

<b>Uffe v City of New York</b>
2022 NY Slip Op 32302(U)
July 8, 2022
Supreme Court, New York County
Docket Number: Index No. 158073/2020
Judge: Leslie Stroth
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LESLIE STROTH PART 52

Justice

-----X

INDEX NO. 158073/2020

OMAR ULFFE,

MOTION DATE 02/22/2022

Plaintiff,

MOTION SEQ. NO. 004

- v -

THE CITY OF NEW YORK, THE BOARD/DEPARTMENT OF EDUCATION OF THE CITY OF NEW YORK, JAQUELINE ROSADO, MARK TURCOTTE, ASIA BURNETT,

DECISION + ORDER ON MOTION

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 004) 48, 49, 50, 51, 52, 53, 54, 55, 56

were read on this motion to/for DISMISSAL

Plaintiff Omar Ulffe (plaintiff), a former teacher employed by defendant Department of Education of the City of New York (defendant or DOE), brings this action pursuant to New York State Executive Law § 296 et seq. (New York State Human Rights Law or SHRL) and Administrative Code of City of NY § 8-101 et seq. (New York City Human Rights Law or CHRL) claiming unlawful age discrimination. Plaintiff further alleges a claim of unlawful retaliation, in violation of Social Services Law (SSL) § 413 (1) (a), (b), (c), and CHRL and SSL § 413(2).

Defendant moves to dismiss plaintiff's amended complaint. For the reasons set forth below, plaintiff's age discrimination claims under the SHRL and CHRL are dismissed as untimely pursuant to Education Law § 3813(2-b). Further, plaintiff's retaliation claim pursuant to Social Services Law § 413 is dismissed, because no private right of action exists to obtain money damages under such provision. However, as Defendant did not move to dismiss Plaintiff's retaliation claim pursuant to CHRL, and the Court does not address that cause of action.

## I. Alleged Facts

As alleged in the amended complaint, plaintiff worked at Junior High School 098X Herman Ridder School (JHS 98) as a probationary math teacher from September 4, 2016 to June 24, 2019. Prior to that he worked at the school as a substitute teacher from 2012-2013. Between May 2018 and March 2019, plaintiff brought to the attention of JHS 98's Assistant Principal Asia Burnett (Burnett) that an immigrant student did not receive an appropriate class placement from the school and that he believed the school misled the parents. Plaintiff further complained that other students did not receive mandated educational services from the school that they were entitled to receive. In April 2018, following his initial complaints, school officials informed plaintiff that he must sign a form that extended his probationary period.<sup>1</sup> In March 2019, plaintiff also submitted written complaints to the assistant principal that documented violence and threats of violence between students, as well as threats of violence by students and a parent against him.

Plaintiff subsequently claims that due to his age, and in retaliation for the complaints, the DOE created a hostile work environment. Specifically, plaintiff asserts that between April 9, 2019 and April 18, 2019, Burton, the assistant principal, improperly conducted an investigation of a complaint lodged by a student against plaintiff. He asserts in his amended complaint that Burton inappropriately interviewed students collectively, rather than separately, in violation of school chancellor regulations and the teachers' collective bargaining agreement. Plaintiff further claims that the assistant principal improperly elevated the disciplinary finding against him from "poor judgment" to "verbal abuse of a student," without substantiation. As a result of such charge, the DOE placed two disciplinary letters in Plaintiff's employee file.

---

<sup>1</sup> Had the probationary period not been extended, plaintiff could have reached tenure in June 2019.

On April 18, 2019, plaintiff unsuccessfully appealed the finding of “verbal abuse of a student.” Plaintiff alleged in his amended complaint that on May 3, 2019, the school principal told plaintiff that, “you’re too old to be a teacher.” (Amended Complaint, Redline, NYSCEF doc 46 at ¶ 39). On June 24, 2019, the school superintendent terminated plaintiff’s employment with the DOE. During the Summer of 2019, plaintiff reapplied to the DOE for employment and was nominated for three positions with the DOE. However, the DOE’s Office of Personnel Investigations notified plaintiff that because he was terminated during his probationary period, he had been placed on a so-called “No Hire” list. (Amended Complaint, Redline, NYSCEF doc 46 at ¶ 2). Plaintiff therefore could not qualify to work in any of the positions that he applied for at the DOE during Summer 2019.<sup>2</sup>

