Smith v Proud
2013 NY Slip Op 33509(U)
December 24, 2013
Supreme Court, New York County
Docket Number: 400903/2010
Judge: Lucy Billings

[* 1]

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: LUCY BILLINGS _____ PART 46
Justice

Index Number : 400903/2010
SMITH, QUANISHA
VS.
BERLIN, ELIZABETH
SEQUENCE NUMBER : 005
STAY PROCEEDINGS

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to 5, were read on this motion to/for a stay

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). 1-2
Answering Affidavits — Exhibits _____ | No(s). 3
Replying Affidavits _____ | No(s). 4-5

Upon the foregoing papers, it is ordered that ~~this motion is~~ :

The court denies defendant pro se's motion for a stay, pursuant to the accompanying decision. C.P.L.R. § 2201.

FILED
JAN 08 2014
COUNTY CLERK'S OFFICE
NEW YORK

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 12/24/13

Lucy Billings, J.S.C.
LUCY BILLINGS

1. CHECK ONE: ..... ☐ CASE DISPOSED ☑ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: .....MOTION IS: ☐ GRANTED ☑ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 46

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QUANISHA SMITH and ANTHONY COLAVECCHIO, Individually and on behalf of all others similarly situated,

Index No. 400903/2010

Plaintiffs

- against -

DECISION AND ORDER

KRISTIN M. PROUD, as Commissioner of the New York State Office of Temporary and Disability Assistance, and ROBERT DOAR, as Commissioner of the New York City Human Resources Administration,

Defendants

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APPEARANCES:

For Plaintiffs
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I. THIS ACTION

In this class action, plaintiffs are public assistance recipients who claim the notices issued by the New York City Human Resources Administration (HRA) when it charges that they have not complied with work requirements violate the New York

Social Services Law (SSL), its implementing regulations, and the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Plaintiff class members who receive assistance from the federal Supplemental Nutrition Assistance Program further claim that the notices violate federal regulations.

Plaintiffs specifically claim that the first notice issued, the Conciliation Notification, violates SSL § 341(1)(a), because the notice fails to set forth the instance of noncompliance or the necessary actions to avoid a reduction of public assistance. Plaintiffs claim this notice lacks examples of evidence to establish (1) an exemption from work requirements, (2) that noncompliance was unwillful, or (3) that noncompliance was with good cause, each of which would avoid a sanction.

When the conciliation process fails to resolve the charged noncompliance, plaintiffs claim that the second notice issued, the Notice of Decision, violates SSL § 341(1)(b). Specifically, they claim the notice similarly fails to set forth how or why noncompliance with work requirements was willful, how or why it was without good cause, and the necessary actions to avoid a reduction of assistance, as well as how the assistance recipient did not comply. Finally, plaintiffs claim this omitted information regarding the substance of evidence assistance recipients must present to avoid a punitive sanction compromises their rights to adequate notice provided by SSL §§ 22(12)(f) and (g) and 341(1), 18 N.Y.C.R.R. § 358-3.3, 7 C.F.R. § 273.13(a)(2),

and due process, to enable them to challenge the Notice of Decision at an administrative hearing.

II. STATE DEFENDANT'S MOTION

Defendant Proud of the New York State Office of Temporary and Disability Assistance moves to stay this action pending a decision on appeal of Puerto v. Doar, __ Misc. 3d __, 975 N.Y.S.2d 527 (Sup. Ct. N.Y. Co. 2013). That proceeding is by a petitioner different from the named plaintiffs here, albeit a member of the plaintiff class, against the same State and City parties who are defendants here.

In this action, plaintiffs challenge the adequacy of the notices' information regarding the reasons a recipient may show for failing to participate in a work activity that may avoid a reduction in assistance. Plaintiffs focus on the reasons that establish the failure was unwillful or with good cause.

In Puerto v. Doar, the petitioner has emphasized that establishing unwillfulness or good cause is not the only means to avoid a reduction in assistance. As this court held in that proceeding: "A recipient also may show, as petitioner maintains she does, that she did not fail or refuse to participate in her work activities at all." Puerto v. Doar, 975 N.Y.S.2d at 533. Therefore the court held that HRA's Conciliation Notification and Notice of Decision and the Social Services Law's implementing regulation 18 N.Y.C.R.R. § 385.11(a)(2), "insofar as they omit that a showing of compliance with . . . work activities is action a public assistance recipient may take to avoid a reduction in

assistance, violate SSL § 341(1)(a)." Puerto v. Doar, 975 N.Y.S.2d at 533.

