

Aristy-Farer v State of New York

2014 NY Slip Op 33763(U)

April 7, 2014

Supreme Court, New York County

Docket Number: 100274/13

Judge: Manuel J. Mendez

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MANUEL J. MENDEZ
Justice

PART 13

MIRIAM ARISTY-FARER, NATASHA CAPERS,
JACQUELINE COLSON, MONA DAVIDS,
HAWA JAGANA, NICOLE JOB,
HECTOR NAZARIO, CHRIS OWENS,
SAM PIROZZOLO PATRICIA PADILLA,
LYNN SANCHEZ and ROBERT JACKSON,

INDEX NO. 100274/13
MOTION DATE 02-26-14
MOTION SEQ. NO. 003
MOTION CAL. NO. _____

Plaintiffs,
-against-

FILED

THE STATE OF NEW YORK, ANDREW M. CUOMO,
as Governor of the State of New York, and
JOHN B. KING, Jr., as President of the University
of the State of New York,

APR 09 2014

Defendants.

COUNTY CLERK'S OFFICE
NEW YORK

The following papers, numbered 1 to 5 were read on this Motion to Dismiss :

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...
Answering Affidavits — Exhibits _____ cross motion _____
Replying Affidavits _____

PAPERS NUMBERED
<u>1 - 3</u>
<u>4</u>
<u>5</u>

Cross-Motion: Yes X No

Upon a reading of the foregoing cited papers it is Ordered that defendants' motion pursuant to CPLR §3211 [a],[2],[3] and [7] to dismiss the Second Amended Complaint and the action with prejudice, is denied.

Plaintiffs, as representatives of a class of those affected, are challenging the constitutionality of the penalty provisions in L. 2012, ch. 53 and L. 2012, ch. 57, Part A §1, which penalized any district that failed by January 17, 2013, to reach an agreement and obtain approval from the Commissioner of Education on a plan for a new system for Annual Professional Performance Reviews (APPR). All but one of the plaintiffs are parents of minor children that attend New York City Schools in each of the boroughs of the City of New York. Robert Jackson is the chairman of the Education Committee of the New York City Council, a taxpayer and resident of New York County.

Pursuant to L. 2012, ch. 53 and L. 2012, ch. 57, Part A §1, in the event there was no APPR plan by January 17, 2013, the total amounts of payments allotted to a school district in excess of the base year for operating expenses are to be immediately withheld from the budget. Officials in the New York City Department of Education (DOE) did not reach an agreement with the United Federation of Teachers (UFT) by the required date. Final and binding APPR was eventually imposed on New York City by the State Commissioner of Education, but the Governor has directed that \$290 million dollars continue to be withheld from the New York City Public School budget.

Defendants' motion pursuant to CPLR §3211 [a],[2],[3] and [7] seeks to dismiss the Second Amended Complaint and this action with prejudice.

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

Defendants contend that the plaintiffs lack standing because of the failure to allege any injury in fact.

An action may be dismissed pursuant CPLR 3211[a],[3], on the grounds that the plaintiff lacks standing. The determination of standing requires that the party seeking relief sufficiently establish a recognizable stake in the proceedings and their outcome so that the dispute is capable of judicial resolution (Community Bd. 7 of Borough of Manhattan v. Schaffer, 84 N.Y. 2d 148, 639 N.E. 2d 1, 615 N.Y.S. 2d 644 [1994]). A determination of standing, "should not be heavy handed" or applied, "...in an overly restrictive manner" (Matter of Association for a Better Long Is., Inc. v. New York State Dept. of Env'tl. Conservation, 2014 NY Slip Op. 02216, 2014 WL 1280310 [2014]). Plaintiffs by establishing that the claims are of, "a sufficient nexus to fiscal activities of the State," may obtain standing without having to demonstrate an injury in fact (Saratoga County Chamber of Commerce v. Pataki, 100 N.Y. 2d 801, 798 N.E. 2d 1047, 66 N.Y.S. 2d 654 [2003]). There is, "no reason to close the courthouse doors to parents and children with viable constitutional claims" (Hussein v. State of New York, 19 N.Y. 3d 899, 973 N.E. 2d 752, 950 N.Y.S. 2d 342 [2012]).

Plaintiffs contend that they have standing to bring this case and can establish injury based on the continued denial of funding that resulted in New York City School students being deprived of a sound basic education. They argue that the loss of \$290 million dollars worth of educational services, has a material impact on children attending the City of New York Public Schools because of the substantial need for programs and services to allow students to meet the regents' college and career standards.

This Court will not "close the courthouse doors" on the plaintiffs' potentially viable constitutional claims affecting New York City School Students, particularly those in need. The plaintiffs have standing based on the effect of L. 2012, ch. 53 and L. 2012, ch. 57, Part A §1, on the funding to New York City School Districts and potential violations of the New York State Constitution.

Defendants argue that this action lacks subject matter jurisdiction because plaintiffs failed to allege any facts and cannot establish a causal link between the present funding system and any failure to provide a sound basic education, or that the withholding of \$290 million in funding to New York City School Districts was irrational or unreasonable.

Plaintiffs contend that there is a basis to establish subject matter jurisdiction because the loss of \$290 million in funding is not an abstract or isolated event related to budgetary concerns and clearly this action involves issues related to violations of the New York State Constitution.