## II. Procedural History

Thereafter, plaintiff commenced this action by filing a summons and complaint on September 29, 2020. Plaintiff subsequently moved to amend his complaint. By decision and order dated November 10, 2021, Justice Lyle Frank granted plaintiff’s motion to add the plaintiff’s proposed first and fourth causes of action, which encompass the alleged age discrimination claims under state and city law and retaliation-based violations of Social Services Law § 413 and the CHRL. However, Justice Frank denied plaintiff’s motion to add the proposed second (intentional infliction of emotional distress), third (stigma plus, defamation, and libel), fifth (abuse of process), and sixth (fraud) causes of action, for failure to state a claim. Justice Frank also denied plaintiff’s motion as it requested to add any causes of action against the individual defendants, holding that

---

<sup>2</sup> The DOE held a hearing regarding the termination of plaintiff’s employment on January 31, 2020, but the Court has not received additional information as to the determination of the hearing.

the time to serve them expired and that plaintiff did not provide a reasonable excuse for such failure.

Justice Frank directed plaintiff to upload to NYSCEF its original complaint with the proposed amended complaint, with the approved amendments “redlined.”<sup>3</sup> Plaintiff uploaded a redlined complaint (*see* NYSCEF doc. 46), which did not comply with Justice Frank’s decision. The “redlined” amended complaint included amendments to the second, third, fifth and sixth causes of action, which were not permitted by Justice Frank and all of which he deemed to fail to state a claim. Despite plaintiff’s failure to adhere to Justice Frank’s order, this Court deems the amended complaint filed and served only as to the first and fourth causes of action against the DOE. The remaining claims and defendants included in the amended complaint do not conform to Justice Frank’s directives and are therefore rejected.

### III. Analysis

CPLR 3211 provides that a party may move to dismiss where, *inter alia*, a cause of action may not be maintained because of the statute of limitations or that the pleading fails to state a cause of action. CPLR 3211 (a) (5), (7). On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction. *Leon v Martinez*, 84 NY2d 83, 87 (1994). When considering a motion to dismiss, the Court must review, “...whether the facts as alleged fit within any cognizable legal theory.” *Id.* at 88.

#### a. Plaintiff’s Age Discrimination Claim Are Time-Barred

Claims against the DOE are governed by a one-year statute of limitations. *See* Education Law § 3813(2-b), *see also* *Campbell v NYC Dept of Educ*, 200 AD3d 488, 488 (1st Dept 2021) (“Plaintiff’s claims against the Department of Education are time-barred under the one-year statute

---

<sup>3</sup> “Redlined” means that all changes made to a document are emphasized.

of limitations applicable to all claims against school districts and other specified entities”). Although plaintiff argues in opposition that claims pursuant to the SHRL and CHRL have a three-year statute of limitations against the DOE, plaintiff does not cite to any statute that so provides, nor does he provide any applicable case law to support his assertions.

Plaintiff's SHRL and CHRL claims accrued on June 24, 2019, the date that the DOE notified plaintiff that his employment was terminated. *Id.* at 488, citing *Matter of Kahn v New York City Dept. of Educ.*, 18 NY3d 457, 467 (2012) (holding that the plaintiff's discrimination claims against the DOE were time-barred, because the plaintiff failed to commence the action within one year of her termination). Plaintiff's grievance of his employment termination does not toll the statute of limitations. *See Pinder v City of NY*, 49 AD3d 280, 281 (1st Dept 2008) (“...an employment discrimination claim accrues on the date that an adverse employment determination is made and communicated to plaintiff, and the possibility that the determination may be reversed is insufficient to toll the limitations period” [citing *Cordone v Wilens & Baker, P.C.*, 286 AD2d 597, 598 (1st Dept 2001)]).

Plaintiff commenced this action on September 20, 2020, over one year after June 24, 2019, the date that the cause of action accrued. As such, Plaintiff's age discrimination claims under SHRL and CHRL against the DOE are time-barred. *See Campbell*, 200 AD3d at 488; *Pinder*, 49 AD3d at 281; *Stembridge v NYC Dept of Educ*, 88 AD3d 611, 611 (1st Dept 2011); *Laboy v City of NY*, 159 AD3d 632, 633 (1st Dept 2018). Therefore, plaintiff's SHRL and CHRL age discrimination claims are dismissed as untimely.

**b. Plaintiff Fails to State a Cause of Action for Retaliation Pursuant to SSL § 413**

Plaintiff alleges that the DOE unlawfully retaliated against him in violation of Social Services Law § 413 for reporting student on student violence, threats of violence, errors in a

student's class placement, and lack of mandated educational services. Defendant moves to dismiss plaintiff's retaliation claim under Social Services Law § 413 on the grounds that the statute does not grant Plaintiff a private right of action for money damages. In opposition, plaintiff's attorney merely cites to the Social Services Law and affirms that, "Plaintiff has a private right of action," without any case law or analysis.

