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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE JOHN A. MILANO IA PART 3
Justice

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LINCOLN JATTAN,           :      Index
                          :      Number 12367 1995
                          :
                          :      Plaintiff,
                          :
                          :      - against -
                          :      Date December 18, 2001
                          :
QUEENS COLLEGE OF THE CITY :      Motion
UNIVERSITY OF NEW YORK, et al., :      Cal. Number 14
                          :
                          :      Defendants.
-----x

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The following papers numbered 1 to 26 read on this motion by the defendants for summary judgment dismissing the complaint against them.

	<u>Papers Numbered</u>
Notice of Motion - Affidavits - Exhibits	1 - 19
Answering Affidavits - Exhibits	20 - 22
Reply Affidavits	23 - 24
Other (Memoranda of Law)	25 - 26

Upon the foregoing papers it is ordered that the motion by the defendants for summary judgment dismissing the complaint against them is granted to the extent that the second and fourth causes of action are dismissed except for the claims arising under the Equal Protection Clause of the Fourteenth Amendment, under 42 USC 1983, and under 42 USC 1988. The motion is otherwise denied.

(See the accompanying memorandum.)

Dated: March 4, 2002

Justice John A. Milano

MEMORANDUM

SUPREME COURT : QUEENS COUNTY
CIVIL TERM IAS PART 3

LINCOLN JATTAN, X BY: Justice John A. Milano
: :
Plaintiff, : Index No. 12367/95
: :
- against - : Motion Date: December 18, 2001
: :
QUEENS COLLEGE OF THE CITY : Motion Cal. No.: 14
UNIVERSITY OF NEW YORK, et al., :
: :
Defendants. :
X

The defendants have moved for summary judgment dismissing the complaint against them.

Defendant Queens College hired plaintiff Lincoln Jattan, a dark-skinned, East Indian, Presbyterian male, in 1990, and he reached the position of tenured College Accountant Level II in January, 1991. Defendant Samuel Yehaskel, allegedly a white Orthodox Jew and the Controller of Queen's College's General Accounting Office, supervised the plaintiff during most of the time that he was employed at the college. The plaintiff alleges that in or about 1994, defendant Yehaskel became the plaintiff's direct supervisor and that he subjected the plaintiff to discriminatory treatment based on race. Defendant Yehaskel allegedly enforced time and record-keeping rules in a manner that applied only to the plaintiff, required the plaintiff to do work over when there was nothing wrong with it, and gave the plaintiff menial, "out-of-title" work to do. The plaintiff also alleges that Yehaskel made

racially derogatory remarks and that the defendant college denied him promotions because of his race.

On the other hand, the defendants allege that the plaintiff had difficulty in completing his work during usual office hours, that he had confrontations with his supervisors, that he applied for a gun permit shortly after one of these confrontations, and that he was suspended without pay for insubordination and misconduct. The defendants further allege that on March 12, 1996, the plaintiff's supervisor told him to stop using the telephone for personal business, whereupon a loud argument ensued, and he was escorted off campus. Defendant Queens College terminated the plaintiff's employment at around that date.

Summary judgment is warranted where there is no issue of fact which must be tried. (See, Alvarez v Prospect Hospital, 68 NY2d 320.) The plaintiff's second and fourth causes of action, which are brought under federal law, are viable only to the extent that they rest on the Equal Protection Clause of the Fourteenth Amendment, on 42 USC 1983, and on 42 USC 1988. The Equal Protection Clause is "essentially a direction that all persons similarly situated should be treated alike." (City of Cleburne, Tex. v Cleburne Living Center, 473 US 432.) The conflicting allegations of the parties concerning racial discrimination have raised issues of fact and credibility under the Equal Protection Clause claim which are inappropriate for summary judgment treatment. (See, Dayan v Yurkowski, 238 AD2d 541; T&L Redemption Center Corp. v Phoenix Beverages, Inc., 238 AD2d 504; First New

York Realty Co., Inc. v DeSetto, 237 AD2d 219.) Section 1983, "Civil action for deprivation of rights," provides in relevant part: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress***." It is true that a section 1983 claim cannot be brought against the State or its instrumentalities. (See, Casillas v Perales, 154 AD2d 420.) "A state is not a 'person' acting under color of law, as defined in 42 USC 1983***." (Welch v State of New York, 286 AD2d 496, 498; see, Will v Michigan Dept. of State Police, 491 US 58.) However, in the case at bar, there is an issue of fact concerning whether Queens College may be regarded as an instrumentality of the State of New York. (See, Pikulin v City University of New York, 176 F3d 598.) In regard to the individual defendants, a section 1983 claim can be brought against an official who violates a person's constitutional rights. (See, Welch v State of New York, supra.) The plaintiff has adequately alleged the personal involvement of the individual defendants in the violation of his constitutional rights. (See, Wright v Smith, 21 F3d 496.) The plaintiff has also stated a viable claim for attorney's fees pursuant to 42 USC 1988. (See, Hensley v Eckerhart, 461 US 424.) The plaintiff failed to

adequately state a claim pursuant to 42 USC 1985, "Conspiracy to interfere with civil rights." A claim based on conclusory allegations of the existence of a conspiracy is not viable. (See, Barr v Adams, 810 F2d 358; Ostrer v Aronwald, 567 F2d 551.) The plaintiff's second and fourth causes of action otherwise have no merit. (See, e.g., Richmond Newspapers v Virginia, 448 US 555; Williams v United States, 341 US 97; Rattner v Netburn, 930 F2d 204.)

The plaintiff's first and third causes of action rests on the New York State Human Rights Law (Article 15 of the Executive Law). Section 296 of the Executive Law, "Unlawful discriminatory practices," provides in relevant part: "It shall be an unlawful discriminatory practice: (a) For an employer or licensing agency, because of the age, race, creed, color, national origin, sex, disability, genetic predisposition or carrier status, or marital status of any individual, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment." (See, Koerner v State of New York, 62 NY2d 442.) The plaintiff made a prima facie showing of illegal discrimination. (See, e.g., Shumway v United Parcel Service, Inc., 118 F3d 60.) Moreover, a cause of action asserted under the State Human Rights Law is controlled by CPLR 214(2), a three year Statute of Limitations. (See, Koerner v State of New York, supra; Mitchell v Nassau Community College, 265 AD2d 456.) The plaintiff began this action in June, 1995. The defendants contend that

allegations in the complaint which pertain to events which occurred before June, 1992 are time-barred. However, where violations of the Human Rights Law occurring within the limitations period are sufficiently similar to alleged conduct occurring without the limitations period, an inference may be drawn that both were part of a single discriminatory practice, and an employee's Human Rights Law claim will therefore be timely in its entirety under the continuing violation doctrine. (See, Sier v Jacobs Persinger & Parker, 276 AD2d 401; Walsh v Covenant House, 244 AD2d 214.) On the present state of the record, there is an issue of fact concerning whether the plaintiff's first and third causes of action in their entirety are timely pursuant to the continuing violation doctrine.

Accordingly, the motion by the defendants for summary judgment dismissing the complaint against them is granted to the extent that the second and fourth causes of action are dismissed except for the claims arising under the Equal Protection Clause of the Fourteenth Amendment, under 42 USC 1983, and under 42 USC 1988. The motion is otherwise denied.

Short form order signed herewith.

Dated: March 4, 2002

Justice John A. Milano