

Meyer v Staten Is. Univ. Hosp.
2012 NY Slip Op 32168(U)
August 14, 2012
Supreme Court, Richmond County
Docket Number: 100786/09
Judge: Joseph J. Maltese
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND DCM PART 3**

**Index No.:100786/09
Motion No.: 004**

JILL MEYER, M.D.,

Plaintiff

DECISION & ORDER

HON. JOSEPH J. MALTESE

against

**STATEN ISLAND UNIVERSITY HOSPITAL, and
DIANE LEVY, as Executor of the Estate of Michael
Levy, M.D.,**

Defendants

The following items were considered in the review of the following motion for summary judgment.

<u>Papers</u>	<u>Numbered</u>
Notice of Motion and Affidavits Annexed	1
Memorandum of Law in Support	2
Answering Affidavits	3
Memorandum of Law in Opposition	4
Memorandum of Law in Reply	5
Exhibits	Attached to Papers

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

The defendants move for an order granting them summary judgment dismissing the plaintiff's complaint. The defendants' motion is granted.

Facts

The plaintiff was employed by the defendant, Staten Island University Hospital ("SIUH") from June 2008 until on or about September 21, 2008. During that 3 month period the plaintiff was a Staff Psychiatrist in SIUH's Department of Psychiatry. The plaintiff's immediate supervisor at that time was the defendant Michael Levy, M.D., who has since died. It is

uncontested that the plaintiff and SIUH through its president and chief executive officer, Anthony C. Ferreri executed an agreement and general release. The plaintiff maintains that Dr. Levy as a representative of SIUH interfered with her prospective employment at Montefiore Medical Center North (“Montefiore”). According to the plaintiff, on or about October 1, 2008 Carlos Rueda, M.D., who was Chief of Psychiatry of Montefiore informed the plaintiff that she would be hired as a full time psychiatrist subject to receiving credentials. The plaintiff states that on or about December 5, 2008 Dr. Rueda rescinded the job “offer” and requested that the plaintiff withdraw her application for employment.

The complaint alleges four causes of action against the defendants: 1) breach of contract; 2) tortious interference with existing or prospective employment, business, or contractual relationship; 3) defamation; and 4) libel and/or slander per se.

The plaintiff’s complaint described her job performance at SIUH as “. . . exemplary and she was at no time subject to disciplinary action.” However, the plaintiff’s employment with SIUH ended approximately three months after it had begun. In connection with her departure from SIUH the plaintiff executed an agreement and general release with the hospital. The terms of that agreement which are relevant to this litigation are as follows:

. . . 6. Response to Third-Party Inquiries: In responding to written inquiries concerning [plaintiff] by other hospitals, managed care organizations, insurance companies . . . the Hospital’s responses will be in form and content as set forth in Exhibit A hereto. . .

. . . 7. Release and Waiver of Claims: . . .(b) . . . [plaintiff] . . . forever releases and discharges Releases from any and all Claims, whether known or unknown, which Releasers ever had, now have or may have against Releasees by reason of any actual or alleged act, omission, transaction, practice, conduct, occurrence, or other matter up to and including the Effective Date.

. . . 10. Injuries Conduct: [plaintiff] and Hospital represent and warrant that they have not, and agrees that they shall not, engage in any conduct that is injurious to the others’ reputation or interest, or

disruptive of Releasees' business, including but not limited to making any communication (whether verbal, written or otherwise) that (i) publicly or privately disparages, criticizes or otherwise reflects adversely on Releasees and/or their business practices and activities, or (ii) induces or encourages others . . . to disparage, criticize, cease or reduce doing business with, or take any other adverse action against Releasees. Notwithstanding the above, the Hospital shall not be restricted from carrying out any legal obligation that it may have, or from responding truthfully and as required by law to inquiries related to the credentialing and licensing of Employee, and other matters.

In addition, the plaintiff signed a "Consent and Release of Applicant" in connection with her application to practice at Montefiore which states in pertinent part:

I hereby authorize the Montefiore CMO Credentialing Office, Montefiore Medical Center & Montefiore Integrated Provider Associations to request and obtain from individuals, organizations, previous employers, and schools any information they may have regarding me, whether or not it is in their records. This also may include otherwise privileged or confidential information relative to my professional qualifications, credentials, clinical and/or professional competence, character, mental, moral behavior, including criminal background check, or any matter having bearing on my consideration of a practice opportunity otherwise offered by or through any/or all Montefiore IPAs.

I release all individuals, organizations, previous employers, and schools from liability from any damage, which may result from issuing this information.

The defendants now move for summary judgment dismissing the plaintiff's complaint.

Discussion

A motion for summary judgment must be denied if there are "facts sufficient to require a trial of any issue of fact (CPLR §3212[b]). Granting summary judgment is only appropriate where a thorough examination of the merits clearly demonstrates the absence of any triable issues

of fact. “Moreover, the parties competing contentions must be viewed in a light most favorable to the party opposing the motion”.¹ Summary judgment should not be granted where there is any doubt as to the existence of a triable issue or where the existence of an issue is arguable.² As is relevant, summary judgment is a drastic remedy that should be granted only if no triable issues of fact exist and the movant is entitled to judgment as a matter of law.³ On a motion for summary judgment, the function of the court is issue finding, and not issue determination.⁴ In making such an inquiry, the proof must be scrutinized carefully in the light most favorable to the party opposing the motion.⁵

Plaintiff’s First Cause of Action for Breach of Contract

The defendants’ motion is granted dismissing the plaintiff’s first cause of action. In this case Dr. Levy acted as an agent of SIUH, the principal. SIUH’s President and Chief Executive Officer executed the agreement and general release on behalf of the hospital, and the plaintiff signed the document in her individual capacity. The Appellate Division, Second Department confronted a case of similar facts in *Waltz v. Todd & Honeywell, Inc.*⁶ In that case the plaintiff commenced an action against the defendant’s president who executed the agreement on behalf of the corporation in his individual capacity. The court in affirming the trial court’s decision

¹ *Marine Midland Bank, N.A., v. Dino, et al.*, 168 AD2d 610 [2d Dept 1990].

² *American Home Assurance Co., v. Amerford International Corp.*, 200 AD2d 472 [1st Dept 1994].

³ *Rotuba Extruders v. Ceppos.*, 46 NY2d 223 [1978]; *Herrin v. Airborne Freight Corp.*, 301 AD2d 500 [2d Dept 2003].

⁴ *Weiner v. Ga-Ro Die Cutting*, 104 AD2d 331 [2d Dept 1984]. *Aff’d* 65 NY2d 732 [1985].

⁵ *Glennon v. Mayo*, 148 AD2d 580 [2d Dept 1989].

⁶ 195 AD2d 455 [2d Dept 1993].

awarding summary judgment to the defendant's president held:

It is well settled that when an agent acts on behalf of a disclosed principal, the agent will not be personally liable for a breach of the contract unless there is clear and explicit evidence of the agent's intention to be bound.⁷

This court finds no evidence which demonstrate a "clear and explicit" intention of Dr. Levy to be contractually bound in his individual capacity to the plaintiff. Consequently, the plaintiff's first cause of action for breach of contract against Dr. Levy is dismissed.

During her deposition the plaintiff conceded that the agreement and general release set forth a specific form response that SIUH was to give written requests for information; and that the form response provided by SIUH to Montefiore was in accordance with the agreement and general release.⁸ Furthermore, in an order issued by this court on October 19, 2011 in connection with a motion for a protective order this court wrote:

By law, in response to a query from another hospital, a hospital is required to provide "the reasons for suspension, termination or curtailment of privileges at the hospital" and is not liable if compliance is good faith.⁹ Thus, when giving a recommendation or evaluation pursuant to a valid request, there can be no liability unless the information is both untrue and maliciously intended.¹⁰ Information given in good faith that is true or not maliciously given shields a person or entity from monetary liability and causes of action for damages when given in response to a hospital evaluating a physician for employment or privileges.¹¹ Therefore, the information given to Dr. Rueda by Dr. Levy is not actionable if it

⁷ Id.

⁸ Meyer Transcript, 275-276.

⁹Public Health Law § 2805-k (4).

¹⁰NY Education Law § 6527 (5).

¹¹Public Health Law § 2805-j (2).

was either truthful or not malicious. Here, the plaintiff bears the burden of showing that Dr. Levy's statements to Dr. Rueda were both false and malicious.¹² The plaintiff states that Dr. Levy's statements were untrue and malicious. However, the plaintiff offered only the unfounded conclusory assertion, without anything more.

Once again, the plaintiff has come forward with only conclusory accusations of malice on the part of Dr. Levy. Consequently, absent the showing of "express malice or actual ill will"¹³ the plaintiff's cause of action for breach of contract against SIUH must also be dismissed.

Plaintiff's second, third and fourth causes of action

The plaintiff's causes of action for tortious interference with existing or prospective employment, business, or contractual relationship; defamation; and libel and/or slander per se all must fail. The plaintiff's deposition testimony demonstrates 1) that Dr. Rueda never identified Dr. Levy as the source of the verbal evaluation from SIUH; and 2) the plaintiff can only assume that Dr. Levy was the source of the verbal statements. Plaintiff's second and third causes of action, tortious interference with existing or prospective employment, business, or contractual relationship and defamation, respectively, require a showing of intentional or wrongful inducement of a breach of contract. In this case, the plaintiff's own deposition testimony shows that she never received a formal job offer and was still subject to the credentialing process. The fourth cause of action for libel and/or slander per se requires the plaintiff to prove that the defendants made false statements with malice. Once again, plaintiff is unable to demonstrate any malice except for her own self-serving statements. Consequently, the defendants' motion for summary judgment is granted and the complaint is dismissed.

¹²*Sithian v Spence*, 283 AD 2d 566 [2d Dept 2006].

¹³ *Shapiro v. Health Ins. Plan of Greater N.Y.*, 7 NY2d 56 [1959].

Accordingly, it is hereby:

ORDERED, that the motion for summary judgment made by the defendants Staten Island University Hospital and Diane Levy, as Executor of the Estate of Michael Levy, M.D. is granted and the plaintiff's complaint is dismissed; and it is further

ORDERED, that the Clerk is directed to enter judgment in favor of said defendants.

ENTER,

DATED: August 14, 2012

Joseph J. Maltese
Justice of the Supreme Court