

Prince v Shestakovich
2022 NY Slip Op 32443(U)
July 22, 2022
Supreme Court, New York County
Docket Number: Index No. 656952/2021
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 05

Justice

-----X

KENNETH PRINCE,

Plaintiff,

- v -

HELEN SHESTAKOVICH, TEACHER'S RETIREMENT
SYSTEM OF THE CITY OF NEW YORK

Defendants.

-----X

INDEX NO. 656952/2021

MOTION DATE 02/09/2022,
02/28/2022

MOTION SEQ. NO. 001, 002

DECISION + ORDER ON
MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12,
13, 14, 15, 16, 17, 18, 19, 20, 28

were read on this motion for DISMISS

The following e-filed documents, listed by NYSCEF document number (Motion 002) 21, 22, 23, 24, 25,
26, 27, 29

were read on this motion for DISMISSAL

Plaintiff commenced this action on December 13, 2021, alleging that before her death, his
mother, Willie Prince, named him as the sole beneficiary of the death benefits payable to her from
defendant Teacher's Retirement System of the City of New York ("TRS") entitling him to these
funds but that defendant Helen Shestakovich, with the aid of TRS, improperly presented herself as
the guardian of Willie Prince and had the funds allegedly meant for him converted to her (NYSCEF
Doc. No. 1 [Complaint at ¶¶5-13]). Plaintiff's complaint asserts claims for conversion and fraud
against Shestakovich, and claims of breach of fiduciary duty and negligence against TRS.

In motion sequence 001, TRS moves for an order, pursuant to CPLR §3211(a)(1) and (2), dismissing the complaint as against it. In motion sequence 002, Shestakovich, moves, pursuant to CPLR §§ 3211(a)(1) and (a)(7), for an order dismissing the complaint as against her. Plaintiff has not opposed either motion. These motions are consolidated for disposition and are hereby granted on default and for the reasons set forth below.

DISCUSSION

TRS asserts that this action is properly brought as an Article 78 proceeding because, despite sounding in tort, it revolves around a dispute over TRS's June 12, 2021 determination of Willie Prince's death benefit. The Court agrees (See Sandler v Benden, 202 AD3d 579, 579 [1st Dept 2022]) ["Plaintiff's allegations challenge the 'academic and administrative standards and decisions' of defendant Long Island University (LIU) and two of its employees. Accordingly, although she variously frames her claims in statute, tort, contract, and quasi-contract, plaintiff was required to bring those challenges via CPLR article 78, rather than in a plenary action"]. However, even if the Court exercised its authority under CPLR §103(c) to convert this claim to an Article 78 proceeding (See Tyk v Brooklyn Community Bd. 12, City of New York, 61 Misc 3d 1217(A) [Sup Ct, Kings County 2016], affd sub nom. Tyk v Brooklyn Community Bd. 12, 166 AD3d 708 [2d Dept 2018]), it would be dismissed as untimely.

Under CPLR §217, "a proceeding against a body or officer must be commenced within four months after the determination to be reviewed becomes final and binding upon the petitioner or the person whom he represents in law or in fact" (CPLR §217[1]). The "final determination" at issue here occurred on or about June 12, 2021, when plaintiff was informed by letter dated June 12, 2021, that a lump sum death benefit of \$1,232,77 was payable to him. Plaintiff's

commencement of this action on December 13, 2021, was beyond the four-month statute of limitations set forth in CPLR 211(1).

TRS has also established independent grounds for dismissal insofar as it is undisputed that plaintiff has failed to timely file a notice of claim, a condition precedent to commencing the instant action against a City entity (See Administrative Code §7-201(a); GML §50-e).

Finally, even ignoring the foregoing, undisputed documentary evidence submitted by TRS establishes that, in light of decisions Willie Prince made regarding her death benefits from TRS, plaintiff was entitled to a payment of \$1,232.77 for Death Benefit #2 and 5276.06 in Fractional Benefits and did, in fact, receive these amounts (See NYSCEF Doc. Nos. 10 [Death Benefit Election] and 11 [Retirement Application and Summary Plan Description]). Accordingly, TRS's motion to dismiss this action is granted.

In motion sequence 002, Shestakovich relies on the documentary evidence submitted by TRS and submits undisputed documentary proof that she was not appointed as Willie Prince's guardian but that an entity named Selfhelp Community Services, Inc. received this appointment (NYSCEF Doc. No. 26 [Order and Judgement Appointing Guardian]). As the undisputed documentary evidence rebuts plaintiff's claims concerning Shestakovich (i.e., that she converted funds meant for him), her motion to dismiss this action is also granted.

Accordingly, it is

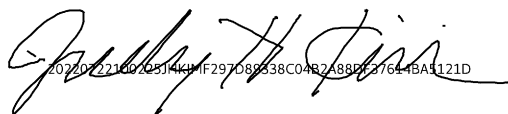
ORDERED that defendants' motions to dismiss the complaint is granted and the complaint is hereby dismissed in its entirety; and it is further

ORDERED that within twenty days of the date of this decision and order, counsel for the City shall serve a copy of this order with notice of its entry upon plaintiff and upon the Clerk of the Court (60 Centre St., Room 141B) and the New York County Supreme Court's General Clerk's

Office (60 Centre St., Rm. 119) 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 upon proof of service of a copy of this order with notice of entry upon all parties, the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the decision and order of the Court.



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7/22/2022

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