

Coyle v Siegfried

2012 NY Slip Op 31814(U)

June 28, 2012

Supreme Court, Suffolk County

Docket Number: 2010-22328

Judge: Jeffrey Arlen Spinner

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SUPREME COURT OF THE STATE OF NEW YORK
IAS PART XXI – COUNTY OF SUFFOLK

PRESENT:

HON. JEFFERY ARLEN SPINNER
 Justice of the Supreme Court

COPY

TIMOTHY COYLE,

Plaintiffs,

- against -

PAUL D SIEGFRIED, individually; **PAUL D SIEGFRIED** as Guardian of the Person and Property of Lawrence P Fraiberg; **LAWRENCE L FLYNN**, individually; **LAWRENCE L FLYNN**, as Employee/Agent for Gottesman, Wolgel, Malamy, Flynn & Weinberg, PC; and **GOTTESMAN, WOLGEL, MALAMY, FLYNN & WEINBERG,**

Defendants.

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MOTION SEQ. NO.: 002 - CASEDISP
 ORIG. MOTION DATE: 09/24/10

MOTION SEQ. NO.: 003 - CASEDISP
 ORIG. MOTION DATE: 09/24/10

FINAL SUBMIT DATE: 04/25/12

Upon the following papers numbered 1- XXXX read on these Motions:

- Defendants SIEGFRIEDs' Motion [**002**] (Papers 1-2);
- Plaintiffs' Opposition (Papers 3-4);
- Defendants SIEGFRIEDs' Reply (Papers 5-6);
- Defendants FLYNN & LAW FIRMS' Motion [**003**] (Papers 7-8);
- Plaintiff's Opposition (Paper 9);
- Defendants FLYNN & LAW FIRMS' Reply (Papers 10-12);
- Plaintiff's Further Opposition (Paper 13);

it is

ORDERED that the Motion [**002**] of Defendants PAUL D SIEGFRIED as Guardian of the Person and Property of Lawrence P Fraiberg and PAUL D SIEGFRIED individually (collectively Defendants SIEGFRIED), pursuant to CPLR 3211, dismissing the complaint as asserted against them is hereby granted to the extent set forth herein below; and it is further

ORDERED that the Motion [**003**] of Defendants LAWRENCE L FLYNN, individually; LAWRENCE L FLYNN, as Employee/Agent for Gottesman, Wolgel, Malamy, Flynn & Weinberg, PC; and GOTTESMAN, WOLGEL, MALAMY, FLYNN & WEINBERG, PC. (collectively Defendants FLYNN & LAW FIRM), pursuant to CPLR 3211, dismissing the complaint as asserted against them is hereby granted to the extent set forth herein below.

Defendants SIEGFRIED move this Court [**002**] for and Order dismissing Plaintiff's complaint in its entirety, pursuant to (i) CPLR 3211(a)(7), for failure to state a cause of action as a matter of law; (ii) CPLR 3211(a)(1), based upon documentary evidence; (iii) CPLR 3211(a)(5), based

upon one year statute of limitations; and (iv) CPLR 3211(a)(3), for lack of capacity/standing to sue.

Defendants FLYNN & LAW FIRM move this Court [003] for an Order dismissing Plaintiff's complaint in its entirety with prejudice, pursuant to (i) CPLR 3211(a)(7), for failure to state a cause of action; and (ii) CPLR 3211(a)(1), based upon documentary evidence.

Plaintiff alleges that after he made a demand for payment of outstanding wages to his former employer's legal guardian, Defendant SIEGFRIED, as Guardian. SIEGFRIED distributed, without authorization, a report containing false statements about Plaintiff to six interested parties participating in the guardianship proceeding.

Plaintiff further alleges that in order to support his claim for unpaid wages, he provided Guardian SIEGFRIED's attorney, Defendant FLYNN, with his income tax returns bearing his unredacted social security number. Although two months later Plaintiff notified Flynn that these documents were privileged and provided for settlement purposes only, Flynn subsequently served them unredacted and without authorization on the six interested parties as part of motion papers.

Plaintiff asserts causes of action sounding in breach of contract, breach of fiduciary duty of confidentiality, negligence, intentional infliction of emotional distress, negligent intentional infliction of emotional distress, and negligent hiring, supervision and retention.

As to the Defendant SIEGFRIED, as Guardian, Plaintiff asserts the following causes of action: breach of fiduciary duty of confidentiality, breach of contract, negligence, intentional infliction of emotional distress, negligent intentional infliction of emotional distress.

As to Defendant FLYNN, individually, Plaintiff asserts the following causes of action: breach of confidentiality, negligence, intentional infliction of emotional distress, and negligent intentional infliction of emotional distress.

As to Defendant FLYNN, as employee of Defendant LAW FIRM, Plaintiff asserts the following causes of action: breach of confidentiality, negligence, intentional infliction of emotional distress, and negligent intentional infliction of emotional distress.

Finally, as to Defendant LAW FIRM, Plaintiff asserts the cause of action for negligent hiring, supervision and retention.

Upon a motion to dismiss for failure to state a cause of action under CPLR 3211 (a) (7), the court must determine whether from the four corners of the pleading "factual allegations are discerned which taken together manifest any cause of action cognizable at law" (*Morad v Morad*, 27 AD3d 626 [internal quotation marks omitted]). Further, the pleading is to be afforded a liberal construction, the facts alleged in the complaint accepted as true, and the plaintiff accorded the benefit of every possible favorable inference (see *Leon v Martinez*, 84 NY2d 83). However, "allegations consisting of bare legal conclusions as well as factual claims flatly contradicted by documentary evidence are not entitled to any such consideration" (*Garber v Board of Trustees of State Univ of NY*, 38AD3d 833, quoting *Maas v Cornell Univ*, 94 NY2d 87).

Furthermore, a motion to dismiss a complaint pursuant to CPLR 3211(a)(1) may be granted only if the documentary evidence submitted by the moving party utterly refutes the factual allegations of the complaint and conclusively establishes a defense to the claims as a matter of law (see: *Goshen v Mutual Life Ins Co of NY*, 98 NY2d 314; *Granada Condominium III Assn v Palomino*, 78 AD3d 996; *Fontanetta v John Doe 1*, 73 AD3d 78).

The Seventh and Eight Causes of Action, as asserted against the Siegfried Defendants, allege breach of contract. The elements of a cause of action to recover damages for breach of contract are: (1) existence of a contract; (2) plaintiff's performance under the contract; (3) defendant's breach of the contract; and (4) resulting damages (see *JP Morgan Chase v JH Elec of NY, Inc.*, 69 AD3d 802; *Furia v Furia*, 116 AD2d 694).

Viewing the facts as alleged in the complaint as true and affording Plaintiff the benefit of every possible favorable inference, the complaint does not allege any facts establishing the existence of an enforceable contract between Plaintiff and the Siegfried Defendants. Accordingly, the seventh and eight cause of action must be dismissed.

The Thirteenth, Fourteenth, Fifteenth and Sixteenth Causes of Action, alleging intentional infliction of emotional distress, are asserted against Defendants SIEGFRIED, Defendant FLYNN individually, and Defendant FLYNN as employee of Defendant LAW FIRM.

In order to properly plead a cause of action for intentional infliction of emotional distress, the plaintiff must allege more than conduct that causes inconvenience or embarrassment, even if such conduct continues for a protracted period of time (see: *Associates First Capital v Crabill*, 51 AD3d 1186). Indeed, the plaintiff must demonstrate that the defendant's "conduct [was] so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency ... and [was] utterly intolerable in a civilized community" (*Murphy v American Home Prods Corp*, 58 NY2d 293).

Applying these principles to the facts alleged in the complaint, the Court finds that Plaintiff failed to plead conduct sufficient to establish a *prima facie* claim of intentional infliction of emotional distress, and therefore the Thirteenth, Fourteenth, Fifteenth and Sixteenth causes of action must be dismissed.

The Ninth, Tenth, Eleventh and Twelfth causes of action allege negligence, and are asserted against Defendants SIEGFRIED, Defendant FLYNN individually, and Defendant FLYNN as employee of Defendant LAW FIRM.

To establish a claim of negligence, the plaintiff must show that the defendant owed a duty of care to the plaintiff, breach of that duty, that such breach was the proximate cause of the resulting injury, and actual loss, harm or damage. (see: *Pulka v Edelman*, 40 NY2d 78; *Gordon v Muchnick*, 180 AD2d 715; *Akins v Glens Falls City School Dist.*, 53 NY2d 325). Absent a duty of care, there is no breach, and without a breach, there can be no liability (see *Pulka v Edelman*, *supra*).

Here, Plaintiff's claim for negligence is essentially one for attorney's malpractice. While an attorney owes a fiduciary duty to his own client (see: *Graubard Mollen Dannett & Horowitz v Moskovitz*, 86 NY2d 112), "[a] direct cause of action by a nonclient against a law firm is not

generally cognizable" (*Mayes v UVI Holdings Inc.*, 280 AD2d 153; *Singer v. Whitman & Ransom*, 83 AD2d 862).

"Absent fraud, collusion, malicious acts, or other special circumstances, an attorney is not liable to third parties not in privity or near-privity for harm caused by professional negligence" (citations omitted) *Breen v Law Off of Bruce A Barket PC*, 2008 NY Slip Op 5640 (NY App Div 2d Dep't 2008).

The complaint alleges that Defendant FLYNN was retained by Defendant SIEGFRIED, as Guardian, to handle Plaintiff's claim for unpaid wages, but it is devoid of any allegations of privity or near-privity between Plaintiff and any of the Defendants. The Court notes that Plaintiff, an attorney registered to practice law in the State of New York, certainly appreciated better than an average person his relationship with Defendants. Thus, the Ninth, Tenth, Eleventh and Twelfth Causes of Action must be dismissed.

The First, Second, Fifth and Sixth Causes of Action, as asserted against Defendants SIEGFRIED, Defendant FLYNN individually, and Defendant FLYNN as employee of Defendant LAW FIRM, allege breach of fiduciary duty of confidentiality.

The elements of a cause of action to recover damages for breach of fiduciary duty are: (1) existence of a fiduciary relationship; (2) misconduct by the defendant; and (3) damages directly caused by the defendant's misconduct (See *Kurtzman v Bergstol*, 40 AD3d 588).

In deciding whether there is a fiduciary relationship, the court will look to see "whether a party reposed confidence in another and reasonably relied on the other's superior expertise or knowledge" (*Wiener v Lazard Freres & Co*, 241 AD2d 114).

Here, the complaint includes conclusory statements that Defendants breached their fiduciary duty of confidentiality to Plaintiff, but it fails to allege any facts that would give rise to such a fiduciary relationship between Plaintiff and any of the Defendants. On a motion to dismiss a complaint pursuant CPLR 3211(a)(7), "bare legal conclusions are not presumed to be true" (*Kupersmith v Winged Foot Golf Club, Inc.*, 38 AD3d 847). Thus, the complaint does not state a cause of action to recover damages for breach of fiduciary duty of confidentiality. Accordingly, the First, Second, Third and Fourth Causes of Action must be dismissed.

The Twenty-First Cause of Action for negligent hiring, supervision and retention, as asserted against Defendant LAW FIRM must be dismissed, since its continued viability is dependent upon the already dismissed claims.

The remaining Causes of Action have been withdrawn by Plaintiff in his opposition papers.

The Court notes that it is not aware of any proceedings commenced by Plaintiff to seal the court records containing his allegedly unredacted social security number; or to permanently expunge it from court filings or of any other effort by Plaintiff to actively protect himself against the anticipated by him identity theft resulting from Defendants' alleged conduct.

For all the reasons stated herein above and in the totality of the papers submitted herein, it is therefore

ORDERED, that the above referenced applications by Defendants are hereby granted to the extent specified herein above, the Complaint herein is hereby dismissed, and this action is therefore disposed; and it is further

ORDERED, that Counsel for the moving parties herein are hereby directed to serve a copy of this order, with Notice of Entry, upon Counsel for all parties and upon the Calendar Clerk of this Court and the Suffolk County Clerk, within twenty (20) days of the date is order is entered by the Suffolk County Clerk.

Dated: **Riverhead, New York**
June 28, 2012


HON. JEFFERY ARLEN SPINNER, JSC

<input checked="" type="checkbox"/> FINAL DISPOSITION	<input type="checkbox"/> NON-FINAL DISPOSITION
<input checked="" type="checkbox"/> SCAN	<input type="checkbox"/> DO NOT SCAN

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