

**Civil Serv. Empls. Assn., Inc., Local 1000,
AFSCME, AFL-CIO v Town of Eastchester**

2024 NY Slip Op 35507(U)

August 7, 2024

Supreme Court, Westchester County

Docket Number: Index No. 65469/2021

Judge: Nancy Quinn Koba

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

To commence the statutory time period for appeals as of right [CPLR 5513(a)], you are advised to serve a copy of this order, with notice of entry upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
THE CIVIL SERVICE EMPLOYEES
ASSOCIATION, INC., LOCAL 1000, AFSCME,
AFL-CIO WESTCHESTER COUNTY LOCAL #860,
TOWN OF EASTCHESTER UNIT 9927 and
RALPH DEBENEDICTIS,

Plaintiffs,

-against-

THE TOWN OF EASTCHESTER and
RICHARD RUGGERIO,¹

Defendants.

-----X
QUINN KOBA, J.

By notice of motion (the "Motion"), defendants seek an order: (1) pursuant to CPLR 3212, dismissing the complaint; (2) striking plaintiffs' demand for a jury trial; and (3) granting such other and further relief as is just and proper. Plaintiffs oppose the Motion.

The following papers were considered on the Motion:

Papers

NYSCEF DOC. No.

Notice of Motion,	21-48
Statement of Material Facts,	
Affirmation in Support,	
Exhibits 1-20,	
Affidavit in support,	
Exhibits 1-3,	
Memorandum of Law in Support,	
Response to Defendants' Statement	49-50
of Material Facts,	

¹The surname is actually spelled "Ruggiero."

Memorandum of law in opposition

Memorandum of law in reply 51

Upon the foregoing papers, the Motion is determined as follows:

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

On or about October 21, 2021, plaintiffs commenced this breach of contract action by filing a summons and complaint. On October 28, 2021, defendant, Town of Eastchester (the "Town"), was served with a copy of the commencement papers through the Town Clerk as was defendant, Richard Ruggiero ("Ruggiero"), pursuant to CPLR 308(2). On January 19, 2022, issue was joined when defendants filed their joint answer with fifteen affirmation defenses.

This action arises from the Town's alleged breach of the collective bargaining agreement between the Town and CSEA, Local 1000 AFSCME, AFL-CIO (the "CBA")² by appointing Ruggiero to the promotional position of General Foreman in the Town's Highway Department over plaintiff, Ralph DeBenedictis ("DeBenedictis"), in violation of, *inter alia*, Articles 23.0 and 26.2 therein. DeBenedictis alleges that, on or about February 20, 2020, he was employed by the Town in the title of Skilled Motor Equipment Operator/Sanitation and was a member of plaintiff Civil Service Employees Association, Inc. ("CSEA"). On the same date, the Town posted a promotional opportunity for the position of General Foreman within its Highway Department. DeBenedictis and Ruggiero were the only two applicants for the position. DeBenedictis claims he was the more senior of the two job candidates with nearly 22 years of service with the Town; Ruggiero allegedly only had approximately 16 years of experience thereat. DeBenedictis also claims he was at least as qualified, or more qualified, than Ruggiero for the subject promotional position.

On or around February 27, 2020, DeBenedictis and Ruggiero were interviewed by Comptroller Dawn Donovan ("Donovan") and Highway Superintendent Rocco Latella ("Latella"). On or about February 28, 2020, Donovan requested that the Town Supervisor and Town Board appoint Ruggiero to the subject promotional position. On or about March 3, 2020, the Town Board appointed Ruggiero to the subject promotional position, effective March 6, 2020.

Thereafter, DeBenedictis invoked the provision governing

²The version of the CBA in effect from January 1, 2019 through December 31, 2021 applies to this action (NYSCEF Doc. No. 26).

disputes in the CBA, alleging that the Town violated the CBA by appointing Ruggerio, who had less seniority than DeBenedictis. The applicable provision(s) of the CBA were followed, including advisory arbitration. Following the arbitration hearing, the arbitrator issued an advisory decision on or about February 22, 2021, recommending the Town sustain DeBenedictis' dispute and that he be awarded a "make whole remedy," including appointment to the promotional position and differential pay retroactive to March 6, 2020. At the Town Board meeting held on March 17, 2021, the Town Board adopted a resolution rejecting the arbitrator's advisory decision.

With respect to filling positions covered under the CBA, the CBA provides, in relevant part, that:

23.0 It is the policy of the Town to promote from within whenever practicable. . . . Department Heads will first consider for promotion to vacancies those employees of the Town who are qualified. Employees equally qualified for a particular position shall be considered in order of their length of service.

26.2 Seniority shall be the determining factor for selection to positions where all other factors are equal.

The CBA also contains the procedures under Article XVII, Sections 17.0-17.4 to be followed in the event of certain disputes, including the circumstances giving rise to this action. It is undisputed that the said procedures therein were substantially followed.