Since the respondent Doar of HRA had not answered, however, the court ordered no declaratory or injunctive relief against him. Since the State respondent had answered and had promulgated the regulation and approved the Conciliation Notification and Notice of Decision used by the City respondent, upon converting the proceeding to a plenary action, C.P.L.R. § 103(b) and (c), the court did grant summary judgment awarding declaratory and injunctive relief against the State respondent on one issue. The court enjoined the State respondent (1) to amend 18 N.Y.C.R.R. § 385.11(a)(2) to require that a conciliation notice notify recipients of their right to show compliance with work activities and (2) from approving conciliation notices and notices of decision that fail to notify recipients of their right to show compliance with work activities. C.P.L.R. §§ 409(b), 3212(b) and (e); Puerto v. Doar, 975 N.Y.S.2d at 534-35. The court nevertheless recognized that the City respondent's answer with its administrative record or ensuing disclosure might show an amended Conciliation Notification and Notice of Decision that included the previously omitted information. Id. at 534.

As the first prong of the court's injunction is mandatory, rather than prohibitory like the second prong, the State respondent's appeal of that order automatically stays the first prong of the injunctive relief. C.P.L.R. § 5519(a)(1); Village of Chestnut Ridge v. Town of Ramapo, 99 A.D.3d 928, 930 (2d Dep't

2012). The appeal does not stay the prohibitory part of the order, the declaratory relief, the City respondent's answer, disclosure, further motions for dispositive relief, or proceeding on the other significant claims in that action quite apart from the notices, which are the sole issue here. Village of Chestnut Ridge v. Town of Ramapo, 99 A.D.3d at 930; In re Nile W., 64 A.D.3d 717, 719 (2d Dep't 2009); Ulster Home Care v. Vacco, 255 A.D.2d 73, 78 (3d Dep't 1999); White v. City of Jamestown, 242 A.D.2d 979 (4th Dep't 1997).

In this action, State defendant nonetheless has sought to stay the entire action, when plaintiffs only have been permitted to amend their complaint, defendants have not yet even answered that complaint, no disclosure has yet been conducted, and no dispositive motions even are pending. For this reason alone, when this action is far short of a dispositive determination, the broad relief State defendant seeks is unwarranted.

III. RELATEDNESS IS NOT A BASIS FOR A STAY.

State defendant relies on the assignment of Puerto v. Doar to the same justice presiding over this action based on relatedness. That relatedness was a determination in Puerto v. Doar made by one or more of the parties and not challenged by any other party.

Under C.P.L.R. § 2201, a pending appeal in one proceeding may warrant a stay in another action only where the parties, issues, and relief sought are "substantially identical" and if a stay will avoid the "duplication of effort, waste of judicial

resources, and possibility of inconsistent rulings," OneBeacon Am. Ins. Co. v. Colgate-Palmolive Co., 96 A.D.3d 541 (1st Dep't 2012), by reaching different conclusions from similar evidence. Morreale v. Morreale, 84 A.D.3d 1187, 1188 (2d Dep't 2011). See Asher v. Abbott Labs., 307 A.D.2d 211, 212 (1st Dep't 2003). Thus the assignment of two proceedings to the same justice based on their relatedness is actually a basis to deny a stay when one proceeding has advanced to an appeal, because the assignment based on relatedness serves the very same purposes as a stay serves. Moreover, insofar as Puerto v. Doar and this action may be related and disclosure in each may overlap, to allow Puerto v. Doar to proceed through disclosure, but stay this action from taking advantage of the opportunity to coordinate disclosure jointly, would promote duplication of effort and waste of resources, rather than avoid those consequences. See OneBeacon Am. Ins. Co. v. Colgate-Palmolive Co., 96 A.D.3d 541; Asher v. Abbott Labs., 307 A.D.2d at 212; Morrreale v. Morreale, 84 A.D.3d at 1188.

The limited extent to which the issues in the two actions overlap is also not a basis for a stay. This court has not ruled, in either action, on the any of the deficiencies in the notices that plaintiffs here claim. While the parties, issues, and relief sought in the two actions must be only "substantially identical," OneBeacon Am. Ins. Co. v. Colgate-Palmolive Co., 96 A.D.3d 541 (emphasis added), the issues to be determined must be fully identical to warrant a stay of this action pending the

outcome of the appeal in Puerto v. Doar, 975 N.Y.S.2d 527: "only where the decision in one will determine all the questions in the other, and where the judgment in one . . . will dispose of the controversy in both actions." Somoza v. Pechnik, 3 A.D.3d 394 (1st Dep't 2004).

