

<b>Catania v United Fedn. of Teachers Union</b>
2022 NY Slip Op 30101(U)
January 14, 2022
Supreme Court, New York County
Docket Number: Index No. 161046/2020
Judge: Barbara Jaffe
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. BARBARA JAFFE PART 12

Justice

-----X

PATRICIA CATANIA, SCOTT MURPHY,

Plaintiffs,

- v -

UNITED FEDERATION OF TEACHERS UNION,
WILLIAM WOODRUFF, MERCEDES LIRIANO,
JACINTH SCOTT, JASMINE DICKSON, DIANE
ROBERTS, CHANTALE JOSPEPH, MIRER
MAZZOCCHI & JULIEN, PLLC (A LAW FIRM),
JEANNE MIRER, RIA JULIEN,

Defendants.

-----X

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 79-85, 128, 130, 131, 137, 138, 140-144, 150

were read on this motion to dismiss

By notice of motion, defendants United Federation of Teachers (UFT) and William Woodruff (collectively, UFT defendants) move pursuant to CPLR 3211(a)(5) and (7) for an order dismissing the complaint against them. Plaintiffs oppose. In their notice of motion, UFT defendants withdraw their prior motion to dismiss. (NYSCEF 79; mot. seq. 1).

I. PERTINENT BACKGROUND

A. Undisputed facts

Plaintiff Catania is employed by the New York City Department of Education (DOE) as a school administrator, serving as the principal of Intermediate School 224 in the Bronx. Until June 2019, she was a probationary principal and was later demoted to a tenured position of assistant principal in September 2019. Plaintiff Murphy is Catania's husband as well as an

attorney.

Defendant UFT is a public employee organization supporting teachers. Woodruff is and was employed by UFT as a District Representative in District 7 of the City School District of the City of New York; he is also a DOE employee. Defendants Liriano, Scott, Dickson, Joseph, and Roberts are teachers employed by DOE (teacher defendants). In September 2021, plaintiffs discontinued the instant action against Liriano, Dickson, Roberts, and Joseph. (NYSCEF 145).

B. Other actions (NYSCEF 80)

1. 2019 New York County action

On February 10, 2019, Murphy filed a summons with notice on Catania's behalf against UFT, Woodruff, Liriano, Scott, and Dickson in New York County Supreme Court under index number 151431/19. The summons with notice was never served and nothing further occurred in that action.

2. Bronx County

a. Catania's action

On February 10, 2019, a summons was filed by Murphy on behalf of Catania against UFT, Woodruff, and other UFT representatives, as well as Liriano, Scott, Hinds, and Dickson in Bronx County Supreme Court under index number 21709/19 (Bronx action). On November 30, 2019, Catania filed an amended complaint, adding allegations and, as defendants, Woodruff and Hinds in their personal capacities. Underlying the claims is Catania's allegation that UFT defendants conspired with the teacher defendants to defame her, thereby causing her demotion.

On November 6, 2020, the justice presiding in the action granted a motion to dismiss filed by UFT defendants, Woodruff, and Hinds. In the decision, the justice describes plaintiff's complaint as comprising 17 causes of action in connection with defendants' alleged conspiracy

to ruin plaintiff's career as a public-school principal and preclude her from obtaining a highly paid position by, among other things, planting in the media false portrayals of her as a racist, holding raucous rallies and protests about her at work, and sending "goon squads" to her at work to intimidate her. (NYSCEF 83).

In dismissing the action against these defendants, the justice found, as pertinent here, that as the allegations against UFT defendants involved conduct occurring in their capacities as UFT representatives, they could not be sued in their personal capacities. Plaintiffs' application for a judgment declaring as unconstitutional General Associations Law § 13 was also denied, as without a procedural or legal basis. (*Id.*).

After plaintiff moved to renew and reargue the November 2020 decision, the justice granted reargument by decision and order dated June 24, 2021, reinstated the negligence claims against defendants, and adhered to the dismissal of the claims against defendants in their personal capacities and the denial of plaintiffs' request for declaratory relief. (NYSCEF 84). The case pends.

#### b. Teacher defendants' action

On November 7, 2019, Liriano, Scott, Dickson, and Roberts filed a summons and complaint against Catania and the DOE in Bronx County under index number 33247/2019, alleging that Catania and the DOE violated their federal constitutional rights and the New York City Human Rights Law. UFT and Woodruff are not parties to that action.

On December 9, 2010, the DOE removed the action to federal court, where it pends.

#### 3. Catania's federal action

On February 11, 2021, plaintiff filed a federal complaint against UFT, Woodruff, Hinds, and additional UFT defendants, which pends.

### C. Instant action

On December 18, 2020, plaintiffs filed a summons with notice in the instant action in which they advanced the allegations and claims set forth in their Bronx County complaint along with a cause of action for malicious prosecution, Murphy's derivative claim, and a request for injunctive relief. (NYSCEF 1). On February 1, 2021, they discontinued the action (NYSCEF 4), and in April 2021, withdrew the discontinuance and served defendants (NYSCEF 5-11).

