

Emmons v Broome County

2019 NY Slip Op 33909(U)

April 8, 2019

Supreme Court, Broome County

Docket Number: EFCA 2018-2998

Judge: Donald F. Cerio, Jr.

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF BROOME
PRESENT: HON. DONALD F. CERIO, JR.
ACTING SUPREME COURT JUSTICE

LORRAINE EMMONS,

Plaintiff,

DECISION AND ORDER
Index No. EFCA 2018-2998
RJI: 2018-1535-M

v.

BROOME COUNTY, NEW YORK,

Defendant.

The present matter comes before the court upon the Defendant’s Notice of Motion, Affidavit of Robert G. Behnke, Esq., and the Defendant’s Memorandum of Law, dated December 12, 2018, seeking to dismiss the plaintiff’s complaint pursuant to CPLR Section 3212. The plaintiff responded by her February 12, 2019, Notice of Cross-Motion seeking an order (1) granting plaintiff an extension of time by which to serve the defendant; (2) recusal of the court, and; (3) recusal of the Broome County Attorney’s Office. Accompanying the Notice of Motion was the Affidavit of Lorraine Emmons and the Affirmation of Douglas Walter Drazen, Esq., dated February 11, 2019, in support of the cross-motion and in opposition to the defendant’s motion to dismiss.¹

On February 20, 2019, the parties appeared by counsel in Broome County Supreme Court and were heard. This court, upon having reviewed and considered the submissions and argument of counsel, directed, by memorandum dated February 26, 2019, counsel to submit supplemental briefs with respect to the import of Judge Hurd’s May 24, 2018, decision as it pertained to the companion state law claim. Respective counsel responded by their submissions of supplemental briefs on March 22, 2019.

The following reflects the Decision and Order of this court:

Initially, this court notes that a decision had been issued by Hon. David N. Hurd, United States District Judge in the Northern District of New York, dated May 24, 2018, which dismissed claims brought by the plaintiff against the defendant pursuant to the provisions of the Americans with Disabilities Act (ADA), 42 USC §12101, et seq., asserting claims of disability

¹Plaintiff’s motion seeking recusal of this court is deemed withdrawn and dismissed based upon counsel’s representations at the time of oral argument.

discrimination and retaliation. Of note, however, is that Judge Hurd, within this decision, declined to exercise supplemental jurisdiction with respect to the plaintiff's claim that the defendant had violated New York State's Human Rights Law (NYSHRL), NY Exec §290, et seq., holding that, "Because summary judgment will be granted as to the federal ADA claims, the continued exercise of supplemental jurisdiction over Emmons's state law claims will be declined. See 28 U.S.C. §1367(c)(3). Accordingly, plaintiff's HRL claims will be **dismissed without prejudice.**" (2018 WL 2364286, USDC, ND NY, at 9; *emphasis added*).

This court further takes notice of the historical facts as set forth by Judge Hurd within his decision as it pertains to the dates of various matters occurring which precipitated the September 2016 commencement in federal court of the plaintiff's action and this court adopts such as they pertain to the November 9, 2018, Summons and Complaint as prepared by the plaintiff with respect to the present New York State action.² With respect to the plaintiff's present complaint, the plaintiff herein asserts causes of action in violation of the NYSHRL with respect to her termination and as retaliation for having commenced various proceedings.

Here, the defendant seeks dismissal of the plaintiff's complaint upon the ground that (1) the plaintiff had not complied with County Law §52 by failing to serve a notice of claim and (2) that the principals of *res judicata* and *collateral estoppel* compel dismissal. Upon having given due consideration to the argument of counsel and relevant law, the defendant's motion must be denied.

The defendant's motion seeking dismissal upon the ground that the plaintiff had failed to comply with the provisions of Section 52 of the County Law, and thus Section 50-e of the General Municipal Law, speaks to the plaintiff's purported failure to have timely served the County of Broome with a formal notice of claim as it pertains to her allegations. Those particular provisions provide that an action may not be commenced against a county unless the complainant timely files a notice of claim "within ninety days after the claim arises." (*See GML §50-e(1)(a)*). The notice of claim, when filed, must be a sworn statement in writing which includes the following information:

- (1) the name and post-office address of each claimant, and his attorney, if any
- (2) the nature of the claim
- (3) the time when, the place where and the manner in which the claim arose, and
- (4) the items of damage or injuries claimed to have been sustained so far as then

²Though the decision of Judge Hurd reflects the plaintiff's filing of a complaint with the US Equal Employment Opportunity Commission [EEOC] on or about February 6, 2014, "constitutes protected activity and that the temporal proximity between this complaint and the April political statement [of Deputy County Executive Bijoy Datta] raises a minimal inference as to causation," this court takes this opportunity to comment upon the fact that the EEOC, in its May 27, 2015, Final Determination, found the plaintiff's discharge to have been premised upon discrimination against her due to her disability and that she had been subjected to retaliation.

practicable.

The legislative purpose behind the notice provisions is provide the county with the opportunity to timely investigate the matter so as to prepare a defense.

Here, as has been recognized by other courts within this state, this court finds that the plaintiff was not required to file a notice of claim specifically with respect to GML §50-e as the causes of action, alleging violations of the NYSHRL, were not “torts” as set forth at Section 50-e(1)(a). However, as County Law §52 is much more broad in its applicable scope, and as the courts of this state have historically found, the plaintiff was otherwise required to file a notice of claim pursuant to this particular provision within the requisite ninety time frame as set forth in GML §50-e so as to permit the county to timely investigate the claim.

