

Cassagnol v Village of Hempstead

2019 NY Slip Op 34977(U)

November 14, 2019

Supreme Court, Nassau County

Docket Number: Index No. 608733/2019

Judge: Leonard D. Steinman

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This opinion is uncorrected and not selected for official publication.

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

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DIDIER CASSAGNOL,

Plaintiff,

**IAS Part 15
Index No. 608733/2019
Motion Seq. Nos. 001-002**

-against-

DECISION AND ORDER

**VILLAGE OF HEMPSTEAD, DON RYAN, in his
official capacity as Mayor, CHERICE P.
VANDERHALL, in her official capacity as Village
Attorney, and LISA BARRINGRTON, in her
official capacity as Director of Human Resources,**

Defendants.
-----X

MOD
CASE DISP

LEONARD D. STEINMAN, J.

The following submissions, in addition to any memoranda of law, were reviewed in preparing this Decision and Order:

Plaintiff's Order to Show Cause, Affirmation & Exhibits.....	1
Defendants' Notice of Cross-Motion, Affirmations & Exhibits.....	2
Plaintiff's Affidavit in Reply to Cross Motion & Exhibits.....	3
Defendants' Reply Affirmation to Cross-Motion.....	4

In December 2013, plaintiff Didier Cassagnol and the Village of Hempstead entered into an agreement to resolve all issues raised by Cassagnol in a Notice of Claim that he filed with the Village in March of that year. Cassagnol—a police officer employed by the Village at all relevant times—asserted in his Notice of Claim that the Village discriminated against him after he became disabled (his legs were paralyzed following an off-duty motorcycle accident in August 2011) and failed to accommodate his return to work. Cassagnol was represented by counsel in connection with the negotiations leading to the settlement agreement. Cassagnol now seeks to rescind the agreement and preliminarily enjoin the Village from terminating or transferring him. The Village has cross-moved to dismiss the

action. Because Cassagnol ratified the agreement by enjoying the significant benefits it afforded to him for 5 1/2 years, and did not bring this action until the Village indicated its intention to enforce the terms it bargained for, the Village's cross-motion is granted and the action is dismissed.

BACKGROUND

Cassagnol alleges in his complaint that he has been employed as a police officer for the Village of Hempstead since November 2005. In August 2011, he was severely injured in an off-duty motorcycle accident. Cassagnol was in a coma for 11 days and in the hospital for 5 weeks, after which he was transferred to a rehabilitation facility. Cassagnol was rendered paralyzed from his T1-T2 vertebrae (upper back) down, losing use of his lower extremities.

Beginning in February 2012, Cassagnol alleges, he tried to return to work. His requests to return to work were refused for over one year, requiring Cassagnol to use sick and vacation time. Finally, Cassagnol hired a lawyer and filed his Notice of Claim. During the course of settlement negotiations, Cassagnol was "manipulated" by the Village and his own attorneys into agreeing to settlement terms proposed by the Village. He alleges he was told that agreeing to the Village's proposal was the only way he would be able to return to work, which is what he wanted "more than anything" to do. The Village told him he had no viable claim and, for these reasons, Cassagnol executed the settlement agreement.

The settlement agreement provided that Cassagnol would remain a police officer and be assigned to a "light duty" position until September 2016, at which time he would have accrued 10 years of service credit and apply for disability retirement. Cassagnol resigned as a police officer, effective in September 2016. The Village agreed to hire him at that time as either a Neighborhood Aide to work in the police department or a police dispatcher. Cassagnol released the Village from all claims relating to his disability and withdrew his Notice of Claim.

Following the execution of the settlement agreement Cassagnol was assigned to the Domestic Violence Bureau. Cassagnol continued to work at the Bureau after September 2016 until the filing of his complaint. He was prompted to file his complaint because he

received notice in March 2019 that he was going to be transferred to a civilian Neighborhood Aide position at a reduced salary as set forth in the settlement agreement.

In his opposition papers to the Village's motion, Cassagnol attests that in July 2019 he was transferred to the position of Village Aide at a reduced salary. He further attests that he did not bring this action sooner because he was assured by the Village that it would not seek to enforce the settlement agreement and that he would be able to remain as a police officer indefinitely.

LEGAL ANALYSIS

On a motion to dismiss a complaint pursuant to CPLR 3211(a)(7) for failure to state a cause of action, the court must afford the complaint a liberal construction, accept the facts as alleged in the complaint as true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory. *See Leon v. Martinez*, 84 N.Y.2d 83, 87–88 (1994) ; *Reilly v. First Niagara Bank, N.A.*, 173 A.D.3d 1082 (2d Dept. 2019); *Sokol v. Leader*, 74 A.D.3d 1180, 1181 (2d Dept. 2010).

