SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. NICHOLAS W. MOYNE **PART**

Justice

----------X

LISA BROAD,

Plaintiff,

- v -

THE DEPARTMENT OF EDUCATION OF THE CITY OF NEW YORK, MICHAEL S. LAZAN

Defendant.

----------X

INDEX NO. 152374/2022

MOTION DATE N/A

MOTION SEQ. NO. 001/002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 23, 24, 25, 26, 27, 28, 31, 32, 34, 41

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, it is

In motion sequence 001, the defendant, Michael S. Lazan's moves to dismiss the complaint pursuant to CPLR § 3211(a)(7). Motion sequence 002 is The Department of Education of the City of New York's ("BOE") CPLR § 3211(a)(7) motion to dismiss the complaint. As set forth below, both motions are granted in their entirety.

The plaintiff in this matter, Lisa Broad, is a former teacher who had been employed by defendant BOE. Defendant Michael Lazan was an arbitrator who acted as the hearing officer in a disciplinary hearing brought by the BOE against Mrs. Broad. Pursuant to Mr. Lazan's Opinion and award in the disciplinary hearing, Mrs. Broad's employment was terminated. The plaintiff herein previously brought an Article 78 proceeding in this court challenging the arbitral award. The Supreme Court granted Mrs. Broad's petition (DOE Exh. C). However, upon appeal, the Appellate Division, First Department reversed and reinstated the arbitrator's determination (DOE Exh. D).

On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction. We 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]).

To the extent that the complaint alleges fraud, it fails to do so with the required particularity (CPLR § 3016[b]). "The elements of a cause of action for fraud require a material misrepresentation of a fact, knowledge of its falsity, an intent to induce reliance, justifiable reliance by the plaintiff and damages" (*Eurycleia Partners, LP v Seward & Kissel, LLP*, 12 NY3d 553, 559 [2009]). Here, the plaintiff fails to identify any material misrepresentation of fact that she relied upon. To the extent that the complaint alleges misrepresentations of fact were made, they were not made to the plaintiff, who is the person alleging that she was damaged. Accordingly, the cause of action sounding in fraud must be dismissed. Likewise, the claim for fraudulent inducement must be dismissed as it has most of the same elements (*see Perrotti v Becker, Glynn, Melamed & Muffly LLP*, 82 AD3d 495, 498 [1st Dept 2011]) and the plaintiff does not indicate how she was allegedly induced to act on a misrepresentation. Therefore, this cause of action also must be dismissed.

Plaintiff contends that the proper procedures were not followed in that the school board didn't screen the charges to determine whether probable cause exists to bring a disciplinary proceeding and that this was concealed from her. However, as noted in the Arbitrator's Opinion and Award, the plaintiff moved to dismiss the disciplinary proceeding on this very basis (Plaintiff's Exh. A), and the motion was denied by Arbitrator Marc Winters on August 22, 2013 (*see* Lazan Exh. C). The plaintiff had ample opportunity to make any arguments regarding due process in her Article 78 proceeding challenging the opinion and award issued by Mr. Lazan –

which was upheld on appeal (DOE Exh. D). "Under the doctrine of res judicata, a party may not litigate a claim where a judgment on the merits exists from a prior action between the same parties involving the same subject matter. The rule applies not only to claims actually litigated but also to claims that could have been raised in the prior litigation" (*Mays v New York City Police Dept.*, 48 AD3d 372, 373 [1st Dept 2008]). The plaintiff had an opportunity to fully litigate the issue of her termination at the Article 78 proceeding. Therefore, the claims in the instant case are barred by res judicata (*see Barrett v City of New York*, 166 AD2d 241 [1st Dept 1990]).

Plaintiff's hearsay allegation regarding comments allegedly written in Mr. Lazan's notepad regarding a different arbitration, which occurred several years after plaintiff's hearing before Mr. Lazan, are not probative of any wrongdoing in the plaintiff's disciplinary hearing.

Furthermore, the complaint must be dismissed as it is barred by the statute of limitations. The conduct complained of, namely the arbitration hearing, took place in 2014. The instant case was not commenced until 2022, eight years later. The statute of limitations for fraud claims is six years (*see* CPLR § 214). The statute of limitations for claims against the BOE is one year (Edu Law § 3813[2-b]). Plaintiff's contention that defendants' actions constitute a continuing wrong because the decision to terminate her put a "problem code" in her personnel file, which remains to this day, is without merit. The doctrine is inapplicable where there is one tortious act complained of since the cause of action accrues in those cases at the time that the wrongful act first injured plaintiff and it does not change as a result of continuing consequential damages (*Henry v Bank of Am.*, 147 AD3d 599, 601 [1st Dept 2017]; *Blaize v New York City Dept. of Educ.*, 205 AD3d 871, 874 [2d Dept 2022]). "The distinction is between a single wrong that has continuing effects and a series of independent, distinct wrongs" (*Blaize, supra*). The alleged

wrongs here, the termination of the plaintiff and placement of a "problem code" in the plaintiff's personnel file, are one-time acts with continuing consequences, not a series of independent, distinct wrongs. Furthermore, plaintiff has not shown discriminatory conduct related to a protected class which would warrant a finding of a continuing wrong under the caselaw cited by plaintiff in her opposition to the motions.

Arbitral immunity shields defendant Lazan from liability for acts performed in his arbitral capacity and the First Department decision (DOE Exh. D) is res judicata on the issue of his jurisdiction (*see John St. Leasehold, L.L.C. v Brunjes*, 234 AD2d 26, 26 [1st Dept 1996]).

For the reasons set forth hereinabove, it is hereby

ORDERED that the motion of defendant Lazan (motion sequence 001) to dismiss the complaint against him is GRANTED in its entirety; and it is further

ORDERED that the motion of defendant Department of Education of the City of New York (motion sequence 002) to dismiss the complaint against him is GRANTED in its entirety; and it is further

ORDERED that the complaint is dismissed.

2/8/2023
DATE

NICHOLAS W. MOYNE, J.S.C.

CHECK ONE:	X	CASE DISPOSED		NON-FINAL DISPOSITION			
	X	GRANTED	☐ DENIED	GRANTED IN PART		☐ OTHER	
APPLICATION:		SETTLE ORDER		SUBMIT ORDER			
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT		☐ REFERENCE	