

**Anyichie v Lincoln Med. & Mental Health Ctr.**

2018 NY Slip Op 31430(U)

January 11, 2018

Supreme Court, New York County

Docket Number: 153343/2017

Judge: Gerald Lebovits

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 7

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DR. NONYELU ANYICHIE,

Plaintiff,

Index No. 153343/2017

Motion Sequence No. 001

- against -

LINCOLN MEDICAL AND MENTAL HEALTH CENTER,

Defendant.

----- X  
LEBOVITS, J.:

Plaintiff Dr. Nonyelu Anyichie alleges that defendant Lincoln Medical and Mental Health Center (Lincoln Hospital) violated Public Health Law § 2801-b when it declined to renew her medical privileges with the hospital. In the single-count amended complaint, plaintiff seeks the reinstatement of her medical privileges at Lincoln Hospital, pursuant to Public Health Law § 2801-c, as well as payment of benefits and pension earnings and cost and fees.

Lincoln Hospital now moves, pursuant to CPLR 3211 (a) (7), to dismiss the amended complaint for failure to state a claim.

Background and Procedural History

From 2005 to 2011, plaintiff was an Attending Physician in the Department of Obstetrics-Gynecology at Lincoln Hospital. On July 5, 2011, Lincoln Hospital’s Credentials Committee “unanimously agreed *not* to recommend [plaintiff] for clinical privileges to the Medical Staff at [Lincoln Hospital].” Van-Lare affirmation, exhibit 11 at 176. On July 8, 2011, “[b]ased on the information provided by the Chair of the Credentialing Committee,” the Medical Executive Committee (MEC) unanimously voted not to reappoint plaintiff. *Id.* at 179. By letter dated July 12, 2011, Lincoln Hospital informed plaintiff that, pursuant to the Lincoln Hospital’s Medical Staff Bylaw (Bylaws), the hospital’s Credentials Committee and the MEC had voted not to recommend her reappointment to the medical staff at Lincoln Hospital. The letter stated that the decision was based on issues relating to: patient care, inappropriate behavior towards colleagues, residents and students, and frequent lateness. The letter contained a “Summary of Issues,” which summarized the specific incidents relating to each of the issues. Englander affirmation, exhibit 2. Pursuant to the Bylaws, plaintiff challenged the non-reappointment and requested a hearing.

On December 29, 2011, plaintiff filed a discrimination lawsuit against the New York City Health and Hospitals Corporation (HHC), which operates Lincoln Hospital, Lincoln Hospital, the City of New York, and Downtown Bronx Medical Associates, LLP (DBMA), which employed plaintiff and provided physicians to Lincoln Hospital, among others, (under index No. 114604-2011) in the New York State Supreme Court (Discrimination Action), alleging that the defendants engaged in various forms of employment discrimination and retaliation, including the

wrongful termination of her privileges at Lincoln Hospital. The Discrimination Action was then removed to the United States District Court for the Southern District of New York.

On June 25, 2012, plaintiff filed an order to show cause in the New York Supreme Court (under index No. 103100-2012), seeking, among other things, an order compelling Lincoln Hospital to hold a hearing (Hearing) regarding plaintiff's non-reappointment to the medical staff at the hospital. On July 10, 2012, Lincoln Hospital commenced the Hearing and the order to show cause was denied as moot.

A hearing committee (Hearing Committee), consisting of five physician members of Lincoln Hospital's medical staff, heard plaintiff's appeal.<sup>1</sup> In all, the Hearing consisted of 10 sessions, from July 10, 2012 through April 17, 2013, during which the Hearing Committee heard testimony from 25 witnesses. Plaintiff was represented by counsel and argued, among other things, that the Credentials Committee's decision not to reappoint plaintiff was improper, because a Bylaw-required quorum was not present. As such, plaintiff argued, the MEC's vote not to reappoint plaintiff, which was based on the information provided by the improperly convened Credentials Committee, was also improper.

The Hearing Committee found that, while "the action of the [Credentials] committee was not in order, due to a lack of a quorum . . . this [was] precisely the type of error covered by Section 12.4 of the medical staff by-laws," which provides that a breach of the Bylaws during a medical staff proceeding "shall be grounds for a new proceeding only if such [a] breach[] [is] of such a material nature that the validity of the results is substantially prejudiced." Van-Lare affirmation, exhibit 21 at 4:18-24, 7:16-24. The Hearing Committee concluded that this was not such a breach, because "the failure of the Credentials Committee to convene [did not] deprive[] the [MEC] of authority to act," as "action by the Credentials Committee at a meeting at which a quorum is present is not a prerequisite to [MEC] action." *Id.* at 5:16-25.