Social Services Law § 413(1)(c) provides in relevant part that:

[A school] shall not take any retaliatory personnel action, as such term is defined in paragraph (e) of subdivision one of section seven hundred forty of the labor law, against an employee because such employee believes that he or she has reasonable cause to suspect that a child is an abused or maltreated child and that employee therefore makes a report in accordance with this title.

The statute does not create a private right of action for money damages, and it does not specify the enforcement mechanism for an employee whose employer unlawfully retaliates against them in violation of the statute. *See generally* Social Services Law § 413.

Moreover, numerous courts have held that that no implied private right of action exists under Title 6 of the Social Services law or, specifically, Social Services Law § 413. *See Mark G v Sabol*, 93 NY2d 710, 719 (1999); *Rivera v Cty of Westchester*, 31 Misc3d 985, 991 (Sup Ct, Westchester County 2011 Giacamo, J.); *Lomonoco v Anne*, 2016 WL 4402029, \*6 (ND NY, Aug. 18, 2016, No. 1:15 CV 1163 [GTS/CFH]). After reviewing the legislative history of Article 6, Title 6, the Court of Appeals has held that:

The Legislature specifically concentrated on the statutory scheme's enforcement provisions, which, except for the unique motivations that underlie Social Services Law § 420, have never included private rights of action for money damages. In sum, we conclude that a private right of action for money damages cannot be fairly implied from title 6 of the Social Services Law. *Mark G v Sabol*, 93 NY2d 710, 722 (1999).

In fact, the First Department has enforced complaints of retaliation in violation of Social Services Law § 413 under Labor Law § 740 (the Whistleblower Law). *See Villarin v Rabbi Haskel Lookstein School*, 96 AD3d 1, 7 (1st Dept 2012). Notably, the redlined amended complaint removes all references to Labor Law § 740, the appropriate enforcement mechanism to pursue a

cause of action under Social Services Law § 413. Therefore, Plaintiff's claim for retaliation pursuant to Social Services Law § 413 is dismissed, as it fails to state a cause of action under any cognizable legal theory.

**c. Plaintiff Claim for Retaliation Pursuant to CHRL Survives**

In addition to his retaliation claim pursuant to Social Services Law, plaintiff pleads that DOE retaliated against him in violation of the CHRL. DOE exclusively moves to dismiss plaintiff's retaliation claims under Social Services Law § 413. DOE fails to address the substance of plaintiff's retaliation claims pursuant to the CHRL. Therefore, the Court does not address such claim.

**IV. Conclusion**

The Court has considered the parties' remaining contentions and find them to be unavailing. Accordingly, it is

ORDERED that plaintiff's amended complaint (NYSCEF doc. 45) is deemed filed and served as to the first and fourth causes of action against the DOE only, and it is further

ORDERED that the action shall bear the following caption:

-----X  
OMAR ULFFE,  
Plaintiff,

-against-

THE BOARD/DEPARTMENT  
OF EDUCATION OF THE CITY  
OF NEW YORK,

Defendant  
-----X

and it is further

ORDERED that plaintiff's first cause of action for age discrimination is dismissed as is beyond the statute of limitations, and it is further

ORDERED plaintiff's fourth of action is dismissed only as to his claims pursuant to Social Services Law § 413, and it is further

ORDERED that counsel are directed to appear for a status conference to be held via Microsoft Teams on September 14, 2022 at 4:00 p.m. regarding plaintiff's remaining claim.

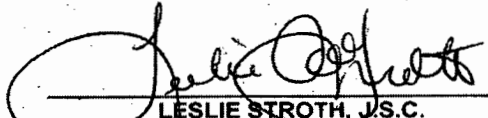
The foregoing constitutes the Decision and Order of the Court.<sup>4</sup>

7/8/2022  
DATE

CHECK ONE:  CASE DISPOSED  DENIED  NON-FINAL DISPOSITION  OTHER

APPLICATION:  GRANTED  SETTLE ORDER  SUBMIT ORDER

CHECK IF APPROPRIATE:  INCLUDES TRANSFER/REASSIGN  FIDUCIARY APPOINTMENT  REFERENCE

  
LESLIE STROTH, J.S.C.

<sup>4</sup> The Court would like to thank Sabrina M. Tann, Esq. for her assistance in this matter.