

King v City of New York

2023 NY Slip Op 34311(U)

December 11, 2023

Supreme Court, New York County

Docket Number: Index No. 150749/2018

Judge: Judy H. Kim

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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. JUDY H. KIM **PART** **05RCP**

Justice

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SHARON T KING,

Plaintiff,

- v -

CITY OF NEW YORK,

Defendant.

-----X

INDEX NO. 150749/2018

MOTION DATE 08/01/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 17, 18, 19, 20, 42, 43, 44, 45, 46, 47, 48 were read on this motion for DISMISSAL.

Upon the foregoing documents, defendant’s motion to dismiss this action is denied for the reasons set forth below.

On or about February 6, 2017, plaintiff commenced a lawsuit against her employer, the City of New York’s Administration for Children's Services, in the United States District Court of the Eastern District of New York, index number 1:17-cv-00701-LDH-LB (the “Federal Action”). In the Federal Action, she alleged that she had been the victim of disparate treatment in the terms and conditions of her employment in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17, and the New York State and City Human Rights Laws (NYSCEF Doc. No. 25 [First Am. Compl.]). The allegations in the Federal Action covered a period that ended on March 28, 2015.

Plaintiff then commenced this action in January 2018, asserting a disability discrimination claim against the City of New York (the “City”) under the New York City Human Rights Law based on allegations that after suffering a work-related injury she had been out of work

continuously since August 31, 2016 and that ACS had refused her August 28, 2017 request to return to work with reasonable accommodation and instead terminated her employment on November 2, 2017.

In June 2018, plaintiff settled the Federal Action for \$50,000.00, as consideration for which plaintiff signed a General Release (the “Release”) dated June 4, 2018. The Release provides, in pertinent part, that plaintiff:

hereby release and discharge the Defendants ... from any and all claims, liabilities or causes of action which were or may have been asserted by me against the Released Parties based upon anything that has happened from the beginning of the world up to now and including the date of the execution of this General Release, including, but not limited to: (i) any and all liability, claims, or rights of action which were or could have been alleged by me in the above-referenced action arising out of the events alleged in the Complaint and Amended Complaint in this action...

The City now moves to dismiss this action pursuant to CPLR §§3211(a)(1) and (a)(5), arguing this action is barred by terms of Release. Plaintiff opposes.

DISCUSSION

“A release is a contract, and its construction is governed by contract law” (Kulkarni v. Arredondo & Co., LLC, 151 .D3d 705, 706 [2d Dept 2017] [internal quotations omitted]). As such, “a release that is complete, clear, and unambiguous on its face must be enforced according to the plain meaning of its terms” (Centro Empresarial Cempresa S.A. v. América Móvil, S.A.B. de C.V., 17 NY3d 269, 276 [2011] [internal citations and quotations omitted]). “Generally, a valid release constitutes a complete bar to an action on a claim which is the subject of the release” (Id.).

The City asserts that the broad language of the Release—specifically that it expressly releases the City of New York and ACS from “any and all other liability, claims or rights of action that may exist or arise up to and including the date that this General Release is signed” which period included the commencement of this action—bars this action. The Court disagrees.

Where a release includes an omnibus clause that “all claims and demands whatsoever” are being discharged yet also contains “specific recitals as to the claims being released,” then “the general words of a release are limited by a recital of the particular claim” (Maxwell Partners, L.L.C. v Bldg. Studio, LLP, 32 AD3d 321, 323-24 [1st Dept 2006] quoting Herman v Malamed, 110 AD2d 575, 577 [1985]). Applying this principle to the case at bar, the broad “omnibus” clause of the Release ostensibly releasing “any and all claims, liabilities or causes of action which were or may have been asserted by me against the Released Parties based upon anything that has happened from the beginning of the world up to now and including the date of the execution of this General Release” is limited by the Release’s subsequent clause to claims that “were or could have been asserted based on the facts alleged in the complaints filed in the Federal Action.”

As the factual recitation in the complaints in the Federal Action end in March 2015, while the events at issue here arose between August 31, 2016 and November 2, 2017, plaintiff could not have asserted the claims here based upon either of the complaints filed in the Federal Action. Accordingly, the Release does not bar this action (Id.; see also Winkler v Alex, 21 Misc 3d 1146(A) [Sup Ct, NY County 2008]).

Accordingly, it is

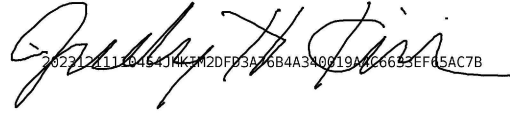
ORDERED that defendant’s motion to dismiss this action is denied; and it is further

ORDERED that within fifteen days of the date of this decision and order counsel for the plaintiff shall serve a copy of this decision and order, with notice of entry, upon defendant as well as the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made 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).

This constitutes the decision and order of the Court.



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12/11/2023
DATE

HON. JUDY H. KIM, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: