

**Brown v Brown**

2020 NY Slip Op 34246(U)

December 21, 2020

Supreme Court, New York County

Docket Number: 651066/2019

Judge: Carol R. Edmead

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.

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

**PRESENT: HON. CAROL R. EDMEAD PART IAS MOTION 35EFM**

*Justice*

-----X

LATANYA BROWN,

Plaintiff,

- v -

SHON BROWN, CYNTHIA BRANN, SHERMA DUNBAR, C.  
WARREN, DESIREE JACOBS, NEW YORK CITY  
DEPARTMENT OF CORRECTION

Defendant.

-----X

INDEX NO. 651066/2019

MOTION DATE 12/13/2019,  
02/11/2020

MOTION SEQ. NO. 001 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 10  
were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 11, 12, 13, 14, 15,  
16, 17, 18  
were read on this motion to/for DISMISSAL.

Upon the foregoing documents, it is

ORDERED that the motion, pursuant to CPLR 3211, of defendants Shon Brown, Cynthia  
Brann, Sherma Dunbar, C. Warren James, Desiree Jacobs, and the New York City Department of  
Correction (motion sequence number 001) is denied as moot; and it is further

ORDERED that this action shall bear the following caption:

-----X  
In the Matter of the Application of

LATANYA BROWN,

Plaintiff,

-against-

CITY OF NEW YORK, and NEW YORK CITY  
DEPARTMENT OF CORRECTION,

Defendants.

-----X  
And it is further

ORDERED that upon receipt of a copy of this order, the Trial Support Office (Room 158) shall amend the caption accordingly; and it is further

ORDERED that the motion, pursuant to CPLR 3211, of the defendants City of New York and New York City Department of Correction (motion sequence number 002) is granted to the extent that the first, second, third and fourth causes of action set forth in the first amended complaint of plaintiff Latanya Brown are dismissed, but is denied as to the fifth cause of action in said amended complaint; and it is further

ORDERED that defendants are directed to a copy of this order along with notice of entry on plaintiff and the Trial Support Office within twenty (20) days; and it is further

ORDERED that defendants are directed to serve an answer to the first amended complaint within twenty (20) days after service of a copy of this order with notice of entry.

## MEMORANDUM DECISION

In this action, the defendants City of New York (the City) and New York City Department of Correction (DOC; together, defendants) have submitted successive motions, pursuant to CPLR 3211, to dismiss the original complaint and the first amended complaint of plaintiff Latanya Brown (Brown; motion sequence numbers 001 & 002). The motions are consolidated for disposition.

## FACTS

Brown is a corrections officer (CO) employed by DOC with the rank of captain, and was formerly stationed in the Manhattan Detention Complex (MDC, a/k/a “the Tombs”), the jail annex connected to New York County Criminal Court (MCC). *See* first amended complaint, ¶¶ 6-7. Brown commenced this action in the aftermath of an article which appeared in the New York Daily News’s December 19, 2018 online edition, and its December 23, 2018 newspaper edition. *Id.*, ¶¶ 9-17. Brown alleges that defendants knowingly and improperly revealed certain of her private, personal information to the New York Daily News ahead of time, along with certain false and defamatory statements. *Id.*, ¶¶ 18-30. Brown further states that she was later harassed while working at the MDC, and later improperly reassigned in an act of retaliation. *Id.*

Brown originally commenced this action on February 11, 2019 by filing a summons and complaint which named the DOC, DOC Commissioner Cynthia Brann, DOC Deputy Commissioners Shon Brown and Sherma Dunbar, and DOC Corrections Officers C. Warren James and Desiree Jacobs as defendants. *See* complaint, ¶¶ 7, 24, 25, 26. Rather than answer, defendants submitted a cross motion to dismiss that complaint on October 17, 2019. *See* notice of cross motion (motion sequence number 001). It is unclear whether the parties ever took any action with respect to Brown’s first complaint or defendants’ first cross motion. However, on

November 22, 2019, Brown filed an amended complaint that names only the City and DOC as defendants, and sets forth causes of actions for alleged violations of: 1) Public Health Law (PHL) Article II, Section 17; 2) New York Civil Rights Law (CRL) Section 50-A; 3) General Municipal Law Section 50 (by defamation per se, libel and slander); 4) General Municipal Law Section 50 (by negligent infliction of emotional distress); and 5) New York State Human Rights Law (NYSHRL) § 296 and New York City Human Rights Law (NYCHRL) § 8-107. *See* first amended complaint. Respondents thereafter filed a new cross motion to dismiss the amended complaint on February 11, 2020. *See* notice of cross motion (together, motion sequence number 002). The matter is now fully submitted.

