

Santiago v City of New York
2022 NY Slip Op 32589(U)
July 27, 2022
Supreme Court, New York County
Docket Number: Index No. 159551/2021
Judge: Adam Silvera
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SUPREME COURT OF THE STATE OF NEW YORK

NEW YORK COUNTY

PRESENT: HON. ADAM SILVERA

PART

13

Justice

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INDEX NO. 159551/2021MOTION DATE N/AMOTION SEQ. NO. 001

CHRISTOPHER SANTIAGO, URENA UBALDO, RAHSAAN WILLIAMS, DAVID GONZALEZ, CHRISTOPHER KINLOCH, EBONY COTTMAN, KAREN SEGUR, STANLEY SAINT PHARD, ALBERTO GONZALEZ, ERIKA BRADBY, DIANE PRADÉ, ANGELA DICHIRO, ARMAND PRETLOW, JOSEPH VANTERPOOL, ROBERTO FERNANDEZ, VERONICA HOWELL, LISA SIMMONS, JASMINE JONAS, RUTHSANA LEE, JOEL CORREA, CARLOS DIAZ, ELLIOTT PAGAN, LUIS PAGAN, SARITA CHAPPLE, KENNETH MCFARLANE, KEISHA PEREZ, REGINA WILLIAMS, VICTOR GASKIN, LORENZO PHILLIPS, NIEVES MERCADO, ARIEL MARTINEZ, CHERRELLE DAVIS, BRYANT AHYOUNG, NICOLE JARVIS, NATALIE KWAYKE, ASHLEY MERRERO, MADEL CASTILLO, LATANYA WORLEY, TERRY GREEN, JAMES THOMAS, GREGORY JOHNSON, DEENA BRONSON, ANGELA WARD-CUNNINGHAM, TAYLOR ROGERS, SHAQUELLA ASHBY, MARVENA HEWITT, CHRISTINA WHITIKER, YOLANDA BRYANT, ANTONIO RIVERA, MICHAEL NELSON, MAKEISHA WEEKS, LONISE SMALLS-DAVIS, MAKEDA BRANNON, MARCHELLE FRANKLIN, ALTHEA KNIGHT, CARLTON WALCOTT, QUINN SMITH, WILLIAM PHILLIPS, JEAN SOUFRANTE, DAVID GASKIN, T. JOHNSON, CHARLES WILLIAMS, ALBERTO PORRIAS, KHAMWATIE BUDHAI, EFRAIN PUENTE, MARC TATE, JESSICA SIMMONS, SABREEN TAYLOR, OFC. MONK, COURTNEY JOSEPH, JENNIFER PRICE, TARA BALLARD, CRAIG HOUSTON, OFFICER PORTER, BRITNIE BRUNO, EUGENE LEWIS, JENNIFER MCCABE, OFFICER MOON, MAGGIE TORRES, OFFICER GUZMAN, GARY WILLIAMS, LEO PREVILLION, JULIO SURIEL, DILBAG SINGH, MARCUS ISAAC, DAVID MEDINA, DEIGHTON GRAY, LEONDRA ROSE, JEFFERSON MILLER, TRACY TOMARS, LUIS NIEVES, KEVIN HOLDER, BERESFORD HARRISON, HECTOR NAZARIO, LIZETTE MALDONADO, TAMISHA SUTTON, ADRIAN MILLS, CAMILLE STEPHENSON, ELJEN GREEN, GREGORY HILL, ALEXIS GONZALEZ, CHRISTIAN COSSETTE, LOIS KONG, LEE MITCHELL, ROSETTA WASHINGTON, LAVERQUISTA STEELE, DAVID JIMENEZ, JOHN CRUZ, C. MAR, EMILE HENRY, JEAN NELSON, NICOLE JOHNSON, SIERRA CUNNINGHAM, TONIA JOHNSON, RETISHA MYATT, NATHANIEL LEE, ANTOINETTE EDWARDS, LAKINA WALLACE, ANDRE BROWN, ERIC SAVAGE, PAUL SAVAGE, PAUL DAVIS, REGINALD FORDE, SHENIQUA BURTON, KATTIA HYMAN, DALE MOORE, SAUDE HARRIS, HARCOURT

DECISION + ORDER ON MOTION

BULLARD, GRANKS MARLON, LYDIA CUMBERBATCH,
GEORGE SANTIAGO, RAHMAN TELFEIR, LATISHA
BOONE, WILLIAM NAVARRO, TYNESHA GRAY, KAMARI
LIVINGSTON, KIMBERLI DAVIS, TAYANNA GRANT,
SELVIN STULTZ, SHAQUANA THOMAS, EDWARD
KELLY, TRACY MADKINS, EVELYN IRBY, CHRIS ALLEN,
JOSSETTA MORGAN, DARRELL RAMOS, JEAN
GERMAINE, KOBIE MCCOY, WILLIAM WILLIAMS

Plaintiff,

- v -

THE CITY OF NEW YORK, NEW YORK CITY COUNCIL,
VINCENT SCHIRALDI, MARIO JULIEN, COREY
JOHNSON, I MILLER, HELEN ROSENTHAL, ERIC
DINOWITZ, FRANCISCO MOYA, ADRIENNE ADAMS,
ERIC ULRICH, FARAH LOUIS, COMMITTEE ON CIVIL
SERVICE AND LABOR, MATHIEU EUGENE, BILL
PERKINS, DANIEL DROMM, BRAD LANDER, INEZ
BARRON, COMMITTEE ON CIVIL AND HUMAN RIGHTS,
DARMA DIAZ, BEN KALLOS, JAMES GENNARO, LAURIE
CUMBO, COMMITTEE ON WOMEN AND GENDER
EQUITY,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 17, 18, 19, 20,
21, 22, 23, 24, 26, 27, 28

were read on this motion to/for

INJUNCTION/RESTRAINING ORDER

Upon the foregoing documents, it is ordered that Ms. Anjuili Osborne's instant order to
show cause is hereby denied for the reasons set forth below.