ANALYSIS

Summary Judgment Standard

"On a motion for summary judgment, the facts must be viewed in the light most favorable to the non-moving party. Summary judgment is a drastic remedy, to be granted only where the moving party has tender[ed] sufficient evidence to demonstrate the absence of any material issues of fact and then only if, upon the moving party's meeting of this burden, the non-moving party fails to establish the existence of material issues of fact which require a trial of the action. The moving party's failure to make a prima facie showing of entitlement to summary judgment requires a denial of the motion, regardless of the sufficiency of the opposing papers" (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012] [internal quotations and citations omitted]). Once a prima facie showing has been made, however, the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient

to establish the existence of material issues of fact that require a trial for resolution or tender an acceptable excuse for the failure to do so; mere expressions of hope are insufficient to raise a genuine issue of fact (see *Zuckerman v City of New York*, 49 NY2d 557, 404 N.E.2d 718, 427 N.Y.S.2d 595 [1980]).

"It is not the function of a court deciding a summary judgment motion to make credibility determinations or findings of fact, but rather to identify material triable issues (or point to the lack thereof)" (*Vega v Restani Constr. Corp.*, 18 NY3d at 505 [internal citation omitted]). "[I]n deciding a motion for summary judgment, issue-finding, rather than issue-determination, is the key to the procedure" (*id.* [internal quotation marks and citation omitted]). Summary judgment is not warranted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility (see *Karel v Pizzorusso*, 215 AD3d 738 [2d Dept 2023]).

NY CLS Town § 65 ("Town Law § 65")

"Town Law § 65 (3) provides that no action shall be maintained against a town 'upon or arising out of a contract entered into by the town unless . . . a written verified claim shall have been filed with the town clerk within six months after the cause of action shall have accrued.' 'The filing of a notice of claim is thus a condition precedent to the maintenance of an action against a town arising out of the contractual relationship between a plaintiff and a town' (*McCulloch v Town of Milan*, 74 AD3d 1034, 1035, 907 NYS2d 19 [2010])" (*W.O.R.C. Realty Corp. v Town of Islip*, 104 AD3d 677, 678 [2d Dept 2013]).

Here, it is undisputed that the mandated notice of claim was never filed with the Town Clerk. Therefore, defendants seek dismissal of the complaint due to plaintiffs' failure to comply with Town Law § 65(3). Plaintiffs allege that the breach of contract action accrued on March 6, 2020, the effective date of Ruggiero's appointment to the General Foreman position. Ordinarily, the time to file the mandated notice of claim would have expired six months thereafter, on September 6, 2020. However, due to the COVID-19 pandemic, then-Governor Andrew Cuomo issued Executive Order No. 202.8 which suspended the running of civil statutes of limitations and various other time periods that affected the litigation process. This directive, as extended, remained in effect from March 20, 2020 until November 3, 2020. Pursuant thereto, plaintiffs' time to file the required notice of claim expired on

April 20, 2021.³ Accordingly, defendants have made a *prima facie* showing of their entitlement to judgment as a matter of law dismissing the complaint.

In opposition to defendants' *prima facie* showing, plaintiffs failed to raise any triable issues of material facts. Plaintiffs counter that the notice of claim requirement does not apply to this action because the complaint primarily seeks equitable relief and incidental monetary damages. However, all of the relief sought, including the declaratory relief, arises solely out of the CBA (see *W.O.R.C. Realty Corp. v Town of Islip*, 104 AD3d 677 [2d Dept 2013]). Moreover, plaintiffs' demand for monetary damages is not merely incidental to the equitable relief sought because the Complaint also seeks back pay and benefits for DeBendictis. Further, a claim for declaratory relief may not be asserted where, as here, it is duplicative of the breach of contract claim (see *Parcella v Town of Newburgh Volunteer Ambulance Corps. Inc.*, 164 AD3d 809 [2d Dept 2018]). "Accordingly, the filing of a notice of claim pursuant to Town Law § 65 (3) was a condition precedent to the maintenance of this action against the defendants (internal citation omitted), and the [] [plaintiffs'] undisputed failure to file a timely written notice of claim bars this action" (*W.O.R.C. Realty Corp. v Town of Islip*, 104 AD3d at 678; see *Mohl v Town of Riverhead*, 62 AD3d 969 [2d Dept 2009]). Therefore, summary judgment dismissing the complaint is warranted.

All other arguments raised on the Motion and evidence submitted in connection therewith have been considered by this Court, notwithstanding the specific absence of reference thereto.

Accordingly, it is hereby

ORDERED that the branch of defendants, The Town of Eastchester and Richard Ruggiero's, motion seeking summary judgment dismissing the complaint is granted and the motion is otherwise denied; and it is further

ORDERED that the Settlement Conference scheduled for August 8, 2024, is cancelled.

³ The six-month time frame in which to serve the mandated notice of claim upon the Town began to run again as of November 4, 2020. Six months from November 4, 2020 was May 4, 2021. However, 14 days of that six-month period had already elapsed prior to March 20, 2020; therefore, Court deducted 14 days from the six-month calculation, thereby resulting in a deadline of April 20, 2021 for plaintiffs to file the mandated notice of claim.

The foregoing constitutes the decision and order of this Court.

Dated: White Plains, New York
August 7, 2024

ENTER:



HON. NANCY QUINN KOBA, J.S.C.

TO: All Counsel VIA NYSCEF