

**Watson v Metropolitan Tr. Auth.**

2023 NY Slip Op 34077(U)

November 14, 2023

Supreme Court, Kings County

Docket Number: Index No. 516086/2022

Judge: Ingrid Joseph

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This opinion is uncorrected and not selected for official publication.

At an IAS Part 83 of the Supreme Court of the State of New York held in and for the County of Kings at 360 Adams Street, Brooklyn, New York, on the 14<sup>th</sup> day of November, 2023.

PRESENT: HON. INGRID JOSEPH, J.S.C.  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

-----X  
MYLES WATSON,

Index No.: 516086/2022

Plaintiff,

-against-

**DECISION AND ORDER**

METROPOLITAN TRANSIT AUTHORITY, NEW YORK CITY TRANSIT AUTHORITY,

Defendants.  
-----X

The following e-filed papers considered herein:

NYSCEF Doc. Nos.

Notice of Motion/Affirmation in Support/Memorandum of Law/ Exhibits Annexed.....	5-20
Memorandum of Law in Opposition/Exhibits Annexed.....	23-24
Memorandum of Law in Reply.....	25

Defendants Metropolitan Transportation Authority (s/h/a Metropolitan Transit Authority (“MTA”)) and New York City Transit Authority (“NYCTA”) (collectively, “Defendants”) move for an order, pursuant to CPLR 3211(a)(1), (a)(5) and (a)(7) to dismiss Plaintiff Myles Watson’s (“Plaintiff”) complaint. Plaintiff opposes the motion on the grounds that Defendants have failed to accommodate or even engage in cooperative dialogue to determine whether Plaintiff could be accommodated to use medical marijuana.

On or about April 2015, Plaintiff was appointed by NYCTA as a Telephone Maintainer, a title subject to Department of Transportation, Federal Transit Administration drug and alcohol testing regulations (a “Covered Title”). The title Telephone Maintainer is represented by Transport Workers Union of America, Local 100 (“TWU”). NYCTA and TWU are parties to a collective bargaining agreement, which incorporates Federally-mandated controlled substances testing requirements. Upon his appointment, Plaintiff received an information package that included two documents related to drug and alcohol rules and testing. One of these documents warned that those with a Covered Title would be removed from their duty following a positive test and dismissed after a second positive test. In

March 2019, Plaintiff underwent a random drug test and tested positive for marijuana. Plaintiff was suspended and required to attend a drug counseling program, which he completed and was allowed to return to work. In October 2020, Plaintiff failed a second drug test by testing positive for marijuana.<sup>1</sup> As a result, NYCTA issued a disciplinary notification seeking Plaintiff's dismissal. Subsequently, NYCTA, TWU and Plaintiff entered into a Stipulation and Agreement (the "Disciplinary Agreement"), wherein Plaintiff agreed to waive any and all claims associated with the disciplinary grievance. In addition, the Disciplinary Agreement provided that Plaintiff would be "dismissed with the right to restoration to an available budgeted non safety sensitive position." Following completion of an Employment Assistance Program, Plaintiff returned to work at NYCTA as a Cleaner, a non-Covered Title.

Plaintiff commenced this action against Defendants alleging that he has a disability and with a medical marijuana accommodation, could have performed the work of a Telephone Maintainer. Since Defendants allegedly did not engage Plaintiff in a cooperative dialogue and arbitrarily rejected his request for a reasonable accommodation, Plaintiff asserts that he has suffered economic damages, pain and suffering, and psychological injuries. In his complaint, Plaintiff includes eight causes of action: (1) disability discrimination in violation of New York State Executive Law ("Executive Law") § 296; (2) hostile work environment in violation of Executive Law § 296; (3) disability discrimination in violation of New York City Administrative Code ("Administrative Code") § 8-107; (4) hostile work environment in violation of Administrative Code § 8-107; (5) failure to engage in cooperative dialogue in violation of Administrative Code § 8-107; (6) strict liability in violation of Administrative Code § 8-107 (13) (b); (7) failure to provide reasonable accommodation in violation of New York Health Law §3369, New York City Administrative Code § 8-101 et seq. and New York State Executive Law § 296 et. seq.; and (8) violation of Administrative Code § 8-502 (a).

Defendants now move to dismiss Plaintiff's complaint on three grounds: (a) pursuant to CPLR 3211 (a)(1) and (5), Plaintiff's claims arise from the disciplinary grievance process and are thus barred by the release in the Disciplinary Agreement; (b) pursuant to CPLR 3211 (a)(7), failure to state a cause of action since (i) state law does not protect those that require an accommodation that prevents them from meeting an essential job requirement and (ii) the complaint does not establish the requisite level

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<sup>1</sup> Plaintiff alleges that he was involved in a car accident in 2017 and began using marijuana to treat his pain and stomach issues. Plaintiff claims that he had been pre-diagnosed with Chron's disease. He began to use cannabidiol after a second car accident. Plaintiff obtained a medical marijuana card after the two failed drug tests (NY St Cts Elec Filing [NYSCEF] Doc No. 1).

inference of discrimination; and (c) complaint should be dismissed as against MTA because it is not Plaintiff's employer and thus, is an improper party.

In opposition, Plaintiff argues that he could have performed the essential functions of his employment with a medical marijuana accommodation. Moreover, Plaintiff contends that Defendants have not argued that it would create a hardship on them to accommodate Plaintiff's disability. Plaintiff alleges that Defendants' documentary evidence is inadmissible because it was not properly authenticated. Plaintiff further argues that the waiver or release in the Disciplinary Agreement is unenforceable because Plaintiff was forced to sign it without consulting an attorney and was under the impression that if he did not sign it, he would be terminated. In addition, Plaintiff asserts that since most of his claims continue to date, it would not be covered by the waiver.

The Court addresses the portion of Defendants' motion seeking dismissal under CPLR 3211 (a)(1) and (5). Pursuant to CPLR 3211(a)(1), a complaint will only be dismissed if there is documentary evidence that "utterly refutes the factual allegations of the complaint and conclusively establishes a defense to the claims as a matter of law" (*Granada Condo. III Ass'n v Palomino*, 78 AD3d 996, 996 [2d Dept 2010]). For evidence to be considered documentary, it must be unambiguous, authentic and undisputed (*Fontanetta v Doe*, 73 AD3d 78, 86 [2d Dept 2010] [internal citation omitted]). Where a motion to dismiss under CPLR 3211(a)(5) is based on a release, it will be denied where fraud or duress in its procurement is alleged (*Farber v Breslin*, 47 AD3d 873, 877 [2d Dept 2008]; *Seff v Meltzer, Lippe, Goldstein & Schlissel, P.C.*, 55 AD3d 592, 593 [2d Dept 2008]).

Here, Plaintiff argues that Defendants' documentary evidence, including the collective bargaining agreement and Disciplinary Agreement should not be considered. The crux of Plaintiff's argument is that Defendants failed to properly authenticate them. As to the collective bargaining agreement, Defendants indicate that it should be considered as it is referenced in Plaintiff's complaint and is publicly available. The Court agrees (*see All. Network, LLC v Sidley Austin LLP*, 43 Misc 3d 848, 852 n 1 [Sup Ct, NY County 2014] [documents referenced in complaint can be considered]; *265 W. 34th St., LLC v Chung*, 47 Misc 3d 1219[A] [Sup Ct, NY County 2015] [records referenced in the complaint may be used in CPLR 3211 [a] [7] motion]), *adhered to on reargument sub nom. 265 W. 34th St., LLC v Joon Sik Chung* [Sup Ct, NY County 2015]). As to the Disciplinary Agreement, the Court finds Plaintiff's argument unpersuasive (*see Phillips v Taco Bell Corp.*, 152 AD3d 806, 807 [2d Dept 2017] [documentary evidence includes contracts, "the contents of which are essentially undeniable"]; *Thierry v BAM GO Devs., LLC*, 59 Misc 3d 1203[A] n 2 [Sup Ct, NY County 2018] [rejecting argument that contract should not consider contract that was not authenticated where, in part, it was not shown to be inaccurate, incomplete or defective]).

The Court next addresses whether the Disciplinary Agreement bars the claims in Plaintiff's complaint. The Disciplinary Agreement contains a waiver and release provisions wherein Plaintiff "waives any and all claims associated with this Grievance" and Plaintiff and his union TWU releases NYCTA "from any and all claims, whether at law, in equity or arising by virtue of contract which they may have or which they may have had heretofore in connection with [the] underlying" disciplinary proceeding. Plaintiff argues that the Disciplinary Agreement is ambiguous and unrelated to the claims in Plaintiff's complaint, is unconscionable because of unfair bargaining power, was signed under economic duress and was not knowingly and voluntarily entered into.

"[T]he meaning and coverage of a general release necessarily depends upon the controversy being settled and upon the purpose for which the release was given" (*Dillon v Dean*, 236 AD2d 360, 360 [2d Dept 1997]). Plaintiff contends that the Disciplinary Agreement related to the grievance and labor relations and fails to definitively state that he was waiving any claims under state and city discrimination laws. Nonetheless, a release need not mention every possible claim under every possible law (*Skluth v United Merchants & Mfrs., Inc.*, 163 AD2d 104, 107 [1st Dept 1990] ["no legal authority exists for the proposition that a release must expressly mention a discrimination claim in order to be valid and binding with respect thereto"]). The Court agrees with Defendants' contention that Plaintiff's claims arise from the application of the disciplinary penalty resolving the disciplinary proceeding: removal from Covered Title, removal pending completion of Employment Assistance Program, and restoration to a non-Covered Title. Plaintiff cannot reasonably contest that his discrimination claims arise from the outcome of the Disciplinary Agreement, which was entered into after Plaintiff alleged that he was treating his medical conditions with marijuana and after he presented a medical marijuana card.

Moreover, even if Defendants threatened to terminate Plaintiff if he did not sign the Disciplinary Agreement, this does not amount to coercion or duress (*see Hopkins v Governale*, 222 AD2d 435, 436 [2d Dept 1995] ["It is well settled that a threat to do that which one has the legal right to do does not constitute duress"] [internal citations omitted]; *Mason v City of New York*, 2011 WL 3664602 [Sup Ct, NY County 2011]). Plaintiff's further arguments that the waiver is unconscionable because of unfair bargaining power and that he did not knowingly and voluntarily entered into the Disciplinary Agreement are unavailing (*see Sepulveda v Long Island State Park & Recreation Comm'n*, 123 AD2d 703, 704 [2d Dept 1986] [affirming lower court's finding that waiver was open, knowing and voluntary where petitioner did not allege his signature was obtained involuntarily or that he was denied assistance of union representative, who also signed the settlement agreement]; *Miller v New York State Dep't of Corr. Servs.*, 126 AD2d 831, 832 [3d Dept 1987], *affd*, 69 NY2d 970 [3d Dept

1987]; *Matter of Clift v City of New York, NYC Transit Authority, Manhattan and Bronx Surface Transit Authority, MTA*, 2009 NY Slip Op 30917[U] [Sup Ct, NY County 2009]). In addition, courts have upheld agreements waiving statutory and constitutional rights (*New Brunswick Theological Seminary v Van Dyke*, 184 AD3d 176, 183 [2d Dept 2020] [internal citations omitted]; see *People ex rel. McLaughlin v Bd. of Police Comm'rs of City of Yonkers*, 174 NY 450, 456 [1903] ["It is well settled by authority that a man may waive any right that he has, whether secured to him by contract, conferred upon him by statute, or guaranteed him by the Constitution"]).

Accordingly, it is hereby

ORDERED, that Defendants' motion (Mot. Seq. No. 1) is granted and Plaintiff's complaint is dismissed.

All other issues not addressed herein are either without merit or moot.

This constitutes the decision and order of the Court.

  
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HON. INGRID JOSEPH, J.S.C.