296 A.D.2d 852
Supreme Court, Appellate Division,
Fourth Department, New York.

MAIN EVALUATIONS, INC., Plaintiff–Respondent,
v.
STATE of New York, New York State Office of Temporary and Disability Assistance, and Commissioner Brian J. Wing, Defendants–Appellants.

July 3, 2002.

Synopsis

Doctor brought declaratory action alleging that state wrongfully terminated medical services contract with him. The Supreme Court, Erie County, O'Donnell, J., granted preliminary injunction on behalf of doctor. State appealed. The Supreme Court, Appellate Division, held that: (1) declaratory action and grant of injunctive relief was **unnecessary** and **inappropriate**; (2) proper forum for claim was Court of Claims; and (3) Supreme Court abused its discretion in granting doctor's motion for preliminary injunction.

Reversed and preliminary injunction vacated.

Scudder, J., filed a dissenting opinion.

West Headnotes (7)

[1] Declaratory Judgment
Existence and effect in general

A cause of action for a **declaratory judgment** is **unnecessary** and **inappropriate** when the plaintiff has an adequate, **alternative remedy** in another form of action, such as breach of contract.

5 Cases that cite this headnote

[2] Declaratory Judgment
Existence and effect in general

Action that doctor brought over state's termination of medical services contract wherein doctor sought declaratory and injunctive relief was **unnecessary** and **inappropriate** because doctor had adequate, **alternative remedy** in action for breach of contract and contract expressly limited doctor's **remedy** to money damages in event of dispute.

3 Cases that cite this headnote

[3] Declaratory Judgment
Existence and effect in general

Parties to an agreement may not seek a declaration of their contract rights when their agreement specifies a different, reasonable means for resolving such disputes.

Cases that cite this headnote

[4] States
Particular claims

Proper forum for state's termination of medical services contract with doctor was Court of Claims, since Court of Claims had subject matter jurisdiction over causes of action against state for breach of contract. McKinney's Court of Claims Act § 9, subd. 2.

Cases that cite this headnote

[5] States
Particular claims

Proper forum for action where doctor sought **declaratory judgment** that state's termination of medical services contract with doctor violated his constitutional right to equal protection was Court of Claims.

Cases that cite this headnote

[6] States
Jurisdiction

A cause of action to recover damages against the State for violation of the equal protection clause of the New York Constitution may be brought in the Court of Claims.

Cases that cite this headnote

[7] **Injunction**

Employment of physicians;hospital staff privileges

Supreme Court abused its discretion in granting doctor's motion for preliminary injunction, on claim that state wrongfully terminated medical services contract with doctor, since doctor failed to meet its burden of demonstrating likelihood of ultimate success on the merits, irreparable injury if preliminary injunction was not granted, and balancing of equities in its favor; even though doctor contended that he would be irreparably injured based on loss of substantial sums expended in preparation for its performance under contracts and loss of good will, doctor, if successful, could be adequately compensated with money damages for those alleged injuries.

4 Cases that cite this headnote

Attorneys and Law Firms

**356 Eliot Spitzer, Attorney General, Albany (Victor Paladino of counsel), for defendants–appellants.

Napier, Fitzgerald & Kirby, Buffalo (Brian P. Fitzgerald of counsel), for plaintiff–respondent.

***856** Present PIGOTT, JR., P.J., GREEN, SCUDDER, BURNS and GORSKI, JJ.

Opinion

***852** MEMORANDUM:

Plaintiff entered into two contracts with the New York State Office of Temporary and Disability Assistance ***853** (defendant) to perform medical evaluations for claimants seeking Social Security disability benefits. Defendant terminated the contracts after learning that plaintiff's chief medical officer was the subject of professional disciplinary proceedings that resulted in the suspension of his medical license. Plaintiff then commenced this action in Supreme Court seeking a declaration that defendants breached the contracts and violated plaintiff's constitutional right to equal protection of the law, and seeking an injunction enjoining defendants from terminating the contracts. Plaintiff also made a motion for a preliminary injunction enjoining defendants from terminating the contracts. Defendants opposed the motion and cross-moved for an order dismissing the complaint on the ground that Supreme Court lacked subject matter jurisdiction, contending that plaintiff's sole **remedy** for the alleged breach of the contracts at issue is an action for money damages in the Court of Claims.

Supreme Court granted plaintiff's motion for a preliminary injunction, directing defendant to reinstate the two contracts at issue pending final determination of this action, and denied defendants' cross motion. We reverse.

[1] [2] [3] [4] With respect to the first cause of action seeking a declaration that defendants breached the contracts, it is well established that "[a] cause of action for a **declaratory judgment** is **unnecessary** and **inappropriate** when the plaintiff has an adequate, **alternative remedy** in another form of action, such as breach of contract" (*Apple Records v. Capitol Records,* 137 A.D.2d 50, 54, 529 N.Y.S.2d 279; *see BGW Dev. Corp. v. Mount Kisco Lodge No. 1552 of Benevolent & Protective Order of Elks of U.S. of Am.,* 247 A.D.2d 565, 568, 669 N.Y.S.2d 56, *lv. denied* 92 N.Y.2d 813, 681 N.Y.S.2d 474, 704 N.E.2d 227; *Levey v. Leventhal & Sons,* 231 A.D.2d 877, 878, 647 N.Y.S.2d 597). We conclude that this action seeking declaratory and injunctive relief is "**unnecessary** and **inappropriate** [because] the plaintiff has an adequate, **alternative remedy**" in an action for breach of contract (*Apple Records,* 137 A.D.2d at 54, 529 N.Y.S.2d 279). Furthermore, even if a **declaratory judgment** action would otherwise have been appropriate, the contracts at issue expressly limit plaintiff's **remedy** to money damages in the event of a dispute, and "parties to an agreement **357 may not seek a declaration of their contract rights when their agreement specifies a different, reasonable means for resolving such disputes" (*Kalisch–Jarcho, Inc. v. City of New York,* 72 N.Y.2d 727, 732, 536 N.Y.S.2d 419, 533 N.E.2d 258). Because the Court of Claims has subject matter jurisdiction over a cause of action against the State for breach of contract (*see* Court of Claims Act § 9[2]; *Sarbro IX v. State Off. of Gen. Servs.,* 229 A.D.2d 910, 911, 645 N.Y.S.2d 212), "the proper forum for [that cause of action] is the Court of Claims" (*Matter of City* ***854**

Constr. Dev. v. Commissioner of N.Y. State Off. of Gen. Servs., 176 A.D.2d 1145, 1146, 575 N.Y.S.2d 595).

[5] **[6]** We further conclude that the second cause of action seeking a declaration that defendants violated plaintiff's constitutional right to equal protection of the law also is properly the subject of an action in the Court of Claims. A cause of action to recover damages against the State for violation of the equal protection clause of the New York Constitution may be brought in the Court of Claims (*see generally Brown v. State of New York,* 89 N.Y.2d 172, 188, 652 N.Y.S.2d 223, 674 N.E.2d 1129).

[7] In any event, even assuming, arguendo, that Supreme Court properly denied defendants' cross motion, we conclude that the court abused its discretion in granting plaintiff's motion for a preliminary injunction. Plaintiff failed to meet its burden of demonstrating the likelihood of ultimate success on the merits, irreparable injury if the preliminary injunction is not granted, and a balancing of the equities in its favor (*see generally Doe v. Axelrod,* 73 N.Y.2d 748, 750, 536 N.Y.S.2d 44, 532 N.E.2d 1272; *Time Sq. Books v. City of Rochester,* 223 A.D.2d 270, 272, 645 N.Y.S.2d 951). Plaintiff contends that it will be irreparably injured based on the loss of substantial sums expended in preparation for its performance under the contracts and the loss of good will. We conclude, however, that plaintiff, if successful, can be adequately compensated with money damages for those alleged injuries (*see Elpac, Ltd. v. Keenpac N. Am.,* 186 A.D.2d 893, 894–895, 588 N.Y.S.2d 667).

It is hereby ORDERED that the order so appealed from be and the same hereby is reversed on the law without costs, the motion is denied, the preliminary injunction is vacated, the cross motion is granted and the complaint is dismissed.

All concur except SCUDDER, J., who dissents and votes to affirm in the following Memorandum:

I respectfully dissent. In my view, Supreme Court properly granted plaintiff's motion for a preliminary injunction prohibiting defendants from terminating certain contracts with plaintiff, pursuant to which plaintiff was to perform medical evaluations for claimants seeking Social Security disability benefits. I further conclude that the court properly denied defendants' cross motion seeking to dismiss the complaint for lack of subject matter jurisdiction. Although the majority properly notes that the Court of Claims has jurisdiction over a cause of action against the State for breach of contract, the Court of Claims may grant injunctive relief only if such relief is incidental to an award of damages (*see Sarbro IX v. State Off. of Gen. Servs.,* 229 A.D.2d 910, 911, 645 N.Y.S.2d 212), and here plaintiff does not seek damages. Rather, plaintiff seeks a declaration that defendants breached the contracts and an injunction prohibiting defendants from doing so.

The majority also properly notes that "[a] cause of action to recover damages against the State for violation of the equal ***855** protection clause of the New York Constitution may be brought in the Court of ****358** Claims." However, contrary to the implicit conclusion of the majority, plaintiff does not seek damages based on that cause of action. Rather, plaintiff seeks a declaration that defendants violated plaintiff's right to equal protection by terminating the contracts on the ground that plaintiff is not a professional corporation while failing to terminate their contracts with other corporations that also were not professional corporations.

In my view, and contrary to the majority's conclusion, the failure of plaintiff to seek damages for breach of contract in the Court of Claims does not foreclose its right to seek in Supreme Court a declaration that defendants breached the contracts. A court "may decline to hear the matter [seeking declaratory relief] if there are other adequate **remedies** available, and it must dismiss the action if there is already pending between the parties another action in which all the issues can be determined * * *. The mere existence of other adequate **remedies**, however, does not require dismissal: 'We have never gone so far as to hold that, when there exists a genuine controversy requiring a judicial determination, the Supreme Court is bound, solely for the reason that another **remedy** is available, to refuse to exercise the power conferred by [the predecessor statutes to CPLR 3001]' " (*Matter of Morgenthau v. Erlbaum,* 59 N.Y.2d 143, 148, 464 N.Y.S.2d 392, 451 N.E.2d 150, *cert. denied* 464 U.S. 993, 104 S.Ct. 486, 78 L.Ed.2d 682; *see Seneca Ins. Co. v. Lincolnshire Mgt.,* 269 A.D.2d 274, 275, 703 N.Y.S.2d 127; *cf. BGW Dev. Corp. v. Mount Kisco Lodge No. 1552 of Benevolent & Protective Order of Elks of U.S. of Am.,* 247 A.D.2d 565, 568, 669 N.Y.S.2d 56, *lv. denied* 92 N.Y.2d 813, 681 N.Y.S.2d 474, 704 N.E.2d 227; *Apple Records v. Capitol Records,* 137 A.D.2d 50, 54, 529 N.Y.S.2d 279). *BGW Dev.*

Corp., Apple Records, and *Levey v. A. Leventhal & Sons,* 231 A.D.2d 877, 647 N.Y.S.2d 597, the cases relied upon by the majority, are factually distinguishable. In those cases, it was determined that the causes of action seeking declaratory relief were **unnecessary** and **inappropriate** because the complaints also sought damages for breach of contract. Nor does the decision in *Kalisch–Jarcho, Inc. v. City of New York* (72 N.Y.2d 727, 732, 536 N.Y.S.2d 419, 533 N.E.2d 258) provide support for the result reached by the majority. Although the Court of Appeals stated therein that declaratory relief is inappropriate if the contract specifies a "different, reasonable means for resolving such disputes" (*id.*), the Court also recognized that a **declaratory judgment** action "may be an appropriate vehicle for settling justiciable disputes as to contract rights and obligations" (*id.* at 731, 536 N.Y.S.2d 419, 533 N.E.2d 258). Although the contracts at issue address money damages, plaintiff does not seek money damages, and thus declaratory relief is appropriate. I disagree with the majority that the contracts limit plaintiff's **remedy** to money damages. The parties dispute the meaning of the term "redress" as that term is used in the clause providing that plaintiff agreed to accept "as full compensation for any damages * * * actually suffer[ed] * * * reasonable and appropriate expenses incurred * * * [and] agree[d] not to seek any punitive damages or other additional compensation or redress." Any ambiguity in that clause must be construed against defendants, the parties who drafted the contracts (*see Clifton Steel Corp. v. County of Monroe Pub. Works Dept.,* 120 A.D.2d 924, 924, 502 N.Y.S.2d 890), and in my view that clause does not indicate that plaintiff "unequivocally declared its intention to surrender substantive or procedural rights to seek [injunctive relief]" (****359** *Abiele Contr. v. New York City School Constr. Auth.,* 91 N.Y.2d 1, 10, 666 N.Y.S.2d 970, 689 N.E.2d 864). Thus, contrary to the apparent conclusion of the majority, defendants failed to establish that plaintiff waived its right to seek injunctive relief (*see generally Rosenthal v. City of New York,* 283 A.D.2d 156, 160, 725 N.Y.S.2d 20, *lv. dismissed* 97 N.Y.2d 654, 737 N.Y.S.2d 54, 762 N.E.2d 932).

I further conclude that the court properly determined that plaintiff established that the termination of the contracts threatens the very existence of its business, thereby establishing irreparable harm and a balancing of the equities in its favor (*see State of New York v. Premier Color of N. Y.,* 285 A.D.2d 544, 545, 728 N.Y.S.2d 86; *Quinones v. Board of Mgrs. of Regalwalk Condominium I,* 242 A.D.2d 52, 57, 673 N.Y.S.2d 450; *cf. Elpac, Ltd. v. Keenpac N. Am.,* 186 A.D.2d 893, 894–895, 588 N.Y.S.2d 667). Furthermore, in my view, plaintiff established a likelihood of success on the merits (*cf. Doe v. Axelrod,* 73 N.Y.2d 748, 750–751, 536 N.Y.S.2d 44, 532 N.E.2d 1272). I therefore disagree with the majority that the court abused its discretion in granting plaintiff's motion for a preliminary injunction, and I would affirm.

All Citations

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