

Renz v State Univ. of N.Y.
2021 NY Slip Op 30547(U)
January 28, 2021
Supreme Court, Kings County
Docket Number: 500193/2020
Judge: Reginald A. Boddie
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At an IAS Trial Term, Part 95 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York, on the 28th day of January 2021.

PRESENT:

Honorable Reginald A. Boddie, JSC

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JOHN F. RENZ, M.D.

Index No. 500193/2020
Cal. No. 26, 27 MS 2, 3

Plaintiff,

-against-

DECISION AND ORDER

STATE UNIVERSITY OF NEW YORK and,
SUNY DOWNSTATE MEDICAL CENTER,

Defendants.

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<u>Papers</u>	<u>Numbered</u>
MS 2	Doc #s 40-64;74-78
MS 3	Doc #s 65-73

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Upon the foregoing cited papers, the decision and order on defendants' motion to dismiss, pursuant to CPLR 3211(a) (1) and 3211 (a) (7), and admission of an additional attorney *pro hac vice*, is as follows:

Plaintiff John F. Renz, MD is an alleged highly skilled transplant surgeon. In early 2018, he was contacted by SUNY to determine if he would relocate from Chicago to work in a senior transplant position at SUNY Downstate, allegedly to turn around a transplant surgery program that had a history of poor outcomes. SUNY Downstate Medical Center is the familiar name of the State University of New York Health Science Center, an entity of the State University of New York, and not a legal cognizable entity separate from the State University of New York (SUNY). Accordingly, the proper suable entity is SUNY.

Plaintiff alleges Dr. Rainer Gruessner, as a representative of SUNY, promised him income of approximately \$500,000 per year for three years. Plaintiff alleged he received a formal offer

letter from SUNY along with a Memorandum of Agreement (MOA), which were allegedly signed by SUNY representatives agreeing to the salary of \$495,000 for three years as a visiting professor in the Department of Surgery. Plaintiff commenced working for SUNY on August 22, 2018, and continued to August 2019, as a transplant surgeon. However, defendants contend plaintiff was informed, by letter dated September 22, 2019, of a one year appointment from August 2018 to August 22, 2019 as a Visiting Professor in the Department of Surgery, subject to continued availability of funding and he never had an employment contract with SUNY. Defendants further contend plaintiff's compensation consisted of a base salary in the amount of \$150,000 and an "Also Receives" component of \$341,944, which SUNY had the absolute right to remove at its sole discretion and subject to the availability of funding and proper approval.

In or about July 2019, the United Network for Organ Sharing (UNOS), an accrediting body that oversees organ transplant centers, requested SUNY terminate its program based on complaints received. SUNY agreed. Thereafter, on September 6, 2019, plaintiff was notified that his position would be terminated effective March 6, 2020. Plaintiff thereafter sought to continue in his employment for a reduced salary, which was denied. SUNY alleged as a result of the deactivation of the transplant program it suffered major financial losses and could no longer afford the compensation. Plaintiff alleged his complaints about SUNY Downstate's deficient health practices also contributed to his termination, and what he perceived as retaliation for such.

Plaintiff commenced the instant action seeking damages for breach of contract, promissory estoppel and fraud. Plaintiff also alleged whistle blower protection under Labor Law §§ 740 and 741, and an unpaid wages claim under Labor Law § 190, et seq. Defendants moved to dismiss the complaint on the ground of documentary evidence and that the pleading failed to state a cause of action. Plaintiff opposed.

The Court of Claims Act § 9 (2) provides that the Court of Claims has jurisdiction “[t]o hear and determine a claim of any person, corporation or municipality against the state for the appropriation of any real or personal property or any interest therein, for the breach of contract, express or implied, or for the torts of its officers or employees while acting as such officers or employees, providing the claimant complies with the limitations of this article.” Court of Claims Act § 9 (13), as amended on August 12, 2010, also provides the court jurisdiction “[t]o hear and determine a claim of any person against the state for a retaliatory personnel action by its officers or employees pursuant to section seventy-five-b of the civil service law or section seven hundred forty of the labor law.” Further, the Court of Claims has exclusive jurisdiction over actions for money damages against State agencies, departments and employees acting in their official capacity in the exercise of governmental functions (*see* Court of Claims Act § 9 (4); *see Schaffer v Evans*, 57 NY2d 992, 994 [1982]; *see also Morell v Balasubramanian*, 70 NY2d 297, 300 [1987]).

Accordingly, in this matter involving substantially contract related claims for money damages against the State and a Labor Law § 740 claim for retaliation, this court declines to exercise jurisdiction in place of the Court of Claims. To the extent plaintiff seeks to assert a claim for preliminary injunctive relief for alleged damages to the doctor’s reputation and standing in the community as a result of the termination, the court finds such claim for relief to be without merit and therefore not dispositive of the necessity for the case to be heard in the Court of Claims. Moreover, plaintiff failed to effectively plead the requisite elements for a preliminary injunction: 1) irreparable harm, 2) likelihood of success on the merits, and 3) a balance of equities in its favor (*see* CPLR 6301; *Herczl v Feinsilver*, 153 AD3d 1338 [2d Dept 2017] [citation omitted]). Therefore, the motion to dismiss and the motion seeking admission *pro hac vice* are removed pursuant to CPLR 325 (a) and N.Y. Constitution, article VI, § 19 (a), to

the Court of Claims (*Wynne v DeStaso*, 2 AD3d 841, 842 [2d Dept 2003] [citation omitted]). The Clerk of the Court shall transfer the file accordingly.

ENTER:



Honorable Reginald A. Boddie
Justice, Supreme Court

**HON. REGINALD A. BODDIE
J.S.C.**

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