On November 6, 2013, Lincoln Hospital issued the report of the Hearing Committee, which unanimously upheld the MEC's decision not to reappoint plaintiff to Lincoln Hospital's medical staff. In pertinent part, the report stated that plaintiff "failed summarily in several core professional competencies in her responsibility to be part of a larger team in the OB-GYN Department to further the mission of the institution in facilitating optimal patient care and physician teaching" and that "her professional conduct, interpersonal skills, practice based learning and system based competencies were insufficient to remain as a member of the Medical Staff." Englander affirmation, exhibit 3 at 8, 9.

Plaintiff appealed the Hearing Committee's determination. By a decision dated February 17, 2015, Dr. Ross Wilson, as designee of the President of the HHC, decided the appeal in favor of Lincoln Hospital, finding, in pertinent part, that:

"The Hearing Committee Decision indicated that it paid close attention to all the testimony and evidence, evaluated the

<sup>1</sup> During the course of the Hearing, based on plaintiff's objection, one of the Hearing Committee members recused himself.

credibility of witnesses, and explained why it drew conclusions one way or another.

\* \* \*

"A review of the extensive transcript shows that the Hospital submitted ample evidence to meet its burden under the preponderance of the evidence standard."

*Id.*, exhibit 6 at 4-5.

Plaintiff filed a formal complaint with the State Public Health Council (PHC), pursuant to Public Health Law § 2801-b. Plaintiff argued, among other things, that the Hearing Committee incorrectly concluded that the MEC could, and did, act on its own in refusing to renew plaintiff's privileges. Plaintiff argued that the Hearing Committee should have "declared the MEC's decision based entirely on the report of the Chair of the Credentials Committee . . . as null and void since it was based on a meeting without a quorum and the MEC did not conduct any independent finding." Van-Lare affirmation, exhibit 3, ¶ 100.

In the meantime, plaintiff settled her Discrimination Action. Pursuant to a general release (General Release), dated March 29, 2016, in exchange for \$300,000, plaintiff released the City of New York, HHC, DBMA, their successors or assigns, and their officials, employees, representatives and agents from "any and all claims . . . of any kind whatsoever . . . which [plaintiff] brought, or could have brought, in the [Discrimination Action] or any action." Englander affirmation, exhibit 11 at 1. However, plaintiff "reserve[d] her right to continue her Formal Complaint Pursuant to *NY CLS Pub Health* § 2801-b in front of the [PHC] dated November 12, 2015 and to seek appropriate relief based on the outcome of the complaint." *Id.* at 2. Pursuant to court ordered stipulations of dismissal dated April 26, 2016, the Discrimination Action was dismissed.

In a brief, four-sentence letter, dated August 12, 2016, the PHC stated that Lincoln Hospital "did not afford due process to the complainant according to its own Medical Staff Bylaws, violating New York Public Health Law 2801-b," and directed Lincoln Hospital "to review its actions in light of the Council's determination." Englander affirmation, exhibit 7.

Dr. Machelle Allen, as the designee of the President of HHC, reviewed the action taken by Lincoln Hospital. In a "Review at the Direction of the New York State Public Health and Health Planning Council" (Review), dated October 24, 2016, Dr. Allen criticized the PHC for: "bas[ing] its ruling on a ground not contained in the statute"; failing to explain in "what manner the Hospital 'did not afford due process' to [plaintiff] under its Medical Bylaws"; violating its own regulations by failing to set forth the reasons behind its findings; and failing to provide the Hospital with guidance on what precisely it should review. *Id.*, exhibit 8 at 3. The Review agreed with the Hearing Committee, that "the lack of a quorum at the Credentials Committee did not substantially prejudice [plaintiff], and thus [was] not grounds for a new hearing," and that "[i]t certainly did not deprive her of due process under the Bylaws, given the extensive hearing and appeal she was afforded." *Id.* at 4.

On April 10, 2017, Plaintiff commenced the instant action. The amended complaint alleges that Lincoln Hospital "violated Plaintiff's rights under Public Health Law § 2801-b and §

2801-c by refusing to conduct a proper review as ordered by the [PHC] and by not reinstating the Plaintiff after the [PHC] found that Lincoln [Hospital] violated Plaintiff's Due Process rights." Amended complaint, ¶ 44. Plaintiff seeks the reinstatement of her privileges at Lincoln Hospital, as well as payment of benefits and pension earnings from August 12, 2016, the date of the PHC's letter, and costs and fees.