Following defendants' demand for a complaint and plaintiffs' filing thereof, UFT defendants moved to dismiss it. While the motion was pending, and after the motion to reargue was decided in the Bronx County action, plaintiffs filed an amended complaint, in which they allege again that Catania was the victim of a conspiracy perpetrated by defendants to defame and cause her to lose her position as principal and add 11 new claims.

In the amended complaint, plaintiffs assert claims against defendants for (1) tortious interference with contract and (2) tortious interference with business relations, each of which relates to Catania's alleged contract to work for the DOE as principal; (3) tortious interference with a future contract; (4) tortious interference with prospective business relations, in that DOE would have given Catania a position higher than principal but for defendants' actions; (5) and (6) abuse of process in that defendants filed false complaints, charges, and/or grievances against Catania, as well as state and federal lawsuits; (7) malicious prosecution; (8) intentional infliction of emotional distress; (9) negligent infliction of emotional distress; (10) a permanent injunction, enjoining defendants from continuing their lawsuits and false complaints against her; (11) *prima facie* tort; (12) negligence; (13) gross negligence; (14) negligent supervision; (15) negligent supervision against UFT only; (16) and (17) conspiracy; (18) and (19) willful misconduct; (20) joint enterprise; (21) a declaration against UFT that section 13 of the GAL is

unconstitutional; and (22) loss of services by Murphy. (NYSCEF 67).

## II. ANALYSIS

Pursuant to CPLR 3211(a)(4), a party may move for dismissal of a claim on the ground that another action pends between the same parties for the same cause of action. The court has broad discretion to dismiss on this ground. (*Jaber v Elayyan*, 168 AD3d 693 [2d Dept 2019]). The statutory intent is to prevent a party from being harassed or burdened by having to defend multiple actions. (*LaBuda v LaBuda*, 174 AD3d 1013 [3d Dept 2019]).

Dismissal due to a prior pending action is warranted “where there is a substantial identity of the parties, the two actions are sufficiently similar, and the relief sought is substantially the same.” (*Jadron v 10 Leonard St., LLC*, 124 AD3d 842, 843 [2d Dept 2015]). A complete identity of the parties is not necessary as long as they are substantially identical, which generally requires that at least one plaintiff and one defendant be common to both actions. Similarly, the precise legal theories need not be the same as long as the relief is substantially the same. (*Jaber*, 168 AD3d at 694).

Here, the Bronx County action is pending, was filed before the instant action, and arises from the same facts and events underlying the claims here. While the claims in this action are not identical to those advanced in the Bronx County action, they arise from the same facts and plaintiffs could have asserted them in the Bronx County action, absent any dispute that the facts underlying them arose before they filed the instant action. So too for the additional defendants sued here, inasmuch as plaintiffs mention them in the Bronx County complaint and/or knew of their existence and alleged participation in the conspiracy before they commenced the instant case. Murphy’s loss of services claim likewise could have been asserted in the Bronx County action, and plaintiffs may move for leave to amend the complaint there to add it, if warranted.

(See *PK Rest., LLC v Lifshutz*, 138 AD3d 434 [1st Dept 2016] [claims dismissed as other action pending where both actions arose out of same subject matter, notwithstanding that one party not party in other action as there was substantial identity of parties; to extent that claims arose after first action commenced, plaintiff could seek leave to supplement complaint in first action]; *Silver v Whitney Partners LLC*, 130 AD3d 512 [1st Dept 2015], *lv denied* 26 NY3d 910 [2015] [new claims should be adjudicated in prior pending action despite differing legal theories and incomplete identity of parties]).

Movants thus establish that dismissal of the claims against them based on the prior pending Bronx County action is warranted, as plaintiffs, in effect, improperly seek a second chance to assert the claims that were rejected by the Bronx County justice and/or to have another justice review the still-pending allegations anew. The interests of judicial economy weigh against permitting them to maintain the claims here. Plaintiffs are also precluded from raising the dismissed claims here, having had a full and fair opportunity to litigate them on the merits in that action.

Plaintiffs' behavior here is particularly egregious as Murphy is an attorney and is presumably aware of not only relevant caselaw but the rules of professional responsibility that prohibit such conduct. The record reveals that one month after the claims were dismissed against UFT defendants in the Bronx County action, instead of choosing to appeal the decision, which would have been the correct course of action, plaintiffs tried to revive the claims by filing a new action here and not two months after that, they also filed a federal action advancing the same allegations. Even after certain claims were reinstated against UFT defendants in the Bronx County action, plaintiffs nevertheless failed to discontinue the claims here.

In light of this result, movants' other arguments for dismissal are not considered.

III. CONCLUSION

Accordingly, it is hereby

ORDERED, that the motion to dismiss of defendants United Federation of Teachers and William Woodruff (mot. seq. 1) is withdrawn; it is further

ORDERED, that the motion to dismiss of defendants United Federation of Teachers and William Woodruff (mot. seq. 3) is granted, and the complaint is severed and dismissed as against them; and it is further

ORDERED, that the remaining parties submit a preliminary conference stipulation, by email to cpaszko@nycourts.gov, on or before March 2, 2022.

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1/14/2022

DATE

BARBARA JAFFE, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE