

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

PRESENT: GEOFFREY D.S. WRIGHT  
*Justice*

PART 62

KAREN BRATHWAITE, et al.,  
Plaintiff/Petitioner(s)

INDEX NO. 105174/11

MOTION DATE \_\_\_\_\_

- v -

MOTION SEQ. NO. 002

DAVID F. FRANKEL, As Commissioner, New York City  
Department of Finance, THE CITY OF NEW YORK,  
MICHAEL R. BLOOMBERG, As Mayor,

**FILED**

Defendant/Respondent(s)

AUG 16 2011

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion/petition to dismiss the complaint  
NEW YORK COUNTY CLERK'S OFFICE

PAPERS  
NUMBERED

Notice of Motion/Petition Order to Show Cause — Affidavits — Exhibits ...	1 _____
Answering Affidavits — Exhibits _____	_____
Replying Affidavits _____	_____
Other _____	_____

Cross-Motion: Yes X No

Upon the foregoing papers, it is ordered that this motion/petition by the Defendants to dismiss the complaint is granted a/p/o.

Aug 9, 2011

  
GEOFFREY D. WRIGHT J.S.C.  
AJSC

Check one: X FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

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

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: Part IA-1

-----X  
KAREN BRAITHWAITE, GWENDOLYN  
BASKERVILLE, ROZINA BROWN, et al,  
Plaintiff/Petitioner(s),

Index #111051/11  
Motion Cal. #  
Motion Seq. #  
**DECISION/ORDER**  
Present:  
Hon. Geoffrey Wright  
Judge, Supreme Court

-against-

DAVID F. FRANKEL, As Commissioner, New  
York City Department Of Finance, THE  
CITY OF NEW YORK, MICHAEL R. BLOOMBERG,  
As Mayor,

**FILED**

AUG 16 2011

Defendant/Respondents(s).

NEW YORK  
COUNTY CLERK'S OFFICE

-----X  
Recitation, as required by CPLR 2219(a), of the papers considered in the review of  
this Motion to: grant preliminary injunction

PAPERS	NUMBERED
Notice of Motion, Affidavits & Exhibits Annexed	
Order to Show Cause, Affidavits & Exhibits	1
Answering Affidavits & Exhibits Annex	2
Replying Affidavits & Exhibits Annexed	
Other (Cross-motion & Exhibits Annexed)	

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

The Plaintiffs are all employees of the New York City Department of Finance, and all qualify as members of protected class, in that they have a disability of some kind. They bring this law suit because their collective job title, Office Management Assistant has been eliminated from the budget of the Department of Finance. The reason for this is the current economic distress that is being suffered throughout the world. In an earlier decision, from May 6 of this year, I denied the Plaintiffs' motion for a preliminary injunction that would have required the Defendant to keep the Plaintiffs in their jobs, and to keep paying them.

In my May decision, I found that many of the Plaintiffs were working out of title, that is in jobs whose titles were other than Office Management Assistant. In most cases, these people

were doing the work of clerks at one level or another. I found in May, and I still adhere to that opinion, that the movement of the Plaintiff to other skill sets was occasioned by the extinguishment of the need for the skills demanded of an Office Management Assistant. This, in and of itself, is a nondiscriminatory reason for the layoff of the Plaintiffs. They are like firemen on diesel engines, a once needed job which need has evanesced as time has marched on. The Defendants, having successfully resisted the request for a preliminary injunction, now move to dismiss the complaint in its entirety. For the reasons set forth below, the motion is granted.

In hearing arguments on the motion for a preliminary injunction, and in reading the affirmations, affidavits and memoranda, the Plaintiffs did not challenge the world wide financial crisis, or that the crisis had affected the City of New York. One needs only read a newspaper, watch television, or surf the internet to be aware of the problem. I take judicial notice of the arguments so recently concluded in Washington, D.C., over the need to pay the country's bills, and how to do it. It was also acknowledged at the argument on the application to the preliminary injunction that to retain any of the Plaintiffs, it would be necessary to lay off some other employee. It was conceded, as I mentioned in my May decision, that some of the Plaintiffs had been accommodated by assignment to other jobs.

As I recited in my prior decision, there were 78 Office Machine Assistants. By the time of the argument of the preliminary injunction, one had died, one qualified for a new job title, 12 had permanent Civil Service and were nonetheless laid off. 28 Office Machine Assistants were hired under 55-a of the Civil Service Law, the qualifying legislation defining disabilities. Attempts were made to find other jobs for these employees. Although the results of the search were not made known, I presume that it was not successful.

Just about any reading of the complaint and supporting statements or memoranda try to make this a strict liability case. That is simply not so. If a defendant can show a nondiscriminatory reason for the disputed action, then there is no breach of the law. Here, the defense has given a nondiscriminatory reason, the financial malaise of the entire world. The Plaintiffs have not disputed this or given any example of how the Plaintiff would be or should exempt from the world forces that affect us all. The Plaintiffs do not address this issue in their papers, much less weigh it in their arguments. Although not yet as dire, the equation would be the depression of the thirties. There are forces out there over which neither side in this matter has any control, but which impact their decision making. The Plaintiffs cannot isolate themselves from these facts of current affairs.

In the absence of any real contest as to the expressed reasons for the layoffs now taking place, the Plaintiffs have ceded this issue and thus the motion. I disagree with the claim that the Plaintiffs need discovery, they had just that in May, when during the hearing they were able to question defense witnesses about how the fiscal distress was affecting other job categories. The City budget is a matter of public record, and is reported in the press on a daily basis, and hashed over on Sunday morning talk shows, which might be why the Plaintiff has not tried to make an issue of the City's predicament. But the failure to address the financial straits of the Defendants

also tacitly accepts the nondiscriminatory reason for the layoff, which is the main defense here. Since I am granting the motion to dismiss, I need not address the issue of whether certain parties must be joined. However, since those parties would be available for joinder, the harsh relief of dismissal on that ground would not be appropriate.

The motion to dismiss is granted. This constitutes the decision and order of the Court.

Dated: August 9, 2011

  
GEOFFREY D. WRIGHT

AJSC

**FILED**

AUG 16 2011

NEW YORK  
COUNTY CLERK'S OFFICE