

<b>Flynn v New York State Dept. of Corr. &amp; Community Supervision</b>
2021 NY Slip Op 33250(U)
March 4, 2021
Supreme Court, Orange County
Docket Number: Index No. EF006948-2018
Judge: Sandra B. Sciortino
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To commence the statutory time for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE

-----X  
**RITA FLYNN,**

Plaintiff,

-against-

**NEW YORK STATE DEPARTMENT OF  
CORRECTIONS AND COMMUNITY  
SUPERVISION,**

Defendants.

-----X  
**SCIORTINO, J.**

**DECISION AND ORDER**  
**INDEX NO.: EF006948-2018**  
**Motion Date: 1/8/2021**  
Sequence No. 6

The following papers numbered 1 to 10 were read on this motion by defendant New York State Department of Corrections and Community Supervision ("DOCCS") for an order dismissing the complaint or striking the Note of Issue:

<u>PAPERS</u>	<u>NUMBERED</u>
Notice of Motion / Affirmation(Walsh)/ Exhibits A - B/ Memorandum of Law in Support	1 - 5
Affirmation in Opposition/Exhibits A - B/ Memorandum of Law in Opposition	6 - 9
Memorandum of Law in Reply	10

Plaintiff was employed by the defendant as a parole officer since 1979. Beginning in approximately 2007, she was assigned to a specialized unit known as Strict and Intensive Supervision and Treatment (SIST). The plaintiff alleges that, in violation of Section 75-b of the Civil Service Law, she was removed from her SIST assignment in 2016. She contends that her removal was in retaliation for her criticism of the release plan for a certain serial sex offender under DOCCS supervision.

The plaintiff initially commenced a federal action alleging Section 75-b violation and violation of her First Amendment rights. The action was dismissed in April 2018.

This action was commenced by Summons and Verified Complaint on July 5, 2018. In her complaint, the plaintiff again asserts a retaliation claim under Civil Service Law § 75-b. An Amended Complaint, filed on April 29, 2019, seeks equitable remedies: reinstatement to her specialized case load and an injunction prohibiting further acts of alleged retaliation. Plaintiff also seeks damages for retroactive overtime pay she claims to have lost because of her reassignment to a non-specialized case load. Defendant interposed an Answer to the Amended Complaint on September 3, 2019 and an Amended Answer on September 26, 2019.

Defendant's motions to dismiss pursuant to Civil Practice Law and Rules 3211 were denied by decisions of the Hon. Elaine Slobod, J.S.C. dated March 7, 2019 and August 22, 2019. On October 28, 2019, plaintiff filed a Note of Issue seeking a jury trial. In response to a motion by defendant to vacate the Note of Issue, plaintiff withdrew the Note of Issue. Note of Issue was refiled on November 30, 2020. By Decision and Order dated January 30, 2020, Hon. Steven I. Milligram, J.S.C. denied defendant's motion for summary judgment.

On February 24, 2020, the parties submitted the dispute to arbitration. Plaintiff had counsel from the New York State Public Employees Federation. Before the arbitration commenced, a settlement was reached and a written stipulation signed by the parties. Pursuant to the settlement, the plaintiff agreed to retire and resign her employment no later than March 10, 2020. (EXHIBIT B)

#### **Notice of Motion**

By Notice of Motion filed on December 7, 2020, defendant DOCCS seeks an order dismissing the complaint or, alternatively, striking the Note of Issue.

Defendant argues plaintiff's resignation/retirement has rendered moot the equitable remedies of reinstatement to her specialized case load and injunction against further retaliation. This Court may have jurisdiction to award monetary relief that is "incidental" to an equitable claim. However, when money damages is the primary relief sought in an action against a state agency, the Court of Claims has exclusive jurisdiction.

The plaintiff's resignation and retirement obviates any equitable claim to which the damages claim can be considered incidental. As the primary equitable relief is no longer available, this Court lacks subject matter jurisdiction over this matter, and the action must be dismissed.

Alternatively, the defendant also argues plaintiff previously withdrew her Note of Issue seeking a jury trial when faced with a motion to strike. Plaintiff has no right to a jury trial under Section 75-b of the Civil Service Law, therefore plaintiff should not be heard to reassert the right to a jury trial.

### **Opposition**

Plaintiff concedes she can no longer demand injunctive relief as she is no longer an employee. However, plaintiff argues that she is no longer an employee only because of an agreement signed under duress. Plaintiff argues that the agreement is unenforceable as it was secured by threats of criminal prosecution and incarceration. Adjudication of the collateral issue that the agreement was voluntary serves only as a delay of the trial of this action.

With respect to the Note of Issue with jury demand, plaintiff argues that a prior filing and withdrawal of the Note of Issue does not mean waiver of the right to a jury trial.

### **Reply**

In reply, defendant essentially argues that the plaintiff's claim that she did not voluntarily

enter the agreement is not properly before this Court.

### Discussion

The stipulation of settlement entered into by the plaintiff renders her claim for reinstatement to her SIST position moot. She no longer seeks equitable relief. This court held to jurisdiction to award money damages which were “incidental” to the equitable relief sought. This Court does not have jurisdiction to award money damages alone. “ Damages may not be awarded in this proceeding because damages, if any, would not be incidental to primary relief.” (*Schwab v Bowen*, 41 NY2d 907, 908 [1977])

The Court of Claim has exclusive jurisdiction over matters which seek “judgment in favor of the claimant ... for such sum as should be paid by ... the state.” Court of Claims Act § 9 (4) The plaintiff’s only remaining issue seeks only damages. This Court lacks jurisdiction to hear the matter.

Furthermore, the issue of whether the stipulation of settlement was voluntarily entered is not before this Court.

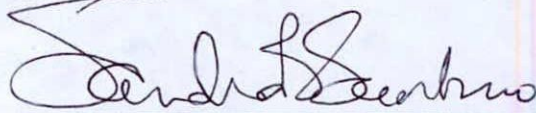
Accordingly, it is ORDERED that the motion is granted, and the complaint is dismissed.

All matters not addressed herein are denied.

The foregoing constitutes the Decision and Order of the Court.

Dated: March 4, 2021  
Goshen, New York

ENTER:

  
HON. SANDRA B. SCIORTINO, J.S.C.

TO: *Counsel of Record via NYSCEF*