Pursuant to CPLR §3211[a],[2], a cause of action can be dismissed for lack of subject matter jurisdiction. Subject matter jurisdiction generally does not apply to a cause of action that involves lawful acts of executive or legislative officials involving, "...questions of judgment, allocation of resources and ordering of priorities," (New York State Inspection, Sec. And Law Enforcement Employees, Dist. Council, 82, AFSCME, AFL-CIO v. Cuomo, 64 N.Y. 2d 233, 475 N.E. 2d 90 [1984]). The judicial branch of government has the responsibility for safeguarding rights provided under the New York State Constitution and can determine if the Legislative or Executive branches have violated those rights (Hussein v. State of New York, 19 N.Y. 3d 899, supra). Judicial intervention pertaining to state budget should be invoked when the state financing plan

is patently irrational or unreasonable (*Campaign for Fiscal Equity, Inc. v. State of New York*, 8 N.Y.3d 14, 861 N.E. 2d 50, 828 N.Y.S. 2d 235 [2006]).

This Court finds that subject matter jurisdiction exists for Judicial determination of constitutionality of the provisions of L. 2012, ch. 53 and L. 2012, ch. 57, Part A §1, put into effect to compel APPR.

Defendants also seek dismissal pursuant to CPLR §3211[a][7], arguing that the Second Amended Complaint fails to state a viable cause of action.

The Second Amended Complaint asserts three causes of action and seeks declaratory relief. Plaintiffs allege that the implementation of the penalties set forth in L. 2012, ch. 57, Part A §1 revoking an increase in general support aid for 2012-2013 and affecting the 2013-2014 school years, (1) violates Article XI, §1 of the New York State Constitution because it prevents students from obtaining a sound basic education, (2) violates due process rights under Article I, §6 of the New York State Constitution, and (3) violates equal protection rights under Article I §11 of the New York State Constitution.

Article XI, §1 of the New York State Constitution applies to education, it ensures that students, including those in New York City School Districts, have a "sound basic education." The claimants are required to specifically allege facts that establish "gross educational inadequacies" that if proven can support a claim that minimal educational opportunities cannot be obtained (*Campaign for Fiscal Equity, Inc. v. State*, 86 N.Y. 2d 307, 655 N.E. 2d 661, 631 N.Y.S. 2d 565 [1995] and *Campaign for Fiscal Equity, Inc. v. State of New York*, 100 N.Y. 2d 893, 801 N.E. 2d 326, 769 N.Y.S. 2d 106 [2003]).

A violation of due process under N.Y. Constitution Article 1, §6, requires proof that the challenged legislation is unreasonable in relation to its subject and fails to serve the community's interests (*Schulz v. Horsehead's Cent. School Dist. Bd. Of Educ.*, 222 A.D. 2d 819, 634 N.Y.S. 2d 792 [N.Y.A.D. 3rd Dept., 1995] citing to *Treyball v. Clark*, 65 N.Y. 2d 589, 483 N.E. 2d 1136, 493 N.Y.S. 2d 1004 [1985]).

A claim of violation of equal protection under Article I §11 of the New York State Constitution, requires the application of the "rational basis test." A determination under the "rational basis test" requires proof that the justification provided by the State does not satisfy or that it is unreasonably related to a legitimate state interest (*Board of Educ., Levittown Union Free School Dist. v. Nyquist*, 57 N.Y. 2d 27, 439 N.E. 2d 359, 453 N.Y.S. 2d 643 [1982]). Plaintiff must establish that, "the State's funding methodology deprives New York City School children of a "minimum adequate education." The plaintiffs are also required to, "establish a causal link between the present funding system and any proven failure to provide a sound basic education to New York City School children." (*Campaign For Fiscal Equity, Inc. v. State*, 86 N.Y. 2d 307, 655 N.E. 2d 661, 631 N.Y.S. 2d 565 [1995]).

Defendants contend that plaintiffs cannot establish that the withholding of the State Aid increase for the 2012-2013 school year will result in the denial of the opportunity for a sound basic education in the 2013-2014 school year. They argue that the \$290 million in funds withheld from the budget was a relative small amount of the entire budget for New York City Schools and was a proper financial incentive to obtain a timely APPR from the School Districts. Defendants argue that plaintiffs' due process and equal protection causes of action fail because the legislation at issue is rational and financial incentives are a well recognized government tool. They claim plaintiffs cannot establish a denial of equal protection.

Plaintiffs argue that the continued withholding of \$290 million as part of a cumulative reduction in funding and services to children that are clearly in need, is irrational and violates the mandates of the Court of Appeals concerning a sound basic education for New York City School Students. They contend that defendants' actions violated the due process of law provisions of the New York State Constitution because the financial sanctions imposed for failure to comply with the legislation were unreasonable and there was no rational basis to establish that APPR plans could be imposed on districts that failed to meet the deadline, if a non-financial sanction had been imposed. Plaintiffs argue that defendants actions violated equal protection because they have created two classes of students and the defendants cannot establish that the penalty imposed was rational and based on reasonable considerations of differences or disparities, or that it was based on prudent management of educational aid funding.

This Court finds that plaintiffs have stated potentially meritorious claims of violations of the requirements of a sound basic education, due process and equal protection rights under the New York State Constitution. Dismissal pursuant to CPLR §3211[a][7], requires a reading of the pleadings to determine whether a legally recognizable cause of action can be identified and it is properly pled. A cause of action does not have to be skillfully prepared but it does have to present facts so that it can be identified and establish a potentially meritorious claim. Allegations are generally deemed true in favor of the non-moving party (Leon v. Martinez, 84 N.Y. 2d 83, 638 N.E. 2d 511, 614 N.Y.S. 2d 972 [1994]). Plaintiffs allegations that enforcement of a penalty provision after the governor's imposition of APPR, was unconstitutional are presumed true and the budgetary actions could potentially be found irrational, arbitrary or capricious.

Accordingly, it is ORDERED that defendants' motion pursuant to CPLR §3211 [a],[2],[3] and [7] to dismiss the Second Amended Complaint and the action with prejudice, is denied

ENTER:



MANUEL J. MENDEZ,
J.S.C.

Dated: April 7, 2014

Check one: FINAL DISPOSITION X NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

FILED

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NEW YORK