Wong v New York City Employees' Retirement Sys.
2024 NY Slip Op 32288(U)
July 2, 2024
Supreme Court, New York County
Docket Number: Index No. 652297/2023
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ANDREA MASLEY** **PART** **48**

Justice

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INDEX NO. 652297/2023

MOTION DATE

MOTION SEQ. NO. 004

WAYNE WONG, JERIANN JALOZA, JENNIFER DIMEGLIO, JATANIA MOTA, and AMERICANS FOR FAIR TREATMENT, INC.,

Plaintiff,

- v -

NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, and BOARD OF EDUCATION RETIREMENT SYSTEM OF THE CITY OF NEW YORK,

Defendants.

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DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 32, 41, 43, 53, 56, 57, 69, 70

were read on this motion to/for DISMISS.

Upon the foregoing documents, it is

In this action for breach of fiduciary duty and declaratory relief, defendants move pursuant to CPLR 3211(a)(1), (2), (3), and (7), to dismiss the complaint, for lack of standing. For the following reasons, the motion is granted, and the complaint is dismissed.

In arguing that plaintiffs lack standing, defendants rely on *Thole v U.S. Bank N.A.* (590 US 538 [2020].) In *Thole*, participants in a pension plan brought a putative class action against U.S. Bank N.A. and others, alleging that the defendants breached their duties of loyalty and prudence under the Federal Employee Retirement Income Security Act of 1974 (ERISA) by poorly managing and investing the assets of the plan. The Supreme Court held that plaintiffs lacked standing to challenge the plan's

mismanagement under the Case or Controversy Clause of article III, § 2 of the United States Constitution. (*Thole*, 590 US at 541.)

The Court explained in *Thole* that to establish standing under Article III, a plaintiff must demonstrate, among other things, "that he or she suffered an injury in fact that is concrete, particularized, and actual or imminent." (*Id.* at 540). The Court reasoned that the plaintiffs did not suffer such an injury because their retirement plan was a "defined benefit plan," entitling them to receive a "fixed payment each month" that does "not fluctuate with the value of the plan or because of the plan fiduciaries' good or bad investment decisions." (*Id.*) Therefore, the outcome of the "suit would not affect their future benefit payments" and the plaintiffs had "no concrete stake" in the lawsuit. (*Id.* at 541-542.)

Here, the pension plans at issue are also "defined benefit" retirement plans. (Complaint at ¶¶ 14-16.) Thus, plaintiffs are entitled to a fixed benefit each month and will receive the same amount regardless of whether they win or lose this action. Just like the plaintiffs in *Thole*, plaintiffs here have not, and will not, suffer any monetary losses based upon defendants' investment decisions.

Plaintiffs urge, however, that *Thole* is distinguishable because it involves the application of federal standing principles to a federal statute. Plaintiffs are correct that this court is "not bound to adhere to federal standing requirements." (*US Bank N.A. v Nelson*, 36 NY3d 998, 1003 n 4 [2020] [concurrence], citing *ASARCO Inc. v Kadish*, 490 US 605, 617 [1989]). Under New York law, however, plaintiffs must nevertheless demonstrate that they suffered an "injury in fact." (*Matter of Mental Hygiene Legal Serv. v Daniels*, 33 NY3d 44, 50 [2019].) This "requirement necessitates a showing that the

party has an actual legal stake in the matter being adjudicated and has suffered a cognizable harm that is not tenuous, ephemeral, or conjectural but is sufficiently concrete and particularized to warrant judicial intervention." (*Id*. [internal quotation marks and citations omitted]). Plaintiffs have not demonstrated sufficiently concrete or particularized harm. Rather, just as the plaintiffs in *Thole*, the outcome of this action will not affect plaintiffs' future benefits. (*See Thole,* 590 US at 540.)

Plaintiffs assert that they have a stake in the outcome of this litigation because defendants' investment decisions have had "a detrimental impact on the financial health" of their retirement plans and on their plans' "ability to pay the pension benefits they owe." (Complaint at ¶ 42.) However, plaintiffs' allegations regarding their plans' potential inability to meet their payment obligations are speculative and they also concede that any "underfunding ultimately puts New York City taxpayers on the hook." (*Id.* at ¶ 46.)

Plaintiffs further contend that *Thole* is distinguishable because plaintiffs' claims, unlike those in *Thole*, should be analyzed under the common law of trusts. The common law of trusts is inapplicable. Defendants are not trust beneficiaries. They are participants in defined benefit plans. As the Court explained in *Thole*, "[i]n the private trust context, the value of the trust property and the ultimate amount of money received by the beneficiaries will typically depend on how well the trust is managed, so every penny of gain or loss is at the beneficiaries' risk." (*Thole*, 590 US at 542.) Defined benefit plans are "more in the nature of a contract." (*Id.* at 542-543.) The benefits under such plans "are fixed and will not change, regardless of how well or poorly the plan is managed. The benefits paid to the participants in a defined-benefit plan are not

tied to the value of the plan." (*Id.* at 543.) As such, plaintiffs' circumstance is not analogous to that of a trust beneficiary.

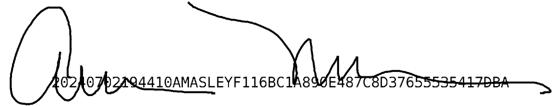
Plaintiffs also assert that defendants' investment decisions will evade review if the court were to find that plaintiffs lack standing. This contention is unpersuasive. 11 NYCRR 136.19 (c) provides that the Superintendent of Financial Services, after notice and a hearing, may make a finding that a person's wrongful or negligent act, omission, or breach of a fiduciary responsibility for a public pension fund caused the fund to have been depleted. The Superintendent may then transmit a copy of such finding to the Attorney General "who may proceed according to statute." (11 NYCRR 136-1.9 [c].) Plaintiffs' allegation that the Attorney General is unlikely to proceed against defendants is speculative.

Finally, plaintiffs argue that they have standing to bring this action as citizen-taxpayers pursuant to General Municipal Law § 51. They do not, however, indicate in their complaint that they are suing under General Municipal Law § 51. In addition, absent fraud, "or a waste of public property in the sense that [it] represent[s] a use of public property or funds for entirely illegal purposes," which is not alleged in the complaint, a taxpayer suit does not lie under General Municipal Law § 51. (*Godfrey v Spano*, 13 NY3d 358, 373 [2009] [internal quotation marks and citations omitted]).

The court has considered the parties' remaining arguments and finds them without merit or otherwise not requiring an alternate result.

Accordingly, it is

ORDERED that defendants' motion to dismiss is granted and the complaint is dismissed.



7/2/2024				**ANDREA MASLEY, J.S.C.**		
DATE						
CHECK ONE:	X	**CASE DISPOSED**		☐ **NON-FINAL DISPOSITION**		
	X	**GRANTED**	☐ **DENIED**	☐ **GRANTED IN PART**	☐	**OTHER**
APPLICATION:	☐	**SETTLE ORDER**		☐ **SUBMIT ORDER**		
CHECK IF APPROPRIATE:	☐	**INCLUDES TRANSFER/REASSIGN**		☐ **FIDUCIARY APPOINTMENT**	☐	**REFERENCE**