

<b>Odudukudu v New York City Dept. of Educ.</b>
2021 NY Slip Op 30072(U)
January 11, 2021
Supreme Court, New York County
Docket Number: 101454/2018
Judge: Lyle E. Frank
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART 52
Justice
INDEX NO. 101454/2018
MOTION DATE 01/07/21
MOTION SEQ. NO. 004
MARTIN ODUDUKUDU
Plaintiff,
- v -
NEW YORK CITY DEPARTMENT OF EDUCATION,
Defendant.
DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER)

This action arises out of injuries allegedly sustained by plaintiff as a result of a breach of an agreement reached in 2006. Plaintiff alleges that he was unable to secure a teaching position as a result of the New York City Department of Education's ("DOE") violation of the terms of an agreement. The DOE now moves for summary judgment on the grounds that plaintiff has failed to timely file a notice of claim and plaintiff fails to state a cause of action. Plaintiff opposes the instant motion.

Facts

Plaintiff was employed by the DOE as a substitute teacher from January 12, 2006 until February 16, 2006 and employed as a regular teacher from March 20, 2006 until May 25, 2006, when he was terminated. In July 2006, plaintiff filed a grievance to receive backpay during his time as a substitute teacher, from January 12, 2006 to February 15, 2006. This grievance was ultimately resolved through a stipulation of settlement dated September 18, 2006 ("2006 agreement"), annexed to DOE's moving papers as exhibit Z and annexed to plaintiff's opposition

as exhibit 6, referred to as the non-disclosure agreement. Sometime in 2012 for a period of one year, plaintiff was employed by the DOE as a substitute teacher but has been unable to secure a position since.

Plaintiff commenced the instant action on October 2, 2018 alleging that DOE's breach of the 2006 agreement prevented him from securing a teaching position. Plaintiff alleges that the DOE breached the agreement twice, one breach was discovered on July 25, 2018 when a search of the DOE website recovered negative information and once in January 2019 when the negative information was placed back into his personnel file.

The DOE moves on the grounds, *inter alia*, that plaintiff's claims, if any, are time barred as he has failed to file a timely notice of claim. To support this contention, the DOE argues that the time of the breach is the point when the claims accrue and not at the time plaintiff discovers the breach. Plaintiff does not dispute that he has not filed a timely notice of claim, rather he contends that due to the nature of this action a notice of claim is not required.

### **Summary Judgment Standard**

Summary Judgment should not be granted where there is any doubt as to the existence of a material issue of fact. *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]. The function of the court when presented with a motion for summary judgment is one of issue finding, not issue determination. *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395 [1957]; *Weiner v Ga-Ro Die Cutting, Inc.*, 104 AD2d 331[1st Dept 1984] *aff'd* 65 NY2d 732 [1985].

The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law. *Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]; *Winegrad v New York University Medical Center*, 64 NY2d 851 [1985]. Summary judgment is a drastic remedy that

deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted and the papers will be scrutinized carefully in a light most favorable to non-moving party. *Assaf v Ropog Cab Corp.*, 153 AD2d 520 [1st Dept 1989]. Summary judgment will only be granted if there are no material, triable issues of fact (*Sillman*, 3 NY2d 395 [1957]).

### **Education Law § 3813**

Education Law § 3813 requires that “no action or special proceeding, for any cause whatever,” shall be prosecuted or maintained against the DOE unless a notice of claim is filed within three (3) months after the accrual of such claim and prior to commencement of the action. *See* N.Y. Educ. Law § 3813. Upon application, “the court, in its discretion, may extend the time to serve a notice of claim.” *See* N.Y. Educ. Law § 3813(2-a). However, “the extension shall not exceed the time limited for the commencement of an action by the claimant against any district or any such school.” *Id.*

### **Discussion**

The Court finds that a liberal reading of plaintiff’s complaint alleges a breach of contract. While plaintiff argues that he is not required to file a timely notice of claim, the Court disagrees with plaintiff’s interpretation of the law. Here, it is undisputed that plaintiff has failed to timely file a notice of claim. Calculating even the most recent breach of the alleged agreement in January 31, 2019<sup>1</sup>, plaintiff’s time to seek an application to file a late notice of claim has since expired. Pursuant to Educ. Law § 3813 (2-a), all claims against the DOE must be commenced within one year of the accrual of the claim. Accordingly, plaintiff had until January 31, 2020 to

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<sup>1</sup> The Court is not opining on the accrual of plaintiff’s claims, rather calculating the statute of limitations at the very latest date to illustrate the untimeliness.

seek leave to file a late notice of claim. Plaintiff failed to do so. As such, the Court does not reach defendant's remaining arguments. Accordingly, it is hereby

ORDERED the motion by defendant, New York City Department of Education, is granted and the complaint is dismissed, and it is further

ORDERED that the Clerk of the Court enter judgment accordingly.

1/11/2021  
DATE

*LF*  
LYLE E. FRANK, J.S.C.

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

**HON. LYLE E. FRANK  
J.S.C.**