Cassagnol does not argue that the settlement agreement violates any federal or state law or regulation. Instead, he argues that it is unconscionable, was procured by fraud and duress, and is against public policy. He bases his argument primarily on the assertion that the Village was wrong from the get-go, that he unquestionably would have won a discrimination lawsuit. As a result, he asserts that he made a bad bargain. But, of course, nearly every claimant and plaintiff believes that he is in the right and will be victorious in court. Nonetheless, cases are settled because most often one can never be certain that the law will be on their side.

Cassagnol presumably believed he would prevail when he filed his claim. Nonetheless, with the advice of counsel, he decided to settle his claim for whatever personal reason: financial, emotional or strategic. That the Village may have convinced him at the time that he signed the agreement that his claim was without merit or the fact that his attorneys may have given him bad advice does not mean he was the victim of a fraud.

Cassagnol accepted the benefits the settlement agreement provided to him: he was guaranteed that he would remain a police officer at full salary (\$137,000 at the time of his

complaint) for approximately 3 years and actually held that position for over 5 years; he was ensured that his pension rights would vest; and he was guaranteed further employment at a different position with the Village. Because he accepted these benefits for the entire term of the settlement agreement he is not entitled to rescission as a matter of law now that the Village seeks to exercise its rights under the agreement. *See e.g., Scarfone v. Village of Ossining*, 23 A.D.3d 540, 541 (2d Dept. 2005).

Stipulations of settlement are favored by the courts and not lightly cast aside. *Pieter v. Polin*, 148 A.D.3d 1191 (2d Dept. 2017). A settlement agreement—even one improvidently made—will not be set aside unless it is manifestly unfair or unconscionable. *Lenge v. Eklecco Newco, LLC*, 172 A.D.3d 843 (2d Dept. 2019). This agreement was not unconscionable. Furthermore, where a party inexcusably delays in seeking to vacate a settlement agreement it will not be rescinded, even if procured by fraud or duress. *Pieter* at 1192; *Lopez v. Muttana*, 144 A.D.3d 871 (2d Dept. 2016). Although Cassagnol asserts that he would have sought to vitiate the agreement sooner but was led to believe the Village would not seek to enforce its rights thereunder, his assertion is conclusory and lacks factual details, such as when he came to realize he was defrauded and/or coerced into signing the agreement.

In *159 MP Corp. v. Redbridge Bedford, LLC*, 33 N.Y.3d 353 (2019), the Court of Appeals recently had occasion to discuss the limited circumstances in which it may be appropriate to void a bargained-for agreement on the grounds that it violates public policy. The Court reiterated that although courts “possess the power to set aside agreements on this basis, our ‘usual and most important function’ is to enforce contracts rather than invalidate them ‘on the pretext of public policy,’ unless they ‘clearly ... contravene public right or the public welfare.’” *Id.* at 361, quoting *Miller v. Continental Ins. Co.*, 40 N.Y.2d 675, 679 (1976). A contractual provision may be voided only after balancing the public interests favoring invalidation of a term chosen by the parties against those served by enforcement of the clause and concluding that the interests favoring invalidation are stronger. *159 MP Corp.* at 360. And the court recognized that agreements waiving statutory or constitutional rights are regularly upheld. *Id.* at 362.

Therefore, simply because Cassagnol waived statutory rights he might have otherwise enjoyed doesn't make the settlement agreement void as against public policy. And as correctly pointed out by defendants, if this were the case no party could settle a discrimination claim. As a result, utilizing the balancing test described in *159 MP Corp.*, it is clear that the parties' bargained-for settlement agreement should be upheld.

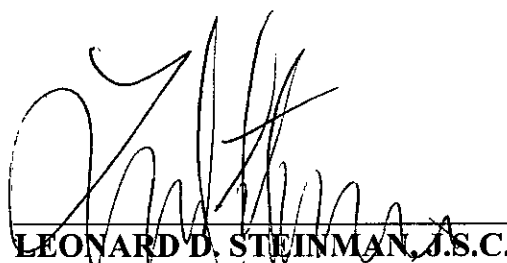
Accordingly, the defendants' cross-motion is granted and the action is dismissed. The motion for a preliminary injunction is denied as moot.

The Village's request for legal fees pursuant to paragraph 10 of the settlement agreement is denied. A contractual provision permitting a prevailing party to recover counsel fees that are incidents of litigation should be strictly construed because such a provision runs counter to the "American Rule" that such fees are not recoverable absent a specific contractual provision or statutory authority. *214 Wall Street Associates, LLC v. Medical Arts-Huntington Realty*, 99 A.D.3d 988, 990 (2d Dept. 2012). The parties' agreement provides that the prevailing party in an action alleging the agreement's breach may recover reasonable counsel fees. This is not an action in which a breach of the agreement is alleged. Instead, plaintiff sought rescission of the agreement based upon allegations of fraud and duress, etc. in its execution.

All other requested relief, not specifically addressed herein, is hereby denied.

This constitutes the Decision and Order of this court.

Dated: November 14, 2019
Mineola, New York


LEONARD D. STEINMAN, J.S.C.
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ENTERED
NOV 18 2019
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