SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: LOBIS Justice

PART 6

Index Number : 402452/2012
JONES, FREDERICK
vs.
NYC HOUSING AUTHORITY
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. ____

MOTION DATE 3/27/13

MOTION SEQ. NO. ____

The following papers, numbered 1 to 42, were read on this motion to/for (Art. 78 Petition)

Notice of Motion/Order to Show Cause — Affidavits — Exhibits ____ | No(s). 1-20

Answering Affidavits — Exhibits ____ | No(s). 21-39

Replying Affidavits ____ | No(s). 40-42

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

THIS MOTION IS DECIDED IN ACCORDANCE WITH THE ACCOMPANYING MEMORANDUM DECISION, ORDER & JUDGMENT

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

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

Dated: 5/13/13

JOAN B. LOBIS, J.S.C.

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
NEW YORK COUNTY: IAS PART 6

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IN THE MATTER OF THE APPLICATION OF
FREDERICK JONES,

Petitioner,

Index No. 402452/12

-against-

Decision, Order, and Judgment

NEW YORK CITY HOUSING AUTHORITY,
NEW YORK CITY DEPARTMENT OF CITYWIDE
ADMINISTRATIVE SERVICES, NEW YORK CITY
EMPLOYEES RETIREMENT SYSTEM,

Respondents.

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JOAN B. LOBIS, J.S.C.:

Frederick Jones petitions this Court pro se under Article 78 of the Civil Practice Law and Rules for an order compelling the Respondents to restore certain employment benefits that were allegedly adversely affected by his involuntary medical leaves of absence. Cross-motions to dismiss claim that the petition is barred by the statute of limitations, fails to state a claim and is barred under the doctrines of res judicata and collateral estoppel. For the following reasons, the cross-motion to dismiss filed by the New York City Housing Authority is granted, and the remaining cross-motion to dismiss is denied.

The cross-motions to dismiss Jones's petition include exhibits. The facts set forth below are gleaned from the entirety of the record and construed in the light most favorable to the non-moving party, Petitioner.

Petitioner Frederick Jones was born on August 3, 1960. In April 1980 he began military service in the U.S. Army. He served through January 1981, when he was honorably

discharged.

In 1985, Mr. Jones began employment with New York City. In the course of his employment he was receiving treatment through the Veteran's Administration for mental health issues. In May of 1993 he was a maintenance worker at Baisley Park Houses, when he made a series of threats against other employees. He was transferred to Redfern Houses and notified that he was to report for a medical examination under Section 72 of the Civil Service Law. In June he was seen and evaluated by Dr. Azariah Eshkenazi, but Mr. Jones failed to provide his past psychiatric records. Dr. Eshkenazi opined that Mr. Jones should not return to employment until the records were made available. Mr. Jones was placed on a medical leave of absence, effective July 6, 1993.

Petitioner challenged that leave administratively. He had a hearing before an administrative law judge, who recommended upholding the leave. That determination was adopted by the NYCHA Board and affirmed by the Civil Service Commission.

In January 1995 Petitioner unsuccessfully sought reinstatement to his duties. Later that year he sued the New York City Department of Citywide Administrative Services (DCAS), then known as the Department of Personnel, in federal district court. Petitioner alleged that the denial of his application for reinstatement was discrimination under the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.

In December 1996, DCAS denied Mr. Jones's second application for reinstatement.

Petitioner then filed a second action against DCAS in federal court. In this action he alleging that the 1996 denial was retaliation for his having sued for discrimination in the 1995 action. While these cases were pending, Petitioner was reinstated on October 27, 1997.

In August 1998, a federal jury found, following consolidation of the two cases, that DCAS had retaliated against Jones for filing the 1995 action, and the jury awarded him $36,000. The Second Circuit affirmed the verdict, which the court of appeals found included back-pay for the period of retaliation.

In August 2002, Petitioner brought an Article 78 proceeding against the New York City Housing Authority (NYCHA). He challenged the imposition of the involuntary medical leave and sought restoration of benefits for the time that he was on leave from 1993 to 1997, including back pay with interest, restoration of leave credits and seniority. On December 23, 2002, that petition was dismissed as time-barred.

In 2012, Petitioner brought this Article 78 proceeding against Respondents NYCHA, DCAS, and the New York City Employees Retirement System (NYCERS). Mr. Jones, who is proceeding pro se, seeks to compel the Respondents to restore his benefits relating to leave credits, union benefits, and pension rights, including allowing Petitioner to participate in the early retirement program. Since the filing of the petition, NYCERS notified Petitioner that his disability retirement application had been granted, effective October 7, 2012. This Court now considers the claims raised in Jones's petition.

Respondent NYCHA cross-moves to dismiss the petition, claiming that the petition fails to state a cause of action, is barred under the doctrines of res judicata and collateral estoppel, and is time-barred. In support of its cross-motion, however, NYCHA attaches numerous exhibits, including evidence that goes beyond the contents of Jones's petition.

In general a motion to dismiss for failure to state a cause of action will fail if within the four corners of the pleading there are discernable facts that show a cause of action. E.g., Guggenheimer v. Ginzburg, 43 N.Y.2d 268, 275 (1977). The Court must accept as true the facts alleged in the pleading and those in the non-moving party's submission opposing the motion to dismiss, and accord the plaintiff all favorable inferences. E.g., ABN AMRO Bank, N.V. v. MBIA Inc., 17 N.Y.3d 208, 227 (2011). Where the moving party presents evidence outside the four corners of the pleading, such as affirmations and exhibits, however, this Court shall determine "'whether the proponent of the pleading has a cause of action, not whether he has stated one.'" Biondi v. Beekman Hill House Apt. Corp., 257 A.D.2d 76, 81 (1st Dep't 1999), aff'd, 94 N.Y.2d 659 (2000) (quoting Guggenheimer, 43 N.Y.2d at 275). "'[B]are legal conclusions, as well as factual claims either inherently incredible or flatly contradicted by documentary evidence,' are not presumed to be true and accorded every favorable inference." 81 A.D.2d at 81 (quoting Kliebert v. McKoan, 228 A.D.2d 232, 232 (1st Dep't 1996)).

This Court finds that Respondent NYCHA's cross-motion to dismiss is warranted. Petitioner Jones's allegations raise claims that were previously raised in the 2002 Article 78

proceeding. The doctrine of res judicata bars future actions between the same parties on the same cause of action where a prior valid final judgment has been entered. E.g., Parker v. Blauvelt Volunteer Fire Co., 93 N.Y.2d 343, 347 (1999). Claim preclusion includes dismissal of a prior action as time-barred. E.g., Smith v. Russell Sage Coll., 54 N.Y.2d 185, 194 (1981). Since Petitioner's claims are precluded under res judicata, this Court need not consider alternative grounds to dismiss that have been raised by NYCHA. Neither of the other Respondents in this proceeding, DCAS or NYCERS, were parties to the earlier Article 78 proceeding, however, and, therefore, the 2002 action does not have a preclusive effect on them.

This Court next considers whether, nevertheless, other grounds lie to dismiss Petitioner's action against DCAS and NYCERS. As an initial matter, this Court notes that only DCAS has properly moved for dismissal. Neither the notice of motion nor captioning of the memorandum of law in support of the motion list NYCERS as a movant. In the signature lines for the notice of motion and memorandum of law, counsel only identifies himself as counsel for DCAS.

Even assuming NYCERS properly cross-moved with DCAS, the motion does not show that relief is appropriate for either agency. The motion presents evidence outside the four corners of the pleading, and, therefore, will be treated as a motion for summary judgment. 257 A.D.2d at 81.

This Court first considers whether the motion shows that Petitioner Jones's action is time-barred. The motion claims that a four-month statute of limitations applies, citing Section 217(1)

of the Civil Practice Law and Rules and identifies the start of Mr. Jones's involuntary medical leave in 1993 as the trigger for the running of that time period.

This Court disagrees. Petitioner is seeking relief in the nature of mandamus to compel restoration of benefits impacted by Respondents' alleged improper conduct. While this Court has found that based on the prior 2002 action Petitioner cannot challenge the determination or restoration of benefits against Respondent NYCHA, that finding does not preclude Petitioner from challenging any independent injury that may have been caused by the other Respondents. As DCAS's motion acknowledges, Petitioner Jones successfully sued DCAS in federal court for violating his civil rights when it retaliated against him for filing a discrimination claim under the Americans with Disabilities Act. Respondents DCAS and NYCERS do not claim, either in the memorandum of law or affirmation in support of the motion to dismiss, that this independent basis under which Petitioner seeks relief is time-barred.

This Court next considers the contention that the 1998 verdict does not state a cause of action against Respondent DCAS. DCAS argues that "Petitioner was not awarded any other remedy" other than $36,000 for DCAS' retaliation against Petitioner. As the Second Circuit's affirmance showed, however, the district court instructed the jurors that if they found DCAS liable for retaliation, Jones was entitled, minus a duty to mitigate, to "the amount of salary and benefits lost from the date of the adverse action." Agency action to restore unjustly deprived seniority rights or related benefits during the established retaliatory period flow from that jury determination.

The motion mischaracterizes the petition to claim that Petitioner fails to "even mention" NYCERS. This Court's review of the pro se petition shows Jones specifically sued NYCERS, among others, to compel restoration of benefits, including pension and seniority. Under these circumstances, it has not been shown that Petitioner has failed to establish a cause of action against the remaining Respondents, DCAS and NYCERS. Accordingly, it is

ORDERED and ADJUDGED that Respondent NYCHA's cross-motion to dismiss the petition is granted; and the Clerk is directed to enter judgment accordingly; it is further

ORDERED that DCAS's cross-motion to dismiss is denied; and it is further

ORDERED that the Respondents DCAS and NYCERS shall answer the petition within thirty days of this decision, order, and judgment.

Dated: May 13, 2013

ENTER:

JOAN B. LOBIS, J.S.C.