

Ogboe v New York City Police Dept.

2024 NY Slip Op 34634(U)

September 24, 2024

Supreme Court, New York County

Docket Number: Index No. 100123/2023

Judge: Hasa A. Kingo

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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. HASA A. KINGO

PART 05M

Justice

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SAMANTHA OGBOE,

INDEX NO. 100123/2023

Plaintiff,

MOTION SEQ. 001, 002

- v -

NEW YORK CITY POLICE DEPARTMENT, TRAFFIC ENFORCEMENT DISTRICT ADMINISTRATION, DISTRICT COUNCIL 37 (AFSCME)

DECISION + ORDER ON MOTION

Defendant.

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In the present motions, Defendants District Council 37 ("DC37"), New York City Police Department ("NYPD"), and Traffic Enforcement ("TEDA") seek dismissal of Plaintiff Samantha Ogboe's ("Plaintiff") claims against them. Plaintiff opposes the motions. Upon review of the parties' submissions, the motions are granted.

BACKGROUND

Plaintiff was employed by the NYPD and sought a reasonable accommodation from the COVID-19 vaccine mandate based on religious grounds. Her request was denied on October 13, 2021, and she subsequently appealed this denial on October 26, 2021. Plaintiff was placed on leave without pay from October 1, 2021, to October 5, 2021, terminated on January 5, 2022, and then reinstated on January 10, 2022. Plaintiff contends that her union, DC37, failed to file a grievance on her behalf following the denial of her accommodation request, leading to her termination and subsequent reinstatement. On October 20, 2022, Plaintiff submitted a grievance to DC37, alleging that the union did not formally submit the grievance to her employer.

On October 4, 2023, Plaintiff initiated this action, serving a complaint upon DC37 Municipal Employees' Legal Services (MELS), which she claimed was proper service upon DC37. Plaintiff brings this action asserting claims against both DC37 for breach of fair representation and against the NYPD/Traffic Enforcement for religious discrimination, failure to accommodate, and challenges to the constitutionality of the vaccine mandate.

ARGUMENTS

DC37's Motion to Dismiss

DC37 moves to dismiss the complaint pursuant to CPLR §§3211(a)(2), (5), (7), and (8) on the grounds of lack of subject matter jurisdiction, failure to state a cause of action, statute of

limitations, and improper service. The union argues that it was not Plaintiff's employer, had no role in the decision to deny her accommodation request, and did not cause Plaintiff's alleged losses. Furthermore, DC37 asserts that the claim for breach of fair representation falls under the jurisdiction of the New York City Office of Collective Bargaining, not this court, and is barred by the statute of limitations.

NYPD/Traffic Enforcement's Motion to Dismiss

The NYPD and TEDA also move to dismiss the complaint under CPLR §3211(a)(7), arguing that Plaintiff's claims for religious discrimination, failure to accommodate, and coercion fail to state a cause of action. NYPD and TEDA further argue that Plaintiff's challenge to the vaccine mandate's constitutionality has been repeatedly rejected by courts, that she is time-barred from bringing an Article 78 proceeding to challenge the denial of her religious accommodation, and that her request for punitive damages must be dismissed as they are not recoverable against the City. Additionally, NYPD and TEDA argue that they are non-suable entities.

DISCUSSION

On motions to dismiss pursuant to CPLR §3211, the court accepts the facts as alleged in the complaint as true, accords the non-moving party the benefit of every possible favorable inference, and determines only whether the facts as alleged fit within any cognizable legal theory (*Morone v Morone*, 50 NY2d 481, 484 [1980]; *Rovello v Orofino Realty Co.*, 40 NY2d 633, 634 [1976]). Dismissal is warranted under CPLR §3211(a)(2) when the court lacks subject matter jurisdiction over the action. In addition, lack of standing by the plaintiff is grounds for dismissal under CPLR §3211(a)(5). Under CPLR §3211(a)(7), the court must accept the factual allegations as true and determine whether the allegations fit within any cognizable legal theory. Causes of action must relate to substantive claims for relief and cannot be based on collateral procedural devices like joinder or severance. Similarly, punitive damages should be pleaded as a prayer for relief, not as an independent cause of action. Finally, dismissal under CPLR §3211(a)(8) is appropriate when the court lacks personal jurisdiction over the defendant, often hinging on the proper service of process.

DC37's Motion to Dismiss

DC37's motion to dismiss is granted. Plaintiff's claims against DC37 fail for several reasons. First, the court lacks subject matter jurisdiction over Plaintiff's claim for breach of fair representation. Such claims fall exclusively within the purview of the New York City Office of Collective Bargaining, not this court (*see* NY Civil Service Laws §205.5[d] and NYC Admin Code §12-306[b][3]). Even if this court had jurisdiction, the statute of limitations for a duty of fair representation claim is four months, and Plaintiff did not commence this action until well beyond that period. Plaintiff was aware of the union's inaction regarding her grievance by 2022, yet she did not file this lawsuit until 2023, well past the statute of limitations.

Additionally, Plaintiff has failed to properly serve DC37. Service was made upon MELS, which is a separate legal entity from DC37. Proper service is a fundamental requirement for the

court to exercise jurisdiction, and Plaintiff's failure to effectuate proper service is fatal to her claims against DC37.

Lastly, Plaintiff's argument that DC37 failed to comply with the Collective Bargaining Agreement ("CBA") by not filing a grievance on her behalf is unavailing. The Union's decision not to file a grievance does not, on its own, constitute a breach of fair representation, particularly when Plaintiff has not demonstrated any arbitrary, discriminatory, or bad faith conduct on the part of the union (*Bergamine v. Patrolmen's Benev. Ass'n of City of New York, Inc.*, 202 AD2d 201, 202 [1st Dept 1994]).

NYPD/Traffic Enforcement's Motion to Dismiss

NYPD and TEDA's motion to dismiss is also granted. Plaintiff's claims for religious discrimination and failure to accommodate under the New York State Human Rights Law ("NYSHRL") and New York City Human Rights Law ("NYCHRL") are inadequately pleaded. Plaintiff has not provided facts supporting an inference of religious discrimination or that she was treated differently because of her faith. The mere denial of her accommodation request, without more, does not suffice to sustain a claim of religious discrimination.

Plaintiff's claim for coercion must also fail. Coercion requires some form of unlawful pressure or compulsion, yet Plaintiff has not alleged any facts suggesting that she was coerced into taking or refusing the vaccine. The decision not to receive the vaccine was her own, and the consequences of that decision, as administered by the NYPD, do not constitute coercion.

Regarding Plaintiff's challenge to the constitutionality of the vaccine mandate, this court concurs with the numerous other courts that have consistently upheld the mandate's constitutionality. Challenges to the vaccine mandate have repeatedly been rejected by courts, affirming that the mandate is neither arbitrary nor capricious and is well within the government's authority to protect public health. In matters of public health, agencies are entitled to a high degree of judicial deference when acting within their area of expertise (*C.F. v. NYC Dept. of Health & Mental Hygiene*, 191 AD3d 52, 69 [2d Dept 2020]).

Notwithstanding, any Article 78 claim Plaintiff could have asserted is now time-barred, as it was not filed within the four-month statute of limitations following the denial of her religious accommodation. In addition, under CPLR Article 78, the court's review is limited to determining whether an agency's decision was arbitrary, capricious, or lacked a rational basis. The standard of review requires that an agency's determination be upheld if it has a rational basis and is not arbitrary or capricious (*Matter of Consolation Nursing Home, Inc., v. Commr. Of New York State Dept. of Health*, 85 NY2d 326, 331-332 [1995]). Public health regulations, such as the vaccine mandate, have consistently been found to meet this standard.

Furthermore, the reviewing court's role is not to substitute its judgment for that of the agency but to determine if there is a rational basis for the agency's action (*Purdy v. Kreisberg*, 47 NY2d 354, 358 [1979]). Given the deference afforded to public health agencies and the ample judicial precedent upholding the vaccine mandate, Plaintiff's challenge lacks merit.

Finally, Plaintiff's request for punitive damages against the City is dismissed. As established by law, punitive damages are not recoverable against the City or its agencies, including the NYPD and TEDA. Moreover, the NYPD and TEDA, as non-suable entities, cannot be sued in their own capacity.

For the foregoing reasons, it is hereby

ORDERED that DC37's motion to dismiss is granted in its entirety, and the complaint against it is dismissed with prejudice; and it is further

ORDERED that the NYPD and Traffic Enforcement's motion to dismiss is likewise granted in its entirety, and the complaint against these defendants is dismissed with prejudice; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that should defendants have occasion to have other matters handled in this court, defendants are advised that any non-appearance where the court has not granted an adjournment agreed to by the parties will constitute a default and result in the immediate denial of defendants' motions with leave to renew.

This constitutes the decision and order of the court.

9/24/2024
DATE


HASA A. KINGO, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE