

Monaco v New York Univ.
2020 NY Slip Op 30599(U)
March 2, 2020
Supreme Court, New York County
Docket Number: 100738/2014
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH **PART** **IAS MOTION 32**

Justice

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DR. MARIE MONACC, DR. HERBERT SAMUELS

Petitioners,

- v -

NEW YORK UNIVERSITY, NEW YORK UNIVERSITY
SCHOOL OF MEDICINE,

Respondents.

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INDEX NO. 100738/2014
MOTION DATE N/A
MOTION SEQ. NO. 006

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 006) 89, 90, 91, 92, 93, 94, 95, 96

were read on this motion to/for STRIKE JURY DEMAND

The motion by respondents to strike petitioners' jury demand is granted.

Background

This action arises out of petitioners' employment as tenured faculty at New York University School of Medicine ("SOM"). Petitioners complain that in November 2009, the SOM instituted a salary reduction policy that reduced the salaries of tenured faculty who failed to secure a certain amount of outside funding. Petitioners contend that this policy violates their employment agreements by contradicting provisions of the faculty handbook concerning academic freedom, failing to provide due process prior to the imposition of discipline and ignoring the requirement that the Board of Trustees approve changes to the meaning of tenure.

Respondents move to strike petitioners' jury demand on the ground that petitioners' request for an "order" constitutes an equitable remedy and, therefore, renders a jury trial impermissible regardless of whether legal remedies are also asserted. Respondents contend that

each of petitioner's four causes of action arise from the same transaction—the salary reduction policy—and that seeking relief barring the use of the salary reduction policy means that petitioners have waived their right to a jury trial.

In opposition, petitioners argue that all of the causes of action are legal in nature and permit a trial by jury. Petitioners state that the only relief they seek in their breach of contract claims is monetary damages, which can be resolved at a jury trial. Petitioners emphasize that they do not seek declaratory relief and that the Court should scrutinize the underlying allegations when considering whether legal or equitable relief was sought. Petitioners also point out that although this case was initially commenced as a “hybrid” Article 78 and plenary action, the Article 78 claims were dismissed more than four years ago.

In reply, respondents assert that the dismissal of certain claims does not change the fact that petitioners' right to a jury trial was waived when legal and equitable claims were alleged together. Respondents insist that even the petitioners' Note of Issue confirms that petitioners want an order—equitable relief—finding that the salary reduction plan violates petitioners' employment contracts.

Discussion

CPLR 4101 provides, in part, that “issues of fact shall be tried by a jury unless a jury trial is waived or a reference is directed under section 4317, except that equitable defenses and equitable counterclaims shall be tried by the court.” “When, as here, the complaint either joins legal and equitable causes of action arising out of the same alleged wrong or seeks both legal and equitable relief, there is a waiver of a plaintiff's right to a jury trial” (*Errant Gene Therapeutics, LLC v Sloan-Kettering Inst. for Cancer Research*, 176 AD3d 459, 459, 107 NYS3d 847 (Mem) [1st Dept 2019] [finding that the inclusion of an equitable cause of action for a permanent

injunction was not incidental to the remaining claims and that money damages would not afford a complete remedy constituted a waiver of the jury trial right)). “[O]nce the right to a jury trial has been intentionally lost by joining legal and equitable claims, any subsequent dismissal, settlement or withdrawal of the equitable claim(s) will not revive the right to trial by jury” (*id.* [internal quotations and citation omitted]).

Here, petitioners commenced a hybrid proceeding involving “breach of contract claims and [an] CPLR Article 78 proceeding which seeks a writ of mandamus ordering Respondents to vacate the complained of action and an entry of an order finding that the SOM’s Policy on Performance Expectations for Research Faculty (“Salary Reduction Policy”) violates Respondents’ own policies and procedures, was not properly promulgated, is arbitrary and capricious, and breaches Petitioners’ contracts of employment” (NYSCEF Doc. No. 92, ¶ 5 [Verified Petition]). The prayer for relief in the verified petition requests “a Writ of Mandamus Ordering Respondents to vacate, set aside and nullify the wrongful acts complained of in this Complaint and Petitioner and prohibiting Respondents from instituting a policy in the future that reduces the salary of tenured faculty” (*id.* at 13).

It also seeks “Entry of an Order and Judgment that the Salary Reduction Policy violates Respondents’ own policies and procedures, was not properly promulgated, and has been applied in an arbitrary and capricious manner and is thus invalid” and “Entry of an Order finding that the Salary Reduction Policy violates Petitioners’ employment contracts” (*id.* at 13-14). Petitioners also seek damages (*id.* at 14).

The Court finds that the allegations contained in the verified petition all arise out of the same incident—the implementation of the salary reduction plan—and, therefore, the inclusion of both legal and equitable relief effected a waiver of petitioners’ right to a jury trial (*see Marko v*

Korf, 166 AD3d 545, 546, 89 NYS3d 44 [1st Dept 2018] [concluding that plaintiff's right to a jury trial was waived where all of the causes of action arose out of the same transaction and plaintiff demanded injunctive relief, including an order restraining defendants from further discrimination]).

Petitioner demanded that this Court issue an order finding that the salary reduction policy violated their employment contracts and “from instituting a policy in the future that reduces the salary of tenured faculty.” That constitutes equitable relief—money damages cannot provide a complete remedy for relief that seeks to bar respondents from taking certain action in the future. Although this request is not framed as injunctive relief, that is exactly what it is. Petitioners asked this Court to effectively impose a permanent injunction prohibiting respondents from imposing any policies that could reduce the salaries of tenured faculty. There is no other way to characterize that request other than as an equitable remedy. Even the underlying allegations make clear that the purpose of this litigation is to have this Court issue an order invalidating the salary reduction policy (NYSCEF Doc. No. 92, ¶ 5).

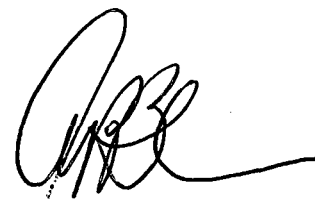
It is of no moment that petitioners might be awarded damages for their breach of contract claims. The fact is that any money damages would be awarded concerning the same issue—the validity of the salary reduction plan. That these claims were dismissed more than four years ago does not revive petitioners' right to a jury trial (*Security Pacific Nat. Bank v Evans*, 148 AD3d 465, 466, 49 NYS3d 122 [1st Dept 2017]).

Accordingly, it is hereby

ORDERED that the motion by respondents to strike petitioners' jury trial demand is granted.

3/2/2020

DATE



ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE