SUPREME COURT- STATE OF NEW YORK
DUTCHESS COUNTY

Present:
Hon. JAMES V. BRANDS
Justice.

SUPREME COURT: DUTCHESS COUNTY

RICHARD J. SASSI III,
Plaintiff,

-against-

MOBILE LIFE SUPPORT SERVICES, INC.,
Defendant.

DECISION AND ORDER
Index No: 2016-51918

The following papers were read and considered on defendant's motion to dismiss pursuant to CPLR §3211(a)(7).

NYSCEF E-FILED DOCS. NO. 14-22

Background Facts:

Plaintiff commenced this action alleging that the defendant violated Executive Law §296.15 and Corrections Law Article 23-A by willfully failing to re-employ plaintiff after his criminal conviction and 60-day incarceration. According to the Verified Complaint, plaintiff applied for employment with the defendant on or about June 2014 at which time he claims to have been facing a misdemeanor charge relating to an alleged false 911 emergency call made in August 2012 while he worked as a police officer. Plaintiff alleges that he was first hired as a per-diem communication specialist and thereafter as a full-time dispatcher for defendant. It is further alleged that during the course of his employment with defendant, plaintiff was re-tried on the misdemeanor charge in early 2016 at which time plaintiff was found guilty of falsely reporting an emergency and sentenced to 60-day incarceration. Plaintiff further alleges that the defendant denied re-employment based solely upon his conviction and incarceration thus violating the aforementioned statutes.

Defendant filed the instant motion for dismissal pursuant to CPLR §3211(a)(7). Counsel contends that the aforementioned statutes are inapplicable since they pertain to denial of employment based on convictions that occurred *prior to* one's employment, whereas the plaintiff's complaint alleges that the defendant failed to *re-employ* plaintiff following a criminal conviction and 60-day incarceration.

Plaintiff argues that he was terminated from his employment upon commencement of his 60-day incarceration sentence and upon completion thereof, plaintiff applied for employment with defendant which was denied solely based upon his prior conviction.

Decision:

Section 751 of Article 23-A of the Corrections Law specifically states that the statute "shall apply…to any…employment held by any person whose conviction of one or more criminal offenses *precedes* such employment" the statue continues stating that "no employment…held by an individual…shall be denied or accepted upon adversely by reason of the individual's having been *previously* convicted of one or more criminal offenses." Likewise, Section 296.15 of the Executive Law states that the statue only applies to convictions that occurred prior to employment, stating that "it shall be an unlawful discriminatory practice for any person…to deny any…employment to any individual by reason of his or her *having been* convicted of one or more criminal offenses…when such denial is in violation of the provisions of Article 23-A of the Correction Law" (*emphasis added*).

Based on the expressed language of the foregoing statutes, plaintiff's complaint is dismissed as a matter of law since the alleged statutory violation is belied by the facts as asserted in the verified complaint. The aforementioned statutes only apply to convictions that occur *prior to* one's employment, whereas plaintiff alleges he was first employed by defendant, after which he was convicted of a crime and incarcerated for 60-days, after which plaintiff sought to resume his employment with defendant. (*See Martino v. Consolidated Edison Co. of N.Y.*, 105 AD3d 575 [1st Dept. 2013]; *Sunny, LLC v Edible Arrangements, LLC*, 2014 WL 1226210 at p. 14 [Mar. 25, 2014]).

Based on the foregoing, it is hereby

ORDERED that plaintiff's complaint is dismissed.

The foregoing constitutes the decision and order of this court.

Dated: December 14, 2016
Poughkeepsie, New York

ENTER:

HON. JAMES V. BRANDS, J.S.C.

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Pursuant to CPLR Section 5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed form and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.

When submitting motion papers to Judge Brands' Chambers, please do <u>not</u> submit any copies. Submit only the original papers.