

Koplinka-Loehr v County of Tompkins
2019 NY Slip Op 34171(U)
June 4, 2019
Supreme Court, Tompkins County
Docket Number: EF2018-0351
Judge: Joseph A. McBride
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At a Motion Term of the Supreme Court of the State of New York held in and for the Sixth Judicial District at the Tompkins County Courthouse, Ithaca, New York, on the 12th day of April, 2019.

PRESENT: HON. JOSEPH A. MCBRIDE
Justice Presiding

STATE OF NEW YORK
SUPREME COURT : TOMPKINS COUNTY

MICHAEL A. KOPLINKA-LOEHR,

Plaintiff,

-vs-

DECISION AND ORDER

Index No. EF2018-0351
RJI No. 2018-0294-M

COUNTY OF TOMPKINS, ITHACA-TOMPKINS
COUNTY TRANSPORTATION COUNCIL, and
JOHN DOES 1-10,

Defendant(S).

APPEARANCES:

Counsel for Plaintiff:

Russell E. Maines
109 Seneca Street
Ithaca, NY 14850

Counsel for Defendant:

TOMPKINS COUNTY ATTORNEY
By: Jonathan Wood, Esq.
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Ithaca, NY 14850

JOSEPH A. MCBRIDE, J.S.C.

This matter is before the Court to address the motion of Plaintiff, Michael A. Koplinka-Loeher ("Plaintiff") to 1) Permitting the plaintiff to amend the complaint in the form filed herewith as the Second Amended Verified Complaint pursuant to CPLR 3025(b) on the grounds that such amendments relate the transactions and occurrences alleged in the prior pleadings; 2) Adding a party defendant, Martha Robertson, pursuant CPLR 1003 and *Perez v. Paramount Communications, Inc.* 92 NY2d 749 (1999); 3) Permitting supplementation of the summons in the form annexed within *Exhibits A and B* as the Second Amended Summons pursuant CPLR 305(c); and 4) Granting whatever other and further relief this Court deems just, equitable and proper. The Defendants, County of Tompkins, Ithaca-Tompkins County Transportation Council, and John Does 1-10 (collectively "Defendants") filed opposition to said motion. The parties through their counsel appeared for oral argument on the motion on April 12, 2019. The Court received and reviewed moving papers filed electronically and maintained by the County Clerk and made a determination as discussed below.

BACKGROUND FACTS

On February 6, 2018, Plaintiff was offered a part-time position, as a County Employee and accepted the position the next day. By letter dated March 2, 2018, Plaintiff's employment offer was rescinded, claiming Plaintiff was dishonest in a public forum on two separate occasions.

The case before the Court is what appears to be a wrongful termination / rescission of an employment offer case. Plaintiff originally filed a summons and complaint on June 18, 2018. Subsequently, on July 2, 2018, Plaintiff filed an amended complaint as of right pursuant CPLR 3025(a). On August 8, 2018, Plaintiff filed another summons and complaint under separate index number (EF2018-0515). This new case is nearly identical to the first complaint filed June 18 and arising out of the same occurrences. On October 4, 2018, the Court, signed by Hon. Molly Fitzgerald, granted Plaintiff's Motion to Consolidate the two indexed cases.

Plaintiff claims that through discovery, he found notes that Martha Robinson, ("Robinson") expressed concerns about Plaintiff's potential employment appointment, citing

unspecified instances of Plaintiff's dishonesty that had occurred in the past and unrelated to the two instances as indicated in the employment revocation letter.

Plaintiff now comes before the Court with a Motion to Amend the Complaint to add Robinson as named party under a new theory of law (defamation).

ANALYSIS AND DISCUSSION

Pursuant CPLR 3025(b), "A party may amend his pleading, or supplement it by setting forth additional or subsequent transaction occurrences, at any time by leave of the court ... Leave shall be freely given upon such terms as may be just..." The Third Department authorizes, that "the movant need not establish the merits of the proposed amendment and, "[i]n the absence of prejudice or surprise resulting directly from the delay in seeking leave, such applications are to be freely granted unless the proposed amendment is palpably insufficient or patently devoid of merit." NYAHS Servs., Inc. Self-Insurance Trust v. People Care Inc., 156 A.D.3d 99, 101-102 (3rd Dept. 2017).

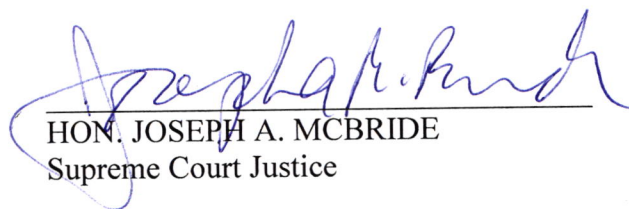
Upon review of the allegations and the contents of the proposed second amended complaint, while simultaneously being mindful of the well-established threshold to amend, the Court finds that absent an objection from Defendant, the Court must grant the motion. The Third Department has made clear that amendments that are absent prejudice or surprise must be freely given. Moreover, this is not the time to analyze the merits of the proposed amended cause of action when the Defendant can move to dismiss or for summary judgment at the appropriate time. See Id. at 102. The Court notes the Defendant's objection that in the interest of justice it is not in the best interest of judicial economy. However, the Defendant fails to state any specific instance of prejudice or surprise that will result from the amendment. With no instances of identified prejudice, the Court finds that the second amended complaint is related to the original cause of action and would overlap in testimony, and therefore the Plaintiff's motion is GRANTED.

CONCLUSION

Based upon the foregoing, Plaintiff's motion in all respects is GRANTED.

This constitutes the **DECISION AND ORDER** of the Court. The transmittal of copies of this Decision and Order by the Court shall not constitute notice of entry (see CPLR 5513).

Dated: 6/4 2019
Ithaca, New York


HON. JOSEPH A. MCBRIDE
Supreme Court Justice