

Lynch v City of New York
2020 NY Slip Op 31546(U)
March 30, 2020
Supreme Court, New York County
Docket Number: 655831/2016
Judge: Margaret A. Chan
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MARGARET A. CHAN PART IAS MOTION 33EFM

Justice

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PATRICK LYNCH, THE PATROLMEN'S BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, INC.,

Plaintiffs,

INDEX NO. 655831/2016

MOTION DATE

MOTION SEQ. NO. 003

- v -

THE CITY OF NEW YORK, BILL DE BLASIO, THE NEW YORK, CITY POLICE PENSION FUND, THE BOARD OF TRUSTEES OF THE NEW YORK CITY POLICE PENSION FUND, JAMES O'NEILL

Defendants.

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 78 through 104 were read on this motion to/for REARGUE.

In this Article 78 proceeding regarding New York City Police Pension Fund ("PPF") Tier 3 member service time buybacks, defendants City of New York; Bill De Blasio, as mayor of the City of New York; The New York City Police Pension Fund; The Board of Trustees of the New York City Police Pension Fund ("Trustees"); and James P. O'Neill, as Police Commissioner of the New York City Police Department and as Executive Chairman of the Board of Trustees of the New York City Police Pension Fund, move to reargue pursuant to CPLR 2221 this court's Decision and Order dated July 5, 2019 ("July 2019 Order"), and upon reopening, modify it.

For their part, plaintiffs Patrick Lynch, as President of the Patrolmen's Benevolent Association of City of New York, Inc. ("PBA") and the PBA cross-move for same. The Decision and Order is as follows:

FACTS

For reference, please refer to the July 2019 Order for the full history of this matter regarding Tier 3 PPF members service buybacks (NYSCEF #87). The facts relevant to the instant motion and cross-motion for reargument are reiterated below.

Plaintiffs' complaint sought the following declaratory relief:

- (1) extend New York City Administrative Code (AC) §§ 13-143 and 13-218, which permit members of the PPF hired before July 1, 2009 (Tier

2 Members) to purchase pension credit based on prior government service, to police officers hired on or after July 1, 2009 (Tier 3 Members)¹;

(2) find defendants' determination refusing to extend those Tier 2 buyback provisions contained in AC §§ 13-143 and 13-218 to Tier 3 members of the PPF as violative of a stipulation of settlement entered into in 2002 between the PBA, the City, and the PPF (2002 Agreement);

(3) allow for a time period for those previously denied or those that did not apply to buyback, purchase, or transfer their prior service and that such rights be retroactive;

(4) nullify any individual determinations made by defendants based on their interpretation of New York Retirement and Social Security Law (RSSL) §43, AC §§13-143 and 13-218, Chapter 646 of the Laws of 1999, Chapter 552 of the Law of 2000 or the 2002 Agreement; and

(5) award plaintiffs' costs, disbursements, and attorneys' fees.

In motion sequence 001, defendants moved for and order: (1) pursuant to CPLR §103(c) converting plaintiffs' declaratory judgment action into a CPLR Article 78 special proceeding, and then pursuant to CPLR 217(l) dismissing as time-barred any claims that accrued more than four months prior to the commencement of this litigation; and (2) pursuant to CPLR 3212 granting summary judgment to defendants in all respects. Plaintiffs opposed defendants' motion and cross-moved for summary judgment pursuant to CPLR 3212 on all their claims.

In the July 2019 Order, this court granted the branches of defendants' motion to convert this proceeding from a declaratory action to an Article 78 proceeding; and to prohibit as time-barred all claims arising four months or more prior to the initiation of this lawsuit on November 4, 2016. And upon conversion, defendants' motion for summary judgment was granted in part and denied in part; and plaintiffs' cross-motion for summary judgment was granted in part and denied in part.

