

Williams v New York City Dept. of Corr.
2022 NY Slip Op 31459(U)
May 4, 2022
Supreme Court, New York County
Docket Number: Index No. 157583/2019
Judge: Judy H. Kim
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JUDY H. KIM PART 05RCP

Justice

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RAHSAAN WILLIAMS,

Plaintiff,

- v -

NEW YORK CITY DEPARTMENT OF CORRECTION, CITY OF NEW YORK, CYNTHIA BRANN, ANGEL VILLALONA, KEITH POWERS, ALICKA AMPRY-SAMUEL, DONOVAN J RICHARDS, CARLINA RIVERA

Defendant.

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INDEX NO. 157583/2019

MOTION DATE 03/10/2022

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 54, 55, 56, 57, 58, 59, 60, 61

were read on this motion for DISMISSAL.

Upon the foregoing papers, defendants' motion to dismiss this action is granted without opposition and for the reasons set forth below.

Plaintiff, a Correction Officer employed by the City of New York ("City") in the New York City Department of Correction ("DOC"), alleges that defendants fabricated claims of misconduct in unlawfully disciplining and later attempting to terminate his employment (NYSCEF Doc. No. 2 [Compl. at ¶3]). Plaintiff further alleges that this discipline and attempted termination were motivated by racial animus as well as part of defendants' effort to lower the numbers of the DOC workforce (Id. at ¶31). Accordingly, plaintiff's complaint asserts causes of action for breach of New York Executive Law §296 et seq. (the "New York State Human Rights Law" or "NYSHRL"), New York City Administrative Code §8-107 et seq. (the "New York City Human Rights Law" or "NYCHRL"), New York Civil Service Law ("CSL") §80 and Article I §11 of the New York State Constitution (Id. at ¶¶32-53).

Defendants now move, pursuant to CPLR §3211(a)(7), to dismiss this action. Plaintiff does not oppose the motion but instead submits a letter which the Court declines to consider (See e.g., P.T. Bank Cent. Asia v Chinese Am. Bank, 229 AD2d 224, 227-28 [1st Dept 1997] [“The nature of plaintiff’s opposition to the motion is unknown as it did not file an opposing affidavit, instead confining its submissions to a memorandum of law and a letter to the court, both dehors the record”]).

DISCUSSION

As a threshold matter, that branch of defendants’ motion which seeks to dismiss this action as to the DOC is granted. Pursuant to Chapter 17, Section 396 of the New York City Charter, “[a]ll actions and proceedings for the recovery of penalties for the violation of any law shall be brought in the name of the City of New York and not in that of any agency, except where otherwise provided by law” (NY City Charter, Ch 17, §396). There is no exception at law which removes DOC from this rule. Accordingly, DOC is not a proper party to this action and the Amended Complaint is hereby dismissed as against it (See e.g. Dimaggio-Campos v Brann, 2021 N.Y. Slip Op. 31868[U] [Sup Ct, NY County 2021]).

That branch of defendants’ motion to dismiss this action as to the remaining defendants is also granted. “On a motion to dismiss pursuant to CPLR §3211, the pleading is to be afforded a liberal construction ... [and the Court must] accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (Leon v Martinez, 84 NY2d 83, 87-88 [1994] [internal citations and quotations omitted]). “In assessing a motion under CPLR §3211(a)(7) the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one” (Id. [internal citations and quotations omitted]).

Plaintiff's claim under CSL §80 is improperly brought here as a plenary action; it should instead be brought as an Article 78 proceeding and must be dismissed for this reason (See Hand v New York City Dept. of Correction, 2020 NY Slip Op. 33822[U], 2 [Sup Ct, NY County 2020] citing Wilson v Madison-Oneida Bd. of Co-op. Educ. Services, 268 AD2d 625, 626 [3d Dept 2000]). Even leaving this aside, before plaintiff may challenge defendants' disciplinary measures in a CSL §80 claim he must establish the complete exhaustion of any administrative remedies. Plaintiff has not pled that any final determination regarding the alleged misconduct charges against him has been reached or that all administrative remedies have been exhausted. As such, this matter is not ripe for determination and must be dismissed for this additional reason (See e.g., Budhai v New York City Dept. of Correction, 2021 NY Slip Op. 31216[U], 4 [Sup Ct, New York County 2021] ["Although [plaintiff] has alleged, among other things, constitutional property rights interests in her employment and discrimination based on gender and race, a constitutional claim that hinges upon factual issues reviewable at the administrative level must first be addressed to the agency so that a necessary factual record can be established"]).

To the extent the complaint can be read to allege that the disciplinary action itself was motivated by racial bias, it nevertheless fails to state a cause of action. Plaintiff's claim under the equal protection clause of the New York State Constitution (NY Const., Art I, §11) fails. The New York State Constitution's equal protection clause "was not intended to create a duty without enabling legislation" (Brown v State, 89 NY2d 172, 190-91 [1996]) and, therefore, the proper method to assert an equal protection claim is through the NYSHRL and NYCHRL, which plaintiff has done.

Plaintiff's complaint fails, however, to state a claim under either the NYSHRL or NYCHRL. To do so, plaintiff must allege "that [he] is a member of a protected class, that [he] was

qualified for [his] position, that [he] suffered an adverse employment action, and that the adverse action was due to circumstances that could be deemed discriminatory” (Thomas v Mintz, 60 Misc 3d 1218(A) [Sup Ct, NY County 2018] [internal citations and quotations omitted], aff’d as mod., 182 AD3d 490 [1st Dept 2020]). Plaintiff here alleges that he is a member of a protected class and that he was inappropriately subjected to disciplinary measures but

fails to ... allege that defendants’ actions occurred under circumstances that give rise to an inference of discrimination. [He] does not allege facts that would establish that similarly situated persons who ... [were] not of African American descent were treated more favorably than plaintiff was. Instead, the complaint merely asserts the legal conclusion that defendants’ adverse employment actions ... were due to race.

(Thomas v Mintz, 182 AD3d 490, 490-91 [1st Dept 2020]; see also Askin v Dept. of Educ. of City of New York, 110 AD3d 621, 622 [1st Dept 2013] [plaintiff’s claim of age-related bias insufficient without “concrete factual allegation in support of that claim, other than that she was 54 years old and was treated adversely under the State law or less well under the City HRL”]).

In light of the foregoing, it is

ORDERED that defendants’ motion to dismiss this action is **GRANTED** and the complaint is hereby dismissed as to all defendants with costs and disbursements to defendants as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

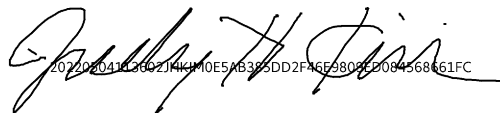
ORDERED that within twenty days from the date of this decision order, defendant the City of New York shall serve a copy of this decision and order, with notice of entry, upon the New York County Supreme Court’s General Clerk’s Office (60 Centre Street, Room 119) and the Clerk of the Court (60 Centre Street, Room 141B), who are directed to enter judgment accordingly; and it is further

ORDERED that such service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for*

Electronically Filed Cases (accessible at the “E-Filing” page on this court’s website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that defendant the City of New York shall, within thirty days of the date of this decision and order, serve a copy of this decision and order, with notice of entry, on all parties.

This constitutes the decision and order of the Court.



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5/4/2022
DATE

JUDY H. KIM, 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