

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Heinrichs v. Town of Brookhaven

2025 NY Slip Op 07000 (N.Y. Ct. App. 2025) · No. 2022-04030 · Decided December 17, 2025

SUMMARY

The Appellate Division, Second Department, modified an order dismissing claims brought by a former Town of Brookhaven employee who alleged retaliation for reporting governmental corruption. The court reinstated claims under Civil Service Law § 75-b, for breach of a settlement agreement, and for First Amendment retaliation under 42 USC § 1983 against most of the Town defendants, while affirming dismissal of the federal retaliation claim against Anthony Gallino and dismissing part of the appeal concerning the law firm defendants.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Valerie Brathwaite Nelson, J.P.; Paul Wooten, J.; Barry E. Warhit, J.; Lourdes M. Ventura, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	December 17, 2025
DOCKET	2022-04030
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff appealed from an order of the Supreme Court, Suffolk County, granting portions of defendants' motions pursuant to CPLR 3211(a) to dismiss claims arising from alleged whistleblower retaliation, breach of contract, tortious interference, and First Amendment retaliation under 42 U.S.C. § 1983.
STANDARD OF REVIEW	On a CPLR 3211(a)(1) motion, the movant must submit documentary evidence that utterly refutes the plaintiff's factual allegations and conclusively establishes a defense as a matter of law. On a CPLR 3211(a)(7) motion, the complaint receives a liberal construction, the alleged facts are presumed true, and the court determines whether those facts fit within any cognizable legal theory. When evidentiary proof is considered without converting the motion to summary

	judgment, dismissal is proper only when the plaintiff has no cause of action and a material factual allegation is shown not to be a fact or no significant dispute exists.
PRECEDENTIAL VALUE	Published New York Appellate Division decision
PARTIES	Michael Heinrichs v. Town of Brookhaven, Town of Brookhaven Highway Department, Daniel P. Losquadro, Steven Tricarico, Anthony Gallino, Cooper Sapir & Cohen, P.C., David Cohen

TOPICS

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QUESTIONS PRESENTED

1. Whether the appeal concerning dismissal of the tortious-interference-with-contract claim against the law-firm defendants had to be dismissed because the plaintiff did not oppose that branch of the motion and therefore was not aggrieved.
2. Whether the complaint adequately stated a whistleblower claim under Civil Service Law § 75-b against the Town and Highway Department.
3. Whether the complaint adequately stated a breach-of-contract claim based on the alleged violation of the 2017 settlement stipulation.
4. Whether the complaint adequately stated a First Amendment retaliation claim under 42 U.S.C. § 1983 against the Town defendants other than Gallino.
5. Whether the documentary submissions conclusively established that the defendants were entitled to dismissal or that the individual Town defendants were entitled to qualified immunity at the pleading stage.

HOLDINGS

1. The appeal from dismissal of the tortious-interference-with-contract claim against the law-firm defendants was dismissed because the plaintiff did not oppose that branch of the motion and therefore was not aggrieved by it.
2. The first cause of action adequately stated a claim under Civil Service Law § 75-b against the Town and Highway Department, and the documentary evidence did not utterly refute the allegations or establish that the plaintiff had no cause of action.
3. The third cause of action adequately stated a breach-of-contract claim against the Town and Highway Department based on the alleged violation of the 2017 settlement stipulation.

4. The sixth cause of action adequately stated a First Amendment retaliation claim under 42 U.S.C. § 1983 against the Town defendants other than Gallino. The claim was properly dismissed as against Gallino because his Town employment ended more than two years before the plaintiff's termination.

KEY QUOTATIONS

*“On a motion to dismiss a [complaint] pursuant to CPLR 3211(a)(1), the movant has the burden of providing documentary evidence that utterly refutes the [plaintiff's] factual allegations, conclusively establishing a defense as a matter of law” ([*2])*

*“On a motion to dismiss a complaint pursuant to CPLR 3211(a)(7) for failure to state a cause of action, the complaint is to be afforded a liberal construction, the facts alleged are presumed to be true, the plaintiff is afforded the benefit of every favorable inference, and the court is to determine only whether the facts as alleged fit within any cognizable legal theory” ([*2])*

*“To maintain a [42 USC] § 1983 action, a plaintiff must establish two elements: (1) that the conduct complained of was committed by a person acting under color of state law; and (2) that the conduct complained of deprived a person of rights, privileges or immunities secured by the Constitution or laws of the United States” ([*3])*

*“[T]he First Amendment protects a public employee from retaliation by his or her employer for the employee's speech only if the employee sp[ea]ks [1] as a citizen [2] on a matter of public concern” ([*3])*

FACTUAL BACKGROUND

Michael Heinrichs worked as a laborer for the Town of Brookhaven's Highway Department from September 2013 until January 2019. He alleged that the defendants terminated his employment in retaliation for reporting incidents of corruption within the Highway Department to federal and local authorities. He also alleged that the Town and Highway Department breached a 2017 settlement stipulation requiring that discipline administered to him not be arbitrary and capricious.

PROCEDURAL HISTORY

Heinrichs commenced an action in December 2019 against the Town defendants and the Town's outside labor counsel, alleging that his employment was terminated in retaliation for reporting alleged corruption. The Supreme Court granted portions of the defendants' CPLR 3211(a) motions, dismissing the first, third, and fourth causes of action and portions of the sixth cause of action against the Town defendants, and the fifth cause of action and portions of the sixth cause of action against the law-firm defendants. The Appellate Division dismissed the unopposed appeal concerning the fifth cause of action, modified the order to reinstate the first and third causes of action and the First Amendment retaliation claim against most Town defendants, affirmed the order insofar as reviewed, and awarded costs to the law-firm defendants.

DISPOSITION

other

REMAND INSTRUCTIONS

The Supreme Court's order was modified by deleting the provisions dismissing the first and third causes of action and the First Amendment retaliation claim against the Town, the Highway Department, Losquadro, and Tricarico, and substituting provisions denying those branches of the motion. The dismissal of the First Amendment retaliation claim against Gallino remained in effect. The appeal concerning the fifth cause of action was dismissed, and one bill of costs was awarded to the law-firm defendants.

CASES CITED

- *Mixon v TBV, Inc.*, 76 AD3d 144, 156-157
- *Birmingham v Linden Plaza Hous. Co.*, 210 AD3d 853, 854
- *Matter of Palmore v Board of Educ. of Hempstead Union Free Sch. Dist.*, 145 AD3d 1072, 1073
- *Watts v City of New York*, 186 AD3d 1577, 1578
- *Leon v Martinez*, 84 NY2d 83, 87-88
- *Marinelli v Sullivan Papain Block McGrath & Cannavo, P.C.*, 205 AD3d 714, 715-716
- *Guggenheimer v Ginzburg*, 43 NY2d 268, 275
- *Tipaldo v Lynn*, 26 NY3d 204, 210-211
- *Matter of O'Hara v Board of Educ., Yonkers City Sch. Dist.*, 198 AD3d 896, 901
- *Lilley v Greene Cent. Sch. Dist.*, 168 AD3d 1180, 1182
- *Truesource, LLC v Niemeyer*, 223 AD3d 694, 695
- *Pressley v City of New York*, 233 AD3d 932, 936
- *Singer v Ferro*, 711 F3d 334, 339 [2d Cir]
- *Sculti v Finley*, 167 AD3d 796, 797-798