Even if "complete identity of the parties, cause of action, and the judgment sought" is not required, id., the Appellate Division's determination of the appeal in Puerto v. Doar, 975 N.Y.S.2d 527, will not dispose of this action in any discernible way. See Lessard v. Architectural Group, P.c. v. X & Y Dev. Group, LLC, 88 A.D.3d 768, 770 (2d Dep't 2011); Tribeca Lending Corp. v. Crawford, 79 A.D.3d 1018, 1020 (2d Dep't 2010). If the Appellate Division reverses this court's ruling, Puerto v. Doar, 975 N.Y.S.2d at 533, that the notices and regulation, 18 N.Y.C.R.R. § 385.11(a)(2), "insofar as they omit that a showing of compliance with . . . work activities is action a public assistance recipient may take to avoid a reduction in assistance, violate SSL § 341(1)(a)," that reversal will not determine whether the deficiencies in the notices claimed here are also unlawful. Conversely, if the Appellate Division affirms that ruling, that affirmance likewise will not determine whether the notices' deficiencies claimed here are still unlawful.

In sum, the claims and issues in the two actions "are not inextricably interwoven" such that the determination in the one on appeal even potentially will resolve this action. Fewer v. GFI Inc., 59 A.D.3d 271 (1st Dep't 2009). See Mt. McKinley Ins.

Co. v. Corning Inc., 33 A.D.3d 51, 58-59 (1st Dep't 2006); Somoza v. Pechnik, 3 A.D.3d 394. Even with the rendering of a decision that resolves the issues raised in the appeal, the principal issues raised here will remain unresolved. Fewer v. GFI Inc., 59 A.D.3d at 272.

IV. C.P.L.R. § 7805

State defendant also relies on C.P.L.R. § 7805, which provides that "the court may stay further proceedings, or the enforcement of any determination under review." The "determination under review" refers to the administrative determination under review in the judicial proceeding pursuant to C.P.L.R. Article 78. While the provision is somewhat ambiguous whether, like "enforcement," the "further proceedings," also refers to the administrative determination, all the authority applying C.P.L.R. § 7805 consistently interprets "further proceedings" as referring to further administrative proceedings regarding the determination under review. E.g., Lucas v. Village of Mamaroneck, 93 A.D.3d 844, 848 (2d Dep't 2012); Murphy v. County of Nassau, 203 A.D.2d 339, 340 (2d Dep't 1994); Town of East Hampton v. Jorling, 181 A.D.2d 781, 782 (2d Dep't 1992). Therefore C.P.L.R. § 7805 does not provide a basis to stay a judicial proceeding.

V. THE ABSENCE OF PREJUDICE TO STATE DEFENDANT

Finally, State defendant identifies no harm or even inconvenience that might befall the State if the court does not grant a stay. See Lucas v. Village of Mamaroneck, 93 A.D.3d at

848; Town of East Hampton v. Jorling, 181 A.D.2d at 782. Notably, neither defendant has claimed that it is burdensome to revise the challenged notices and, if required to revise a notice to comply with the ultimate ruling in Puerto v. Doar, it then would be burdensome to revise the same notice again to comply with a ruling here. In fact, the reason that claim is not heard here may be that it would be a claim to be raised in Puerto v. Doar and not here.

On the other hand, a stay would prevent the tens of thousands of plaintiff class members from proceeding toward a judicial determination of their rights and defendants' duties on the merits and any relief to which all these plaintiffs may be entitled: rights, duties, and relief that affect the assistance on which plaintiffs rely for their basic subsistence. Wachovia Bank, N.A. v. Silverman, 84 A.D.3d 611, 612 (1st Dep't 2011). See Coleman v. Daines, 19 N.Y.3d 1087, 1090 (2012); McCain v. Koch, 70 N.Y.2d 109, 117-18 (1987); Tucker v. Toia, 43 N.Y.2d 1, 8-9 (1977). As long as defendants omit information from the Conciliation Notification and Notice of Decision mandated by applicable statutes and regulations and by due process, plaintiffs are subject to unlawful reductions of their public assistance and deprived of an opportunity to defend adequately against those sanctions, just as plaintiffs were before.

VI. CONCLUSION

For each of the above reasons, the court denies defendant Proud's motion for a stay of this action. C.P.L.R. § 2201; Fewer

v. GFI Inc., 59 A.D.3d at 271-72; Mt. McKinley Ins. Co. v. Corning Inc., 33 A.D.3d at 58-59; Somoza v. Pechnik, 3 A.D.3d 394. This decision constitutes the court's order. The court will provide copies to the parties' attorneys.

DATED: December 24, 2013

LUCY BILLINGS, J.S.C.

LUCY BILLINGS J.S.C.