

Polselli v New York City Dept. of Educ.

2023 NY Slip Op 32611(U)

July 28, 2023

Supreme Court, New York County

Docket Number: Index No. 450254/2019

Judge: J. Mabelle Sweeting

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. J. MACHELLE SWEETING PART 62

Justice

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JAYSON POLSELLI,

Plaintiff,

- v -

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

Defendants.

-----X

INDEX NO. 450254/2019

MOTION DATE 04/28/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32

were read on this motion to/for JUDGMENT - SUMMARY.

Pending before the court is a motion in which plaintiff seeks an order: (1) pursuant to Civil Practice Law and Rules (“CPLR”) 5003 seeking a judgment with interest against the CITY OF NEW YORK and NEW YORK CITY DEPARTMENT OF EDUCATION (collectively, the “City”) and the City’s attorneys ZACHARY CARTER, ESQ CORP COUNSEL in the amount of \$109,000.00, based on their failure to comply with a settlement effectuated on May 12, 2022; and (2) sanctioning the CITY OF NEW YORK and their attorneys ZACHARY CARTER, ESQ CORP COUNSEL in the amount of \$100,000.

In the motion, plaintiff argues that a settlement was reached with the City for the total amount of \$100,000. A stipulation of settlement was signed by all parties on May 22, 2022, and a release was signed on June 7, 2022. Plaintiff argues that there were “repeated emails and excessive unnecessary paperwork your affirmant had to do, with still no production of the settlement check pursuant to CPLR 5003and 22 NYCRR 130-1.1.”

In opposition, the City argues that plaintiff's motion should be denied as premature, because the ninety (90) days the City is afforded to effectuate payment pursuant to CPLR 5003-a(b) has not yet elapsed. Specifically, the City argues that on May 12, 2022, the same day that plaintiff and the City came to a settlement agreement, counsel for the City sent plaintiff's counsel closing papers via email. However, it was not until a full seven (7) months later, on December 21, 2022, that counsel for plaintiff finally sent closing papers and releases to the City. The City argues that on December 29, 2022, a mere eight (8) days after the city received the closing papers and releases, Assistant Corporation Counsel Kimberly Roc, Esq., informed plaintiff, via email, that the closing papers and releases sent to the City were incomplete. Counsel for plaintiff failed to respond, and it was Attorney Roc who followed up again, on January 27, 2023.

The City argues that on February 16, 2023, plaintiff's counsel again forwarded documents to the City, but five days later, on February 21, 2023, Attorney Roc again informed plaintiff's counsel that the documents were incomplete. It was not until March 8, 2023, that plaintiff's counsel finally submitted the correct and complete documents, and two days later, on March 10, 2023, Attorney Roc for the City informed plaintiff's counsel that the papers were "undergoing final review."

The City argues that pursuant to CPLR 5003-a(b), the City, as a municipality, is afforded ninety (90) days to effectuate payment, and that this ninety-day period does not begin until the municipality has received "duly executed release and stipulation discontinuing action executed on behalf of the settling plaintiff." Here, the City argues, the 90-day window started on March 8, 2023, which means that the City had until June 6, 2023 to effect payment. Plaintiff's motion was filed on April 28, 2023, and is therefore is premature and should be denied in its entirety.

Conclusions of Law

CPLR 5003-a(b) provides, in part:

When an action to recover damages has been settled and the settling defendant is a municipality or any subdivision thereof, or any public corporation that is not indemnified by the state, it shall pay all sums due to any settling plaintiff **within ninety days of tender, by the settling plaintiff to it, of duly executed release and a stipulation discontinuing action** executed on behalf of the settling plaintiff [...]


Here, the City attached to its opposition papers copies of the correspondence described above, between the City and plaintiff's counsel (NYSCEF Docs. 28, 29, 30, 31). Further, plaintiff did not file any Reply,¹ so the timeline as set forth in the City's opposition papers is undisputed.

Plaintiff's counsel did not tender the duly executed release and a stipulation discontinuing action until March 8, 2023, and accordingly, the City had until June 8, 2023 to pay all sums due. Plaintiff's motion, filed on April 28, 2023, was therefore premature, and is being denied on these grounds. The court further notes that the City is correct in arguing that even without considering the arguments made in the opposition papers, plaintiff's motion is deficient on its face, as plaintiff failed to state in his motion the date on which the release and stipulation of discontinuance were sent to the City.

¹ Courtesy e-mails from the court were sent to plaintiff's counsel on May 30, 2023 and June 6, 2023, inquiring about whether a Reply was intended. Plaintiff's counsel did not respond to either email.

Given the above, it is hereby:

ORDERED that this motion is **DENIED** without prejudice with leave to re-file as the dates set forth in the motion papers have since lapsed.

<u>7/28/2023</u> DATE		 J. MACHELLE SWEETING, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> REFERENCE