#### DISCUSSION

The court initially notes that New York law deems that Brown's amended complaint superseded and replaced her original complaint,<sup>1</sup> and consequently rendered both the original complaint and defendants' first dismissal motion moot. *See e.g., Golia v Vieira*, 162 AD3d 864 (2d Dept 2018); *Healthcare I.Q., LLC v Tsai Chung Chao*, 118 AD3d 98 (1<sup>st</sup> Dept 2014). Therefore, as a preliminary matter, the court denies defendants' first dismissal motion for that reason, and orders that the caption of this case be changed to conform to the caption on Brown's first amended complaint (motion sequence number 001).

As another preliminary matter, the court notes that Brown's opposition to defendants' second dismissal motion avers that she "concede[s her] claims of defamation and emotional

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<sup>1</sup> The court's electronic database indicates that the Office of the Chief Clerk initially rejected Brown's amended complaint when she submitted it on November 22, 2019, and returned it to counsel to make certain corrections. Although the database does not state on what subsequent date counsel filed the amended complaint, it is clear that it was filed and that defendants accepted service of it. This is evident from the fact that defendants' second dismissal motion facially requests the dismissal of Brown's first amended complaint. *See* notice of motion (motion sequence number 002)

distress.” See plaintiff’s mem of law in opposition at 2, 6-8. In light of this concession, the court grants so much of defendants’ second dismissal motion as seeks the dismissal of the third and fourth causes of action in Brown’s amended complaint (motion sequence number 002).

As a result of the foregoing findings, only the first, second and fifth causes of action in Brown’s amended complaint are before the court. Each will be considered separately.

When evaluating a defendant’s motion to dismiss, pursuant to CPLR 3211 (a), a court “must give the pleadings a liberal construction, accept the allegations as true and accord the plaintiffs every possible favorable inference.” See *Chanko v American Broadcasting Cos. Inc.*, 27 NY3d 46, 52 (2016), citing *Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326 (2002). It has been held, however, that where the documentary evidence submitted flatly contradicts the plaintiff’s factual claims, the entitlement to the presumption of truth and the favorable inferences are both rebutted. *Scott v Bell Atl. Corp.*, 282 AD2d 180, 183 (1<sup>st</sup> Dept 2001), *affd as mod Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d at 314.

Brown’s first cause of action alleges that defendants violated PHL Article II, Section 17 by “wrongfully and illegally access[ing her] private information and wrongfully disclos[ing it] to the public.” See first amended complaint, ¶¶ 31-33. Defendants argue that PHL § 17 “does not apply to employers, and creates no right of action against others who release medical information.” See defendants’ mem of law at 10-12. Defendants are correct. Nothing in the language of the PHL or the case law that interprets it suggests that the statute authorizes a private right of action for an alleged violation. In Article 1, Title II of the PHL, § 12 (“Violations of health laws or regulations; penalties and injunctions”) authorizes the New York State Commissioner of Health to assess fines and civil penalties against violators, § 12-b (“Wilful violation of health laws”) makes certain violations criminal offenses, § 13 (“Enforcement:

against officers”) authorizes aggrieved parties to seek injunctive relief pursuant to CPLR Article 78, and § 16 (“Summary action”) authorizes the New York State Commissioner of Health to issue emergency orders. PHL § 17 (“Release of medical records”) merely authorizes private individuals to request copies of their medical records, subject to reasonable costs and access restrictions. Here, Brown does not allege that she was refused access to her medical records, or seek to enjoin defendants from releasing them. Instead, she claims that defendants previously released her medical records improperly (although she does not claim that they obtained them improperly), and now seeks “compensatory damages and punitive damages” as relief. *See* first amended complaint at 11. A plain reading of the amended complaint is that it asserts defendants’ alleged violation of PHL § 17 as a ground for which Brown may seek compensation. However, nothing in the statute authorizes such a claim. Further, Brown’s reply papers identify no authority for the proposition that such a claim is proper. Therefore, the court grants so much of defendants’ motion as seeks dismissal of the first cause of action in Brown’s amended complaint.

Brown’s second cause of action alleges that defendants violated Section 50-A of New York Civil Rights Law by “conspir[ing] to release private employment information regarding the plaintiff.” *See* first amended complaint, ¶¶ 34-35. Defendants again claim that New York law does not recognize a private right of action for violations of this statute. *See* defendants’ mem of law at 6-9. Defendants are again correct. In the past, the Court of Appeals and the Appellate Division, First Department recognized that “the statute [CRL § 50-A] does not create a private right of action . . . for a claimed violation . . . , and, therefore, injunctive relief is not available if sought by plaintiffs under this statute.” *Matter of 35 N.Y. City Police Officers v City of New York*, 34 AD3d 392, 394 (1<sup>st</sup> Dept 2006), citing ; *Reale v Kiepper*, 204 AD2d 72, 73 (1<sup>st</sup> Dept

1994); *Carpenter v City of Plattsburgh*, 66 NY2d 791 (1985). More recently, on June 12, 2020, the New York State Legislature repealed CRL § 50-A. L.2020, c. 96, § 1. As a result, an alleged violation of the statute is no longer actionable under any legal theory. Therefore, the court grants so much of defendants' motion as seeks dismissal of the second cause of action in Brown's amended complaint.

