

Hubbard v New York State Off. of Mental Health
2023 NY Slip Op 35134(U)
June 20, 2023
Supreme Court, Oneida County
Docket Number: Index No. EFCA2011-000353
Judge: William F. Ramseier
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At a term of Supreme Court held in and
for the County of Oneida, in the City of
Utica, New York on the 15th day of
June, 2023.

PRESENT: HONORABLE WILLIAM F. RAMSEIER
Supreme Court Justice

STATE OF NEW YORK

SUPREME COURT COUNTY OF ONEIDA

JOSEPH H. HUBBARD,

Plaintiff,

ORDER

-vs-

Index No. EFCA2011-0353

NEW YORK STATE OFFICE OF MENTAL
HEALTH; CENTRAL NEW YORK PSYCHIATRIC
CENTER; DONALD SAWYER; COREY CONLEY;
MAUREEN BOSCO; PATRICIA BARDO; AND
JOHN DOES(S) AND JANE DOES(S),

Defendant.

Plaintiff, Joseph H. Hubbard, has moved for an order reinstating and allowing the
First, Second, and Fifteenth Causes of Action in the Amended and Supplemental
Complaint to be decided by the jury in the re-trial of this action. Defendants oppose the
motion.

The Court has considered all documents filed in the New York Courts Electronic
Filing system (NYSCEF).

First, the Court will address the procedural posture of this matter. This action was commenced on February 14, 2011 when Plaintiff filed his Summons with Notice with the Oneida County Clerk. A Complaint was served on April 26, 2011. An Amended and Supplemental Complaint was served on April 11, 2013 and thereafter filed on April 12, 2013.

A jury trial was held before Judge David A. Murad in December 2018. Prior to trial, the parties stipulated that the First Cause of Action would be heard in the Court of Claims. At trial, Plaintiff's Amended and Supplemental Complaint was dismissed in its entirety by judgment entered March 14, 2019. Plaintiff appealed and, in a decision dated March 19, 2021, the Fourth Department Appellate Division modified on the law by reinstating the third through sixth and ninth through twelfth causes of action except insofar as asserted against Defendant Carli, and granted a new trial on those causes of action and affirmed the judgment as modified.

With respect to the Second and Fifteenth Causes of Action, this Court finds that the causes of action were dismissed at trial and the dismissal was affirmed by the Appellate Division. Therefore, the Second and Fifteenth Causes of Action are no longer properly before this Court and will not be presented to the jury.

With respect to the First Cause of Action, Plaintiff argues that the United States Supreme Court decision in *Torres v. Texas Dept. of Public Safety*, 142 S. Ct. 2455 (2022), decided after the Appellate Division's review, represents an intervening change of law to

be applied retroactively. Plaintiff submits that the decision in *Torres* is good cause for the Court to vacate the pre-trial stipulation with respect to the First Cause of Action and restore the same.

The Court has reviewed *Torres v. Texas Dept. of Public Safety* and finds that it is inapplicable to the case at bar. In *Torres*, The Texas Department of Public Safety claimed sovereign immunity with respect to USERRA claims. There, the Court held that Texas agreed to waive its sovereign immunity with respect to USERRA claims when it ratified the Constitution and agreed their sovereignty would yield to the national power to raise and support the Armed Forces. *Torres v Texas Dept. of Pub. Safety*, 213 L Ed 2d 808, 142 S Ct 2455, 2466 (2022). The Court goes on to note that such a suit may proceed in a "State court of competent jurisdiction in accordance with the laws of the State." *Id.* at 2466, citing 38 USCA § 4323(b)(2).

The Appellate Division's prior decision in this matter is instructive, where it affirmed the dismissal of the Seventh and Fourteenth Causes of Action (against the same state agencies as alleged in the First and Fifteenth Causes of Action). There, the Court stated:

New York waived sovereign immunity from actions principally to recover money damages long ago on the condition that the claimants bring suit in the Court of Claims (see Court of Claims Act §§ 8, 9). Thus, the "[t]he Court of Claims has exclusive jurisdiction over actions for money damages against State agencies, departments, officials, and employees acting in their official capacity in the exercise of governmental functions" (*Byvalets v State of New York*, 171 AD3d 1125, 1126 [2d Dept 2019]; see *Morell v Balasubramanian*, 70 NY2d 297, 300 (1987)). (NYSCEF Doc. #4).

Accordingly, this Court lacks jurisdiction over the First Cause of Action.

It is therefore, ordered that Plaintiff's motion is DENIED.

Dated: June 20, 2023

Utica, New York

ENTER



WILLIAM F. RAMSEIER
Supreme Court Justice