

**City of Long Beach v Hansen-Hightower**

2021 NY Slip Op 32082(U)

October 8, 2021

Supreme Court, Suffolk County

Docket Number: 000508/2021

Judge: Joseph A. Santorelli

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SHORT FORM ORDER

**ORIGINAL**

INDEX No. 000508/2021  
CAL No. \_\_\_\_\_

SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 10 - SUFFOLK COUNTY

**PRESENT:**

Hon. JOSEPH A. SANTORELLI  
Justice of the Supreme Court

MOTION DATE July 15, 2021  
SUBMIT DATE September 9, 2021  
Mot. Seq. # 01 - MD

-----X  
CITY OF LONG BEACH,

Plaintiff,

- against -

KRISTIE HANSEN-HIGHTOWER,

Defendant.  
-----X

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Upon the following papers numbered 1 to 170 read on this motion to dismiss; ; Notice of Motion/ Order to Show Cause and supporting papers 1-97; ~~Notice of Cross Motion and supporting papers~~; Answering Affidavits and supporting papers 98-158; Replying Affidavits and supporting papers 159-170; Other   ; (and after hearing counsel in support and opposed to the motion) it is,

By motion dated July 15, 2021, the defendant moves for an order pursuant to CPLR 3211(a)(1), (a)(7) or in the alternative 3211(c) dismissing the complaint. The plaintiff opposes the application in all respects.

The plaintiff City of Long Beach, (hereinafter the "City"), has commenced this action against the defendant former Comptroller of the City seeking to recoup \$28,628.93 which is alleged to constitute overpayment of unused sick leave and personal leave accruals.

In sum, the City claims that on or about July 27, 2017, the defendant submitted for and was granted payment of \$61,915.29 which consisted of 100% of her accrued sick leave, (505.77 hours), and personal leave, (56 hours). The City acknowledges that the defendant was entitled to be paid for 30% of those accruals.

The City alleges that it attempted to recoup the overpaid funds from the defendant but she has refused to return the funds to the City.

In opposition, the defendant contends that the action is time-barred by the applicable three year statute of limitations period. Further, the defendant argues that the City/Personnel Code does not limit payment for personal or sick leave accruals and even if the City/Personnel Code was ambiguous or the payments were inconsistent with the Code, it is not against equity and good conscience for her to retain the funds.

To succeed on a motion to dismiss pursuant to CPLR 3211(a) for failure to state a cause of action, the court must determine whether, accepting as true the factual averments of the complaint and granting plaintiff every favorable inference which may be drawn from the pleading, plaintiff can succeed upon any reasonable view of the facts stated (*Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409, 754 NE2d 184, 729 NYS2d 425 [2001]; see also *Fowler, Rodriguez, Kingsmill, Flint, Gray & Chalos LLP v Island Prop., LLC*, 307 AD2d 953, 763 NYS2d 481 [2d Dept 2003], *Bartlett v Konner*, 228 AD2d 532, 644 NYS2d 550 [2d Dept 1996]). If the pleading states a cause of action and if, from its four corners, factual allegations are discerned which, taken together, manifest any cause of action cognizable at law, a motion for dismissal will fail (see *Wayne S. v County of Nassau Dept. of Social Services*, 83 AD2d 628, 441 NYS2d 536 [2d Dept 1981]). The documentary evidence that forms the basis of the defense must be such that it resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff's claim (see *Estate of Menon v Menon*, 303 AD2d 622, 756 NYS2d 639 [2d Dept 2003], citing *Leon v Martinez*, 84 NY2d 83, 88, 614 NYS2d 972, 638 NE2d 511, *Roth v Goldman*, 254 AD2d 405, 406, 679 NYS2d 92).

In the context of a CPLR 3211 motion to dismiss, the Court must take the factual allegations of the complaint as true, consider the affidavits submitted on the motion only for the limited purpose of determining whether the plaintiff has stated a claim, and in the absence of proof that an alleged material fact is untrue or beyond significant dispute, the Court must not dismiss the complaint (*Wall Street Assocs. v Brodsky*, 257 AD2d 526, 684 NYS2d 244 [1<sup>st</sup> Dept 1999], citing *Guggenheimer v Ginzburg*, 43 NY2d 268, 275; *Rovello v Orofino Realty Co.*, 40 NY2d 633, 634-636). In making a determination whether the complaint sets forth a cognizable claim, evidentiary material may be considered to “remedy defects in the complaint” (see *Dana v Shopping Time Corp.*, 76 AD3d 992, 908 NYS2d 114 [2d Dept 2010], quoting *Rovello v Orofino Realty Co.*, *supra* at 40 NY2d at 636).

Further, a motion to dismiss a complaint pursuant to CPLR 3211(a)(1) may be granted only where the documentary evidence proffered utterly refutes the complaint's factual allegations, thereby conclusively establishing a defense as a matter of law (see, generally, *Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314 326; *Leon v Martinez*, *supra*).

Preliminarily the Court concludes that the “documentary evidence” submitted by the defendant does not “utterly refute” the allegations set forth in any of the causes of action in the complaint or “conclusively establish[ ] a defense as a matter of law “. Therefore the defendant's motion to dismiss the complaint pursuant to CPLR 3211(a)(1) is in all respects denied.

“On a motion to dismiss a complaint pursuant to CPLR 3211(a)(5) on statute of limitations grounds, the moving defendant must establish, prima facie, that the time in which to commence the action has expired. The burden then shifts to the plaintiff to raise an issue of fact as to whether the statute of limitations is tolled or is otherwise inapplicable” (*Baptiste v Harding-Marin*, 88 A.D.3d 752, 753, 930 N.Y.S.2d 670; see *Zaborowski v Local 74, Serv. Empls. Intl. Union AFL-CIO*, 91 A.D.3d 768, 768-769, 936 N.Y.S.2d 575).

(*Williams-Guillaume v Bank of America, N.A.*, 130 A.D.3d 1016-1017 [2d Dept 2015]).

Generally, where an unjust enrichment cause of action seeks monetary as opposed to equitable relief, the three-year statute of limitations period, (CPLR 214), is applicable (see, *Ingrami v Rovner*, 45 A.D.3d 806, 808 [2d Dept 2007]).

The defendant urges that the three-year statute of limitations period renders the action time-barred. In opposition, the plaintiff argues that the six-year statute of limitations period set forth in CPLR 213(7) is applicable.

CPLR 213(7) states:

The following actions must be commenced within six years:

\* \* \*

7. an action by or on behalf of a corporation against a present or former director, officer or stockholder for an accounting, or to procure a judgment on the ground of fraud, or to enforce a liability, penalty or forfeiture, or to recover damages for waste or for an injury to property or for an accounting in conjunction therewith.

The City claims that a “corporation” includes a “public corporation” and a “public corporation” includes a “municipal corporation” such as the City of Long Beach (see, General Construction Law 65[b][1] and 66[1]). The City further contends that the defendant, as comptroller, was an “officer” of the corporation. The plaintiff relies upon *Roslyn Union Free School Dist. v Barkan*, 16 N.Y.3d 643, where the Court of Appeals held that the six-year statute of limitations period applied to causes of

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action for negligence and breach of fiduciary duty by a school district against a former member of the school board.

Under the circumstances herein, this Court concludes that the six-year statute of limitations set forth in CPLR 213(7) is applicable and therefore the motion to dismiss the complaint pursuant to CPLR 3211(a)(5) is denied.

Finally, the defendant contends that the City cannot establish a cause of action for unjust enrichment.

“To state a cause of action to recover damages for unjust enrichment, a plaintiff must allege that (1) the other party was enriched, (2) at {the plaintiff’s} expense and (3) that it is against equity and good conscience to permit {the other party} to retain what is sought to be recovered” (*AHA Sales, Inc. v Creative Bath Prods., Inc.*, 58 A.D.3d 6, 19, 867 N.Y.S.2d 169 [internal quotation marks omitted]; see *Paramount Film Distrib. Corp. v State of New York*, 30 N.Y.2d 415, 421, 334 N.Y.S.2d 388, 285 N.E.2d 695, cert. denied 414 U.S. 829, 94 S.Ct. 57, 38 L.Ed.2d 64; *Cruz v McAneney*, 31 A.D.3d 54, 59, 816 N.Y.S.2d 486). “The essence of unjust enrichment is that one party has received money or a benefit at the expense of another” (*Goldman v Simon Prop. Group, Inc.*, 58 A.D.3d 208, 220, 869 N.Y.S.2d 125, quoting *City of Syracuse v R.A.C. Holding*, 258 A.D.2d 905, 906, 685 N.Y.S.2d 381).

(*Levin v Kitsis*, 82 AD3d 1051, 1052-1053 [2d Dept. 2011]).

The Court concludes that, accepting as true the factual averments of the complaint and granting the City every favorable inference which may be drawn from the pleading, the City has pled a cause of action cognizable at law against the defendant. Therefore the defendant’s motion to dismiss pursuant to CPLR 3211(a)(7) is denied.

The defendant’s remaining contentions, to the extent no specifically addressed herein, have been considered and found to be unavailing.

The City is directed to serve a copy of this order upon counsel for the defendant within twenty (20) days of the date of the order.

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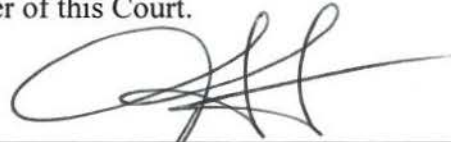
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The defendant shall serve her answer to the complaint within twenty (20) days from service of a copy of this order.

The foregoing shall constitute the decision and order of this Court.

Dated: October 8, 2021



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HON. JOSEPH A. SANTORELLI  
J.S.C.

\_\_\_\_ FINAL DISPOSITION      X   NON-FINAL DISPOSITION