Upon a review of the submissions, it is without question that the plaintiff did not file, to date, a formal notice of claim with the county. However, it is also quite true that the plaintiff had provided the County of Broome with her EEOC complaint of February 3, 2014, on February 24, 2014. The plaintiff’s amended EEOC complaint dated May 7, 2014, was received by the County of Broome on May 16, 2014. As the terminal events which precipitated the filing of the plaintiff’s EEOC original complaint and amended complaint occurred on December 29, 2013, and April 12, 2014, i.e., her original discharge from employment and the Datta communication, respectively, the plaintiff had provided to the County of Broome notice of her claims within ninety days of each event.

The question which must then be answered is whether the plaintiff’s provision of the EEOC complaints to the defendant comported with the substantive requirements of the notice of claim as set forth in GML §50-e? This court finds that answer to be in the affirmative.

Specifically, the EEOC complaint and amended complaint satisfied each of the requirements as set forth at GML §50-e(1)(a). Such documents, as received by the defendant, were sworn statements of the plaintiff setting forth her name, phone number, date of birth and mailing address, as well as a detailed narrative of those matters alleged to have occurred which gave rise to her complaint. The plaintiff set forth a very complete recitation of those matters which extensively detailed the nature of her claim, when, where and under what circumstances the offending events occurred, and the nature of her injuries. While this court recognizes that the courts of this state have not specifically addressed whether an EEOC complaint is the substantive equivalent of a notice of claim, the courts have not specifically held that it does not. The Appellate Division, Third Department, in 2006, held in *Grasso v. Schenectady County Public Library*, 30 AD3d 814, that County Law §52 specifically applied to discrimination cases, as is the case here. However, the court left unanswered whether an EEOC complaint, **timely received** by the defendant county, would comport with the notice requirements. “Even if we were to find that the EEOC complaint contained sufficient detail to provide the required notice and that it was filed within 90 days after plaintiff’s claim arose, **there is no evidence (or even an allegation) that the library or the County actually received the EEOC complaint at any time, or within**

the 90-day period.” (*Id at 817; emphasis added*). Thus, the court did not reach the question as to whether receipt of the EEOC complaint “constituted substantial compliance with the notice of claim requirement” as the facts adduced did not address when the complaint had been received. (*Id at 817*).

This court, having considered the statutory language of County Law §52 and General Municipal Law §50-e(1)(a), the legislative purpose behind the statutory notice requirements, and upon a review of the plaintiff’s EEOC complaints, as received by the defendant within the requisite ninety day time period, finds the spirit and intent of the notice requirements to have been met by the plaintiff and that the plaintiff had substantially complied with the notice requirement. Given such, this court denies the defendant’s motion to dismiss upon this ground.

Turning next to whether the defendant’s motion to dismiss upon the ground of *res judicata* or *collateral estoppel*, given the interplay between the federal action of similar import and the present state action, mandates dismissal of the state action, this court concludes that the plaintiff is not now precluded from prosecuting the present state action given such ruling. The language of Judge Hurd’s May 24, 2018, which is not mandatory with respect to the viability of the plaintiff’s state law claims, provides that:

Emmons has failed to establish that the County terminated her because of her disability, and has failed to demonstrate that Deputy Datta’s public statement was issued in retaliation for her administrative complaint. **However, plaintiff remains free to test the merits of those theories in a state forum using her analogous state law claims.** (Page 8; Emphasis added).

Therefore, while this court declines to grant defendant the relief it seeks upon the theories of *res judicata* or *collateral estoppel*, and while this court recognizes that the standard of review upon the filing of a motion for summary judgment with respect to the state law claim is, in effect, the same as that for the federal claim, the plaintiff is none the less entitled to prosecute the state action.

Therefore, upon the foregoing, it is

ORDERED, that the defendant’s motion seeking to dismiss the plaintiff’s state law claim upon the grounds asserted is denied; and it is

ORDERED, that the plaintiff’s cross-motion seeking an extension of time by which to serve the plaintiff’s complaint is granted and such service shall be effectuated within twenty (20) days of the filing of this Decision and Order; and it is

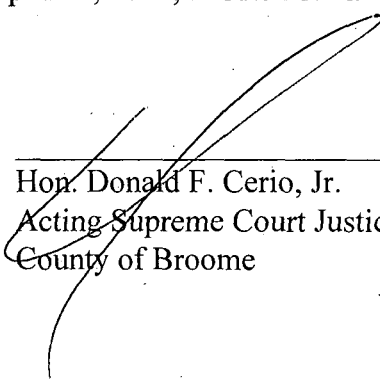
ORDERED, that the plaintiff’s cross-motion seeking recusal of the County Attorney’s Office is granted in part and denied in part only to the extent that any member of the County Attorney’s Office who may be a witness or who has material knowledge of the facts of the underlying state

action is precluded from participating in the defense of this action; and it is

ORDERED, that a conference will be conducted in Broome County Supreme Court, at the courthouse in Binghamton, New York, on April 22, 2019, at 11:30 AM.

Enter.

DATED: April 8, 2019
Oneida, New York



Hon. Donald F. Cerio, Jr.
Acting Supreme Court Justice
County of Broome

FILED
APR 12 2019
BROOME COUNTY CLERK