Analysis

Lincoln Hospital contends that the amended complaint must be dismissed because plaintiff fails to identify an improper practice under Public Health Law § 2801-b. In addition, it argues that, to the extent that plaintiff seeks monetary damages and costs, such claims must be dismissed because: (1) Public Health Law provides for injunctive relief only, and bars claims for damages; and (2) plaintiff released all such claims in the Discrimination Action. Plaintiff counters that Lincoln Hospital's violation of its Bylaws, and the resulting denial of due process to plaintiff, was akin to operating with bad faith, which constitutes an improper practice under Public Health Law § 2801-b. Plaintiff also argues that nothing in the Public Health Law prohibits the PHC from finding that the Lincoln Hospital denied plaintiff due process, and that, pursuant to Public Health Law § 2801-c, this court should adopt the PHC's finding as "prima facie evidence of the facts found therein." Lastly, plaintiff contends that neither Public Health Law nor the General Release bars the instant action, because: (1) Public Health Law § 2801-b (4) provides that nothing in section 2801-b "shall. . . be deemed to impair or affect any other right or remedy"; and (2) the General Release specifically reserves plaintiff's right to "seek appropriate relief based on the outcome of the complaint" to the PHC. Englander affirmation, exhibit 11 at 2.

"[O]n a motion to dismiss a complaint for failure to state a cause of action, the complaint must be construed in the light most favorable to the plaintiff and all factual allegations must be accepted as true." *Allianz Underwriters Ins. Co. v Landmark Ins. Co.*, 13 AD3d 172, 174 (1st Dept 2004). The court is not permitted "to assess the merits of the complaint or any of its factual allegations, but only to determine if, assuming the truth of the facts alleged, the complaint states the elements of a legally cognizable cause of action." *Skillgames, LLC v Brody*, 1 AD3d 247, 250 (1st Dept 2003) (citation omitted). "However, factual allegations that do not state a viable cause of action, that consist of bare legal conclusions, or that are inherently incredible or clearly contradicted by documentary evidence are not entitled to such consideration." *Id.* (citation omitted).

In pertinent part, Public Health Law § 2801-b provides that:

"[i]t shall be an improper practice for the governing body of a hospital . . . to deny or withhold . . . staff membership or professional privileges in a hospital . . . without stating the reasons therefor, or if the reasons stated are unrelated to standards of patient care, patient welfare, the objectives of the institution or the character or competency of the applicant . . ."

Public Health Law § 2801-b (1). In addition, the law provides that an aggrieved physician may complain to the PHC (Public Health Law § 2801-b [2]), which is authorized to investigate the

complaint and instruct the governing body of a hospital to review its decision. Public Health Law § 2801-b (3). The PHC's inquiry is limited in scope to whether the decision to deny privileges was "related to one of the various institutional concerns" and "whether it was made in good faith and not for some impermissible ulterior reason." *Fried v Straussman*, 41 NY2d 376, 381 (1977). Once the PHC makes its determination, a physician may institute an action in the Supreme Court to enjoin violations or threatened violations of Public Health Law § 2801-b. Public Health Law § 2801-c. In such an action, "any finding of the [PHC] . . . shall be prima facie evidence of the fact or facts found therein." *Id.*

"There is no common-law cause of action based upon a denial of staff privileges by a private hospital; . . . the aggrieved physician is limited to injunctive relief under Public Health Law § 2801-c and is barred by section 2801-b from maintaining an action for damages . . ." *Lobel v Maimonides Med. Ctr.*, 39 AD3d 275, 277 (1st Dept 2007) (internal citations omitted). "[S]imple claims of breach of contract which focus exclusively upon the breach of contract or by-laws, and not on the termination, are still viable." *Falk v Anesthesia Assoc. of Jamaica*, 228 AD2d 326, 329 (1st Dept 1996); accord Public Health Law § 2801-b (4) ("[t]he provisions of this section shall not be deemed to impair or affect any other right or remedy"). However, "where the claim of a violation of the bylaws is secondary and the gravamen of the plaintiff's grievance is the suspension of [her] privileges, [her] cause[] of action alleging breach of contract . . . [is] barred." *Mason v Central Suffolk Hosp.*, 305 AD2d 556, 557 (2d Dept 2003), *aff'd* 3 NY3d 343 (2004).

Here, plaintiff fails to state a cause of action for injunctive relief, pursuant to Public Health Law § 2801-c, to enjoin Lincoln Hospital's alleged violation of Public Health Law § 2801-b. Nowhere in the amended complaint does plaintiff allege that Lincoln Hospital engaged in an "improper practice" under Public Health Law § 2801-b (1). Plaintiff does not allege that Lincoln Hospital failed to provide reasons for its denial of her medical privileges or that the stated reasons were not related "to standards of patient care, patient welfare, the objectives of the institution or the [plaintiff's] character or competency," as required by Public Health Law § 2801-b (1). Nor does plaintiff allege that the stated reasons were a pretext for some impermissible, ulterior reason for terminating her privileges. Instead, plaintiff alleges that Lincoln Hospital denied her right to due process by violating the Bylaws and that it acted in bad faith when it failed to reinstate her privileges following the PHC's determination in her favor. Such conduct is not included among the "improper practices" specified in Public Health Law § 2801-b (1). Accordingly, the amended complaint fails to state a claim under Public Health Law §§ 2801-b and 2801-c. See *Jackaway v Northern Dutchess Hosp.*, 139 AD2d 496, 497 (2d Dept 1988) (affirming dismissal of the complaint, brought pursuant to Public Health Law § 2801-c, seeking injunctive relief and damages for an alleged violation of Public Health Law § 2801-b (1), "since . . . the plaintiff ha[d] not claimed that the [hospital] acted in bad faith or that the reasons given for the change in his status . . . [were] not genuine").

The PHC's finding, that Lincoln Hospital "did not afford due process to [plaintiff] according to its own Medical Staff Bylaws, violating New York Public Health Law 2801-b," does not mandate a different result. Englander affirmation, exhibit 7. This finding appears to be beyond the scope of the PHC's review, which is limited to whether the decision to deny privileges was "related to one of the various institutional concerns" and "whether it was made in

good faith . . .” *Fried*, 41 NY2d at 381. What is more, the PHC’s letter does not contain any findings of fact to support its conclusion. “In this context, the determination of the [PHC] carries little, if any, weight in the instant action.” *Hauptman v Grand Manor Health Related Facility*, 121 AD2d 151, 154, 155 (1st Dept 1986) (finding that the PHC’s finding was “neither persuasive nor controlling,” where the PHC “made no findings of fact but only issued a letter stating that there was no cause for the complaint . . .”).

In addition, to the extent that plaintiff seeks “emoluments for the period Plaintiff was denied due process” (amended complaint at 10), her claim is barred by Public Health Law §§ 2801–b and 2801–c, which limit her remedy to injunctive relief. *See Lobel*, 39 AD3d at 277. While, generally, a plaintiff may seek damages for a breach of contract or bylaws (*see Falk*, 228 AD2d at 329; *see also* Public Health Law § 2801–b [4]), the single-count amended complaint does not plead such a claim. Instead, it challenges the denial of plaintiff’s medical privileges, pursuant to the Public Health Law, based on an alleged violation of the Bylaws. *See* amended complaint, ¶¶ 12-16, 44. Because “the gravamen of the plaintiff’s grievance is the suspension of [her] privileges,” her claim for damages is barred. *Mason*, 305 AD2d at 557 (dismissing the complaint for failure to state a cause of action, where complaint asserted claims for breach of contract and tortious interference with contract based on the defendant hospital’s alleged violation of its bylaws in the revocation of the plaintiff’s privilege to perform certain procedures); *accord Moallem v Jamaica Hosp.*, 264 AD2d 621, 622 (1st Dept 1999) (finding that the plaintiff’s causes of action for damages should have been dismissed as barred by Public Health Law § 2801-b, since there were “no contract or by-law claims separate from the suspension of his privileges”).

Moreover, plaintiff’s claim for damages is also barred by the General Release, which releases Lincoln Hospital from “any and all claims . . . of any kind whatsoever . . . which [plaintiff] brought, or could have brought, in the [Discrimination Action] or any action” (Englander affirmation, exhibit 11 at 1), and reserves only plaintiff’s right “to seek appropriate relief based on the outcome of the complaint” to the PHC. *Id.* at 2. As explained above, the only relief available to plaintiff, following the PHC’s determination, was to seek to enjoin Hospital from violating Public Health Law § 2801-b. *See* Public Health Law § 2801-c; *see also Lobel*, 39 AD3d at 277. Therefore, to the extent plaintiff seeks anything beyond injunctive relief, in connection with the allegedly wrongful termination of her medical privileges at Lincoln Hospital, the General Release bars such claims. *See Centro Empresarial Cempresa S.A. v América Móvil, S.A.B. de C.V.*, 17 NY3d 269, 276 (2011) (internal quotation marks and citations omitted) (“a valid release constitutes a complete bar to an action on a claim which is the subject of the release”).

For the foregoing reasons, Lincoln Hospital’s motion to dismiss the amended complaint is granted.

Accordingly, it is hereby

ORDERED that the motion of defendant Lincoln Medical and Mental Health Center is granted, and the amended complaint is dismissed in its entirety, with costs and disbursements to

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said defendant as taxed by the Clerk of the Court upon the submission of an appropriate bill of costs; and it is further

ORDERED that defendant Lincoln Medical and Mental Health Center must serve a copy of this decision and order on all parties on the County Clerk's Office, which is directed to enter judgment accordingly.

Dated: January 11, 2018



J.S.C.

**HON. GERALD LBOVITS**  
**J.S.C.**