The instant action is a discrimination action alleging racial and gender discrimination
within the New York City Department of Corrections. The summons and complaint were filed
on October 20, 2021. Thereafter, plaintiffs filed an amended summons and complaint on January
14, 2022, adding movant Ms. Anjuili Osborne as a plaintiff. The instant order to show cause was
filed on February 11, 2022, which seeks a temporary restraining order precluding the New York
City Department of Corrections and the City of New York from terminating Ms. Osborne's
employment for failing to comply with the vaccine mandate. The instant order to show cause

further seeks, *inter alia*, a hearing before the New York City Office of Administrative Trials and Hearings, and for Ms. Osborne to be permitted to apply for a religious exemption to the vaccine mandate.

Preliminarily, the Court notes that Ms. Osborne is not a named plaintiff in the original summons and complaint, and thus, was not a party to the instant action. Furthermore, plaintiff's amended summons and complaint, which attempted to add Ms. Osborne as a plaintiff, was not timely filed and no leave of court was sought prior to its filing. CPLR §1003 states that "[p]arties may be added at any stage of the action by leave of court or by stipulation of all parties who have appeared, or once without leave of court within twenty days after service of the original summons or at anytime before the period for responding to that summons expires or within twenty days after service of a pleading responding to it."

Here, plaintiff failed to file the amended complaint as of right within 20 days after service of the original summons and failed to obtain leave of court to file the amended complaint. The Appellate Division has held that "plaintiff's failure to follow the requisite procedure [pursuant to CPLR §1003] rendered the supplemental summons and amended complaint a legal nullity". *Yadegar v Int'l Food Mkt.*, 306 AD2d 526, 526 (2d Dep't 2003). Thus, the amended summons and complaint is null and void such that Ms. Osborne is not added as a plaintiff herein, is not a party to the instant action, and does not have standing to request relief herein. As such, the instant order to show cause is denied.

Even assuming Ms. Osborne was able to challenge the City's vaccine mandate herein, which she is not, the instant order to show cause still fails. "A preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the

subject of the action, and tending to render the judgment ineffectual, or in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff.” CPLR §6301. “A party seeking a preliminary injunction must demonstrate, by clear and convincing evidence, (1) a likelihood of success on the merits, (2) irreparable injury absent the granting of the preliminary injunction, and (3) a balancing of the equities in the movant’s favor.” *Gilliland v Acquafredda Enterprises, LLC*, 2 AD3d 19, 24 (1st Dep’t 2011). “Perhaps the single most important prerequisite for the issuance of a preliminary injunction is a demonstration that if it is not granted the applicant is likely to suffer irreparable harm before a decision on the merits can be rendered.” *Citibank, N.A. v Citytrust*, 756 F2d 273, 275 (2d Cir. 1985).

It is well settled that Ms. Osborne has not suffered irreparable harm. The Appellate Division, First Department, in *Valentine v Schembri*, 212 AD2d 371, 371 (1st Dep’t 1995) held that “[p]etitioner’s allegation that a possible loss of health benefits constitutes a showing of irreparable harm is speculative and not supported by the record.” Lost profits, wages, and even benefits could be reasonably calculated.

In the instant order to show cause, Ms. Osborne alleges that a balancing of the equities would fall in her favor. However, this Court held, in another decision concerning the vaccine mandate, that “ ‘[t]he Court recognizes the sacrifices firefighters and EMT employees have made to protect the public, especially over the course of the COVID-19 pandemic. Our nation is indebted to their efforts and sacrifices. However, the Court has the difficult task of balancing the needs of the vast majority against the concerns of a few, and here, the public health and safety concerns far outweigh the concerns of Plaintiffs.’ [*Garland v N.Y.C. Fire Dep’t*, 2021 U.S. Dist.

LEXIS 233142, 2021 WL 5771687]. It is evident the balancing of the equities are in favor of [defendants] who, at the moment, are tasked with the greater public health and safety concerns.”

Detective's Endowment Association, et. al. v The City of New York, et. al., Index No.

650656/2022, mot. seq. no. 001, Decision/Order dated June 10, 2022. Thus, Ms. Osborne's order to show cause seeking a preliminary injunction is denied.

The remainder of Ms. Osborne's order to show cause is also denied. Although Ms. Osborne alleges that she was unaware of the deadline to file for a religious exemption, it is undisputed that the City of New York set a filing deadline and widely publicized such deadline. Ms. Osborne's arguments are unavailing.

Accordingly, it is

ORDERED that Ms. Anjuili Osborne's order to show cause is denied in its entirety; and it is

ORDERED that within 30 days of entry, defendant City of New York shall serve a copy of this Decision/Order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.

7/27/2022

DATE

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

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CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

☒

DENIED

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NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

☐

OTHER

☐

REFERENCE



ADAM SILVERA, J.S.C.