for the equitable relief without the commencement of an Article 78 proceeding, necessitates dismissal.

Decision

The Court of Claims has limited jurisdiction to hear actions against the State itself, or actions naming State agencies or officials as defendants, where the action is, in reality, one against the State--i.e., where the State is the real party in interest. Generally, actions against State officers acting in their official capacity in the exercise of governmental functions are deemed to be, in essence, claims against the State and, therefore, suable only in the

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Court of Claims [citations omitted]. Not every suit against an officer of the State, however, is a suit against the State. [citations omitted]

A suit against a State officer will be held to be one which is really asserted against the State when it arises from actions or determinations of the officer made in his or her official role and involves rights asserted, not against the officer individually, but solely against the State. Thus [for example], an action for damages against the Director of the State Lottery Division, stemming from a disputed termination of claimant's license agreement, was, in actuality, an action against the State; it could, therefore, be brought only in the Court of Claims and Supreme Court had no jurisdiction . . .

Where, however, the suit against the State agent or officer is in tort for damages arising from the breach of a duty owed individually by such agent or officer directly to the injured party, the State is not the real party in interest--even though it could be held secondarily liable for the tortious acts under respondeat superior. Thus, an action arising out of a traffic accident against a hospital operating a State ambulance service was not one against the State as real party in interest.

Morell v. Balasubramanian, 70 N.Y.2d 297, 300-01, (1987).

The matter now before this court involves allegations of a breach of contract between the plaintiff and the State of New York, the Office of Court Administration, and Hon. Lawrence Marks in his professional capacity alone, whereby the plaintiff seeks monetary damages rather than equitable relief. Johnson vs. Smith, 112 A.D.2d 50 (4th Dept. 1985); Barrier Motor Fuels, Inc. vs. Boardman, 256 A.D.2d 405 (2nd Dept. 1998); Gonzalez vs. Coughlin, 198 A.D.2d 683 (3rd Dept. 1993).

The plaintiff cites Loehr vs. New York State Unified Court System, 150 A.D.3d 716 (2nd Dept. 2017), *lv. denied* 30 NY3d 903 (2017), wherein similar relief to the case now before this court was sought, and asserts that same was properly determined in Supreme Court. However, in the Loehr matter, the defendant never objected, moved to dismiss or asserted that the case would only have been properly commenced in the Court of Claims, and thus this court finds that

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Loehr is not binding on the case now before this Justice. Loehr was a hybrid action seeking CPLR Article 78 relief, whereas here, no such proceeding was filed.

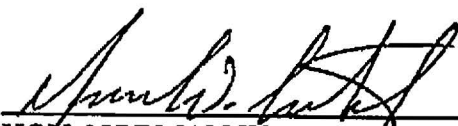
Were this court to determine the relief requested to be equitable in nature, a proceeding pursuant to CPLR Article 78 would be necessary for this court to address the propriety of the defendants' decision to withhold salary increases under Chapter 276(7)(a) of the Laws of 2008. The determination was made as to salary increases on or about January 16, 2013, and the time to challenge the agency determination by the filing of a proceeding under Article 78 has long since run.

In any case, this court finds that the issues presented are clearly asserted against the defendants for decisions made in a governmental capacity, resulting in plaintiff's request for monetary damages, which such issues fall within the purview and jurisdiction of the New York State Court of Claims.

Conclusion

In light of the foregoing, this court will grant the pending Motion and the Complaint shall be dismissed in its entirety. Counsel for the defendants is to submit a proposed Order and Judgment granting the Motion and dismissing the overall action within thirty (30) days hereof, on notice to opposing counsel.

Dated: July 26, 2018
Oswego, New York


HON. NORMAN W. SEITER, JR.,
Justice of the Supreme Court

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