The July 2019 Order found that PPF Tier 3 members are not entitled to obtain service credit for their New York State Employees Retirement System ("NYSERS") service or to the benefits of Tier 2 members as sought in their complaint. This court further found that RSSL §§ 43, 446, 519, and 645 do not

¹ The parties make no distinction between Tier 3 members, Tier 3 Revised members (hired between April 1, 2012 and March 30, 2017), and Tier 3 Enhanced members (hired after March 30, 2017). As such, the relief sought is applicable to all Tier 3 members

confer the benefits sought by plaintiffs. Further, Administrative Code §§ 13-143 and 13-218 do not apply to Tier 3 members.

However, this court found that the PPF must allow Tier 3 members to transfer service credit pursuant to RSSL § 513(c)(2) and 1976 Admin Code § B3-30.1 for PPF members who previously obtained credit in the New York City Employees' Retirement System ("NYCERS"), as long as § B3-30.1 service requirements are met. To this extent only, defendants' motion was denied, and plaintiffs' cross-motion granted.

Critically, this court found that drafters of RSSL Article 14 intended to create some level of equivalence between Tier 2 and Tier 3, but frozen in time so that Tier 3 members receive the same creditable service benefits as Tier 2 members in 1976. One such benefit was transferring credit from NYCERS to PPF. Other than this exception, defendants were granted summary judgment and plaintiffs denied summary judgment.

DISCUSSION

A motion for CPLR 2221(d) reargument "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion but shall not include any matters of fact not offered on the prior motion". The movant bears the burden of demonstrating that "the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision" (*William P. Pahl Equipment Corp. v Kassiss*, 182 AD2d 22, 27 [1st Dept 1992]). "Reargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided or to present argument different from those originally asserted" (*id.*).

Defendants' motion is denied. Defendants claim that the court "misapprehend[ed] the effects of" RSSL §513(c)(2) and NYC Administrative Code §§ B3-30.1 and B18-15.0 (NYSCEF #81 at 7). Defendants argue that the court altered the eligibility requirements for Tier 3 members to participate in the service time buybacks.

However, this court's decision with respect to these statutes was clear and did not alter the eligibility requirements for buybacks. The court determined that RSSL § 513(c)(2) requires a look back at the law as it was before July 1, 1976 (when Tier 3 was initially created) to determine the creditable service benefits available to Tier 3 members, and, since NYC Administrative Code §§ B3-30.1 and B18-15.0 were in effect at that time, these statutes may provide benefits to Tier 3 members so long as the member is eligible pursuant to the relevant provisions. Defendants fail to show that the court misapprehended anything and merely rehash the earlier

motion. As the prior interpretation of the PPF's service buyback eligibility regime still stands, there is no basis to reopen the July 2019 Order.

Likewise, plaintiffs' cross-motion is denied. Plaintiffs claim that this court misapprehended or overlooked issues of law in its rulings relating to RSSL §§ 43, 645, and 513(b). With respect to plaintiffs' arguments that this court misapprehended RSSL §§ 43 and 645, this court thoroughly addressed those issues in the July 2019 Order. Plaintiffs simply rehash their previously rejected arguments. Plaintiffs' request to revisit their arguments is declined.

Finally, there is no merit as to plaintiffs' claim that this court overlooked RSSL § 513(b) as an avenue to obtain relief. RSSL § 513(b) does not speak to allowable police service on the basis of prior NYCERS or NYSLERS service. All RSSL § 513(b) speaks to is "Previous service", which allows a Tier 3 member to receive pension credit for previous service. It does not speak to the crediting of such service as allowable "police service", the type of credit plaintiffs seek. As such, there was no need to address it in the July 2019 Order. The provision does not provide plaintiffs with the relief sought and thus reargument of this issue is superfluous.

Accordingly, it is ORDERED that defendants' motion and plaintiffs' cross-motion for reargument are denied in their entirety.

This constitutes the Decision and Order of the court.

3/30/2020
DATE


MARGARET A. CHAN, J.S.C.
MARGARET A. CHAN, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> DENIED
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> SUBMIT ORDER
		<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> OTHER
		<input type="checkbox"/> REFERENCE