Brown's fifth cause of action alleges that defendants violated NYSHRL [Executive Law] § 296 and NYCHRL § 8-107 by "retaliat[ing] against [her] . . . as a result of [her] having previously filed a complaint with the New York State Division of Human Rights" against them. *See* first amended complaint, ¶¶ 46-48. "To make out a prima facie claim of retaliation under [Exec Law] § 296], a plaintiff must show that (1) he/she has engaged in a protected activity, (2) his/her employer was aware of such activity, (3) he/she suffered an adverse employment action based upon the activity, and (4) a causal connection exists between the protected activity and the adverse action." *Harrington v City of New York*, 157 AD3d 582, 585 (1<sup>st</sup> Dept 2018), citing *Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 312-313 (2004); *see also Zakrzewska v New School*, 14 NY3d 469, 481 (2010) (NYCHRL § 8-107 "is consistent with Executive Law § 296. . . NYCHRL § 8-107 merely creates a greater penalty for unlawful discrimination"). Here, defendants contend that Brown's human rights law claim should be dismissed because she failed to adequately plead the fourth element of "causal connection." *See* defendants' mem of law at 12-13. Brown's reply papers do not discuss the issue of the causal connection. *See* plaintiff's reply mem at 10-12. The amended complaint alleges that Brown previously filed "a human rights complaint" against defendants at an unspecified date, and that defendants thereafter "commenced employment termination proceedings against [her]" in retaliation for that filing at another unspecified date. *See* first amended complaint, ¶ 30. Although the First Department

recognizes that it is necessary to establish “temporal proximity” between the protected activity (i.e., an employee filing a NYSHRL claim) and the adverse action (i.e., retaliation by the employer), and that a plaintiff may also have to establish “other facts supporting causation” in some instances, the First Department also recognizes that mere “allegations are sufficient, at the pleading stage, to permit the inference” of a “causal connection” that precludes dismissing a NYSHRL claim. *Matter of Local 621 v New York City Dept. of Transp.*, 178 AD3d 78 (1<sup>st</sup> Dept 2019); *see also Harrington v City of New York*, 157 AD3d 582. Here, as noted, Brown’s allegations regarding “temporal proximity” are quite insubstantial, since she does not specify the dates on which she allegedly filed her NYSHRL complaint against defendants or the date when defendants allegedly retaliated by filing disciplinary charges against her. However, the court heeds the First Department’s guidance that an “inference” of a causal connection is sufficient at the pleading stage of litigation, and believes that Brown’s amended complaint alleges (however broadly) behavior by defendants that would justify such an inference. Therefore, the court also finds that dismissal is an unjustified remedy. Accordingly, the court denies so much of defendants’ motion as seeks dismissal of Brown’s fifth cause of action.

CONCLUSION

ACCORDINGLY, for the foregoing reasons it is hereby

ORDERED that the motion, pursuant to CPLR 3211, of defendants Shon Brown, Cynthia Brann, Sherma Dunbar, C. Warren James, Desiree Jacobs, and the New York City Department of Correction (motion sequence number 001) is denied as moot; and it is further

ORDERED that this action shall bear the following caption:

-----X  
 In the Matter of the Application of  
  
 LATANYA BROWN,

Plaintiff,

-against-

CITY OF NEW YORK, and NEW YORK CITY  
DEPARTMENT OF CORRECTION,

Defendants.

-----X

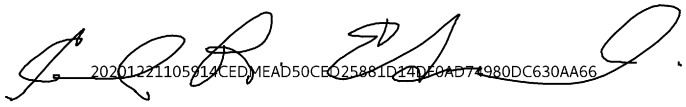
And it is further

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ORDERED that defendants are directed to a copy of this order along with notice of entry on plaintiff and the Trial Support Office within twenty (20) days; and it is further

ORDERED that defendants are directed to serve an answer to the first amended complaint within twenty (20) days after service of a copy of this order with notice of entry.



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12/21/2020  
DATE

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CAROL R. EDMEAD, J.S.C.

CHECK ONE:

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<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
<input type="checkbox"/>		<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: