

Barnett v New York City Dept. of Educ.

2023 NY Slip Op 34828(U)

November 2, 2023

Supreme Court, Kings County

Docket Number: Index No. 523142/2017

Judge: Gina Abadi

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, City Part 7 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof at 360 Adams St., Brooklyn, New York on the 2nd day of November 2023.

P R E S E N T:

HON. GINA ABADI,
J.S.C.

JORDAN BARNETT,

Plaintiff,

Index No.: 523142/2017
Motion Seq: 5

-against-

INTERIM
DECISION/ORDER

THE NEW YORK CITY DEPARTMENT OF
EDUCATION, AND STEVE DORCELY, in his
individual and official capacity,

Defendants.

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of this motion:

<u>Papers</u>	<u>NYSCEF Numbered</u>
Notice of Motion/Cross Motion/Order to Show Cause and Affidavits (Affirmations) Annexed.....	70 – 81
Opposing Affidavits (Affirmations).....	83
Reply Affidavits (Affirmations).....	84
Other.....	

Upon the foregoing cited papers and after oral argument, the Interim Decision/Order on this motion is as follows:

Defendant Steve Dorcelly, in his individual and official capacity (“defendant”), moves, motion sequence five, for summary judgment dismissing the complaint of plaintiff Jordan Barnett (“plaintiff”) against him.

The branch of defendant's motion which is for summary judgment dismissing plaintiff's fifth cause of action for defamation as against him is *granted without opposition*.¹

The *remaining branches* of defendant's motion are *denied with leave to renew*, pursuant to 22 NYCRR § 202.8-g (e),² and subject to compliance with 22 NYCRR § 202.8-g (a) as to defendant-movant, and with 22 NYCRR § 202.8-g (b) as to plaintiff-opponent; *provided* that defendant's statement of undisputed facts must be personally verified by him under the penalty of perjury (rather than by the Corporation Counsel which is defending him in this action).³

¹ See Plaintiff's Memorandum of Law in Opposition, dated December 12, 2022, at 1 n 1 ("To the extent advanced within Plaintiff's pleadings, Plaintiff hereby withdraws any claim for defamation . . ."). NYSCEF Doc No. 83.

² 22 NYCRR § 202.8-g (e) provides, in relevant part, that "[i]n the event that the proponent of a motion for summary judgment fails to provide a statement of undisputed facts though required to do so, *the court* may order compliance and adjourn the motion, *may deny the motion without prejudice to renewal upon compliance*, or may take such other action as may be just and appropriate" (emphasis added).

³ Although credibility determinations are not made at the summary-judgment stage, the parties' diametrically opposing positions as to whether they had any type of sexual relations with each other makes it appropriate under the particular circumstances of this sexual-discrimination, *quid pro quo* case for the Court to direct that defendant personally (rather than the Corporation Counsel representing him) swear to the truth of the undisputed facts under the penalty of perjury, *specifically including* whether he did (or did not) – irrespective of his then-married status – ever have any of type of sexual relations with plaintiff and, if so, the approximate period of time in which such relations occurred. *Compare Babcock v Frank*, 729 F Supp 279, 288 (SD NY 1990) ("The allegations that [plaintiff's] supervisor . . . implored her to love him again and that he couldn't stand seeing her without being intimate with her, when coupled with his contemporaneous threat to destroy her career at the USPS and his subsequent issuance of a disciplinary letter against her, are more than sufficient to raise an inference in a reasonable person that [plaintiff's supervisor] intended to use – and did use – his supervisorial authority to blackmail [her] into again accepting his sexual advances. Those allegations comprise a claim of *quid pro quo* sexual harassment. [Plaintiff], after ending her relationship with [her supervisor], 'had the right, like any other worker, to be free from a sexually abusive environment, and to reject her employer's sexual advances (footnote continued)

On renewal, the following additional papers must be submitted, by either party (with the exception of item “5” below which must be submitted by the Corporation Counsel), to assist the Court in determining the outstanding branches of defendant’s motion:

(1) a complete set of *plaintiff’s version* of her emails to defendant, which version she produced to her counsel (rather than the version of plaintiff’s emails which defendant had extracted/printed out on his own and then produced to the Corporation Counsel);⁴

(2) combined Exhibits “A” through “X” introduced at plaintiff’s and defendant’s respective pretrial depositions;

(3) combined Exhibits “7” through “13” introduced at defendant’s pretrial deposition;

(4) plaintiff’s complaint to the Office of Equal Opportunity & Diversity Management which she filed on (or about) April 10, 2017; and

(5) an affidavit from an individual with knowledge whether, between January 1, 2010 and December 31, 2015, the NYC DOE maintained in place a policy, rule, or regulation prohibiting (or disapproving of) sexual relations between its senior and junior personnel (such as, without limitation, a male school principal and his female assistant school principal who are both working in, or are assigned to, the same school in Brooklyn, New York).

without threat of punishment.”) (internal citation omitted) *with Mauro v Orville*, 259 AD2d 89, 92 (3d Dept 1999) (“discrimination against an employee on the basis of a failed voluntary sexual relationship does not [in and] of itself constitute discrimination because of sex”), *lv denied* 94 NY2d 759 (2000).

⁴ *See e.g. Gregorian v New York Life Ins. Co.*, 211 AD3d 711, 714 (2d Dept 2022) (at the summary-judgment stage, the evidence is “viewed in the light most favorable to the plaintiff, with all reasonable inferences resolved in her favor”).

To reflect the remaining defendant and the prior dismissal of, The New York City Department of Education, from this action by stipulation, dated April 17, 2018 (NYSCEF Doc No. 10), the caption is amended to read in its entirety as follows:

JORDAN BARNETT,

Plaintiff,

Index No. 523142/2017

-against-

STEVE DORCELY, in his individual and official capacity,

Defendant.

The foregoing constitutes the Interim Decision/Order of this Court.

ENTER:


HON. GINA ABADI
J.S.C.

HON. GINA ABADI
J.S.C.

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KINGS COUNTY CLERK
FILED