SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. KENNETH A. DAVIS,

Justice

TRIAL/IAS, PART 10
NASSAU COUNTY

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.
A.F.S.C.M.E., Local 1000, A.F.L.-C.I.O.,
by its Local 830,

Plaintiff(s),

SUBMISSION DATE: 04/16/03
INDEX No.: 18012/02

-against-

THE COUNTY OF NASSAU,

MOTION SEQUENCE #2

Defendant(s).

The following papers read on this motion:

Notice of Motion/ Order to Show Cause..... X
Answering Papers..... X
Reply.....
Briefs: Plaintiff's/Petitioner's.....
Defendant's/Respondent's.....

Upon the foregoing papers, defendant's motion for an order dismissing the action pursuant to CPLR § 3211 (a)(5), (7) and (10) is denied.

The instant action seeks a declaratory judgment pertaining to several jobs performed by employees of the Sheriff acting as Correction Officers. Plaintiff claims that the duties of the corrections officers in performing Drug Interdiction work at Kennedy Airport, in performing internal investigations of Deputy Sheriffs and in transporting individuals pursuant to § 9-4.1 of the Mental Hygiene Law should be performed by Deputy Sheriffs and not correction officers. Plaintiff claims that all of the individuals performing the complained of duties are working out of their civil service title.

CPLR § 3211(a)(5) provides that

> "the cause of action may not be maintained because of arbitration and award, collateral estoppel, discharge in bankruptcy, infancy or other disability of the moving party, payment, release, res judicata, statute of limitations, or statute of frauds." Here, the court finds that the issues currently before the court are different than those who were litigated in the action entitled Arciello v. Nassau.

Accordingly, defendant's motion to dismiss the action on the theory of res judicata and collateral estoppel is denied.

CPLR §3211(a)(7) provides that complaints are to be "liberally construed and the facts alleged accepted as true; the court must determine whether the facts as alleged fit within any cognizable legal theory." Wiener v. Lazard Freres & Co., 241 A.D.2d 114, 672 N.Y.S.2d 8 citing Leon v. Martinez, 84 N.Y.2d 83, 638 N.E.2d 511, 614 N.Y.S.2d 972. The court is limited to determining whether the complaint states a cause of action and must be liberally construed in favor of the plaintiff. Edmond v. IBM, 91 N.Y.2d 949, 694 N.E.2d 438, 671 N.Y.S.2d 437. The question for the trial court "is not whether an issue of fact exists warranting a trial, or even whether there is any evidentiary support for the complaint, but whether it can be determined, from within the four corners of the complaint, that plaintiffs have stated any cognizable cause of action." Glassman v. Vatli, 111 A.D.2d 744, 489 N.Y.S.2d 777. The court finds that plaintiff has set forth sufficient allegations in the complaint to assert a cause of action against the moving defendant. Accordingly, the court finds that the plaintiff's complaint sufficiently states a cause of action.

CPLR § 3211(a)(10) provides "that the court should not proceed in the absence of a person who should be a party." Upon review of the pleadings, the court finds that the defendant in the instant action is the proper party to the action. Accordingly, the court finds that the necessary parties have been named. Nothing precludes the defendant from impleading an additional party. Defendant has the ability to join any party that he believes is necessary in the action.

Based on the above, defendant's motion is denied in its entirety. Defendant is hereby ordered to serve an answer within twenty (20) days form the date of this order. The parties are to appear for a preliminary conference on July 16, 2003 at 2:30 pm on the lower level of the Supreme Court Building, 100 Supreme Court Drive, Mineola, New York.

This decision constitutes the order and judgment of the Court.

Dated: JUN 09 2003

J.S.C.

HON. KENNETH A. DAVIS