

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOSHUA BRINN,

Plaintiff,

09 CV 1151

-against-

SYOSSET PUBLIC LIBRARY, MORRIS DUFFY
ALONSO & FALEY, UTICA NATIONAL
INSURANCE COMPANY, JUDITH LOCKMAN,
Director of the SYOSSET PUBLIC LIBRARY
in her individual and professional
capacities, ROBERT GLICK, Trustee of
the SYOSSET PUBLIC LIBRARY in his
individual and professional capacities,

Defendants.
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NOTICE OF MOTION

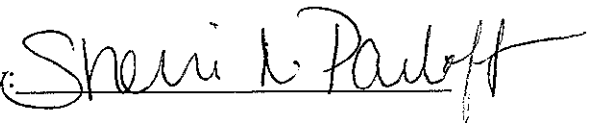
PLEASE TAKE NOTICE, that upon the Affidavit of Robyn Nelson, sworn to on September 8, 2009 and the exhibits annexed thereto, the Affidavit of Sherri N. Pavloff, sworn to on September 11, 2009 and the accompanying Memorandum of Law, the third party defendant, UTICA NATIONAL INSURANCE COMPANY., will move this Court on a date to be determined by the Court, at the United States Courthouse, located 100 Federal Plaza, Central Islip, NY 11722; before Hon. Thomas C. Platt, for an Order pursuant to FRCP 12/(b)(6) to dismiss the complaint because:

1. Plaintiff's allegations against Utica are mere conclusions which fail to meet the federal pleading standards and as such, every claim against Utica must be dismissed;
2. Plaintiff cannot establish that Utica, a private insurance company, is a state actor or conspired with a state actor and as such, the First and Second Counts of the complaint, brought pursuant to 42 U.S.C. §1983 alleging that Utica violated the U.S. Constitution, must be dismissed;
3. Plaintiff's claims alleging violation of the First Amendment in the First Count also fail because the First Notice of Claim does not raise matters of public concern;

4. Plaintiff's claims alleging violation of the Fourteenth Amendment Due Process Clause in the First and Second Count also fail, since Plaintiff had no property right to continued at-will employment;
5. Because Plaintiff's federal claims must be dismissed, this Court should exercise its discretion, deny jurisdiction over the State law claims and dismiss Plaintiff's remaining State law claims;
6. Assuming this Court entertains jurisdiction over the State law claims, for the same reasons that Plaintiff's Federal claims fail, so too must Plaintiff's State Constitutional claim for retaliation contained in the Sixth Count fail;
7. Assuming this Court entertains jurisdiction over the State law claims, the Plaintiff has failed to state a claim for intentional interference with contractual relations or "business opportunity" and as such, the Third Count must be dismissed;
8. Assuming that this court entertains the State law claims, as an at-will employee, Plaintiff cannot state a claim for breach of the covenants of good faith and fair dealing and as such, the Fifth Count must be dismissed;
9. Finally, assuming that this court entertains the State law claims, the Plaintiff has failed to meet the strict criteria for pleading the tort of intentional infliction of emotional distress and as such, the Fourth Count must be dismissed;
10. For such other and further relief as the Court deems just and proper.

Date: Mineola, New York
September 11, 2009

FARBER BROCKS & ZANE L.L.P.

By: 

Sherri N. Pavloff (5373)
Braden H. Farber (7175)

TO:

RAYMOND NARDO, ESQ.
Attorney for Plaintiff.
129 Third Street
Mineola, NY 11501
(516) 248-2121
(516) 742-7675 (F)

Richard Granofsky, Esq.
LESTER, SCHWAB, KATZ & DWYER, LLP
Attorneys for Defendants Syosset Public Library,
Judith Lockman and Robert Glick
120 Broadway
New York, NY 10271
(212) 341-4320
(212) 267-5916 (F)

Thomas A. Catalano, Esq.
LESTER, SCHWAB, KATZ & DWYER, LLP
Attorneys for Defendants Syosset Public Library,
Judith Lockman and Robert Glick
120 Broadway
New York, NY 10271
(212) 341-4320
(212) 267-5916 (F)

Peter L. Contini, Esq.
L'ABATE, BALKAN, COLAVITA & CONTINI, L.L.P.
Attorneys for Defendant Morris Duffy Alonso & Faley
1050 Franklin Avenue, 4th Floor
Garden City, NY 11530
(516) 294-8844
(516) 294-8202