Golia v Vieira
2015 NY Slip Op 31765(U)
August 14, 2015
Supreme Court, Queens County
Docket Number: 702457/14
Judge: Robert J. McDonald
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SHORT FORM ORDER

NEW YORK SUPREME COURT : QUEENS COUNTY

P R E S E N T : **HON. ROBERT J. McDONALD** **IAS PART 34**
Justice

- x

DR. MICHAEL J. GOLIA,

Plaintiff,

- against -

DR. JEFFREY VIEIRA, DR. LAWRENCE WOLF, DR. ROBERT LEVEY, LONG ISLAND COLLEGE HOSPITAL,

Defendants.

- x

Index No.: 702457/14
Motion Date: 5/28/15
Motion No.: 175
Motion Seq.: 3

The following numbered papers read on this motion by defendant Long Island College Hospital (LICH) pursuant to CPLR 3211(a)(1), (2), (5) and (7) to dismiss the complaint as asserted against LICH based upon a release, lack of jurisdiction, the statute of limitations and failure to state a cause of action.

	Papers Numbered
Notice of Motion - Affidavits - Exhibits.....	EF 84
Answering Affidavits - Exhibits.....	EF 102-106
Reply Affidavits.....	EF 107

Upon the foregoing papers it is ordered that the motion is determined as follows:

Plaintiff was appointed to the LICH graduate medical education training program (residency program) for a term of 12 months beginning June 23, 2010 and ending on June 22, 2011. The terms and conditions of the appointment were set forth in the resident agreement between plaintiff and LICH dated April 9, 2010. The agreement provided that reappointment was in the sole discretion of the Chair of the Department and would be contingent upon several factors, including satisfactory completion of all training components, satisfactory performance evaluation, and no closure or reduction in the size of the program. In addition to the resident agreement, plaintiff's residency with LICH was subject to a collective bargaining agreement between the Service

Employees International Union, Committee of Interns and Residents (the union) and LICH.

In May 2011, LICH and its residency program were acquired by the State University of New York Downstate Medical Center (SUNY Downstate). In connection with the acquisition, plaintiff entered into a resident agreement with SUNY Downstate for an appointment to its residency program effective May 1, 2011 and ending June 22, 2011, as a temporary clinical assistant. According to the terms of the SUNY Downstate agreement, the appointment was subject to renewal on an annual basis, in accordance with the laws of the state and the policies of the SUNY board of trustees, and subject to the final approval of the president of SUNY Downstate. The agreement also provided that plaintiff's employment with LICH would terminate upon the closing of SUNY Downstate's acquisition of LICH and that in consideration of his employment with SUNY Downstate, plaintiff waived and released any claims for termination of his LICH employment against SUNY, SUNY Downstate and LICH. This action arises out of the nonrenewal of the resident agreement upon the completion of plaintiff's first 12-month term.

Initially, the court rejects movant's contentions that the action against it is barred as a matter of law by either the jurisdiction of the Public Health Council (PHC) (Public Health Law § 2801-b) over claims arising from a residency program or by an executed release. Where a physician seeks reinstatement of hospital staff membership or professional privileges, the court is without jurisdiction to consider that issue until the PHC reviews the matter and makes its findings. (*Gelbard v Genesee Hosp.*, 87 NY2d 691 [1996]; *see Indemini v Beth Israel Med. Ctr.*, 4 NY3d 63 [2005].) In this case, however, plaintiff does not seek reinstatement to the residency program but money damages. (*Cf. Gelbard*, 87 NY2d at 694-695.) Even assuming that the requirement for a threshold review by the PHC were applicable to plaintiff's breach of contract and non-renewal claims, plaintiff has provided proof in opposition to the motion that a complaint which he filed with the PHC was determined by letter dated April 23, 2015.

The meaning and scope of a release clause must be determined within the context of the entire agreement read as a whole, the controversy being settled, and the purpose for which the release was given. (*See Eaton Elec., Inc. v Dormitory Auth. of State of N.Y.*, 48 AD3d 619 [2008]; 19A NY Jur 2d, Compromise, Accord and Release §§ 100, 103-105.) Given the fact that the release relied upon by LICH was a provision contained in a paragraph of the SUNY Downstate resident agreement addressing the termination of

plaintiff's employment with LICH upon the closing of the acquisition of LICH by SUNY Downstate and was specifically given in consideration of plaintiff's employment with SUNY Downstate upon the acquisition, it could reasonably be concluded that the release of "any claim for termination" of plaintiff's LICH employment was meant to encompass only claims relating to termination due to the acquisition of LICH by SUNY Downstate. In any event, the release clearly does not contain broad language which on its face would encompass "any claim against LICH" up to the date of its execution as argued by movant in its attorney's affirmation. (*Cf. Centro Empresarial Cempresa S.A. v América Móvil, S.A.B. de C.V.*, 17 NY3d 269, 274 [2011].) Nonetheless, LICH is entitled to dismissal of plaintiff's causes of action as asserted against it on other grounds.

The exhibits annexed to the complaint show that certain essential facts alleged in the first and second causes of action are not facts at all and that plaintiff has no cause of action. (*See M&B Joint Venture, Inc. v Laurus Master Fund, Ltd.*, 12 NY3d 798, 800 [2009]; *Rovello v Orofino Realty Co.*, 40 NY2d 633, 636 [1976].) With regard to the claim for breach of contract, the letter of intent and resident agreement for the LICH residency program establish that the term of the agreement was 12 months, not three years. This proof defeats plaintiff's claim that the non-renewal of his resident agreement breached the contract by violating its three-year term.

Plaintiff's submissions also demonstrate that he received notice of a conditional non-renewal of his term. It was then incumbent upon plaintiff, not LICH, to take the necessary steps under the resident agreement and/or the union contract to initiate the appeal, hearing, or grievance procedure afforded thereby. By not taking advantage of these avenues of review, plaintiff failed to exhaust his administrative remedies. This failure also bars his claims for breach of his contract with LICH. (*See Spano v Kings Park Cent. School Dist.*, 61 AD3d 666, 670-671 [2009]; *Manfro v McGivney*, 11 AD3d 662 [2004].) Moreover, since LICH was not a party to the resident agreement between plaintiff and SUNY Downstate, LICH cannot be held liable for any breach of that agreement or the SUNY Downstate Residents Handbook.

With regard to the second cause of action, a party to a contract cannot be liable in tort for interfering with its own contract. (*See Widewaters Prop. Dev. Co., Inc. v Katz*, 38 AD3d 1220, 1222 [2007]; *Bradbury v Cope-Schwarz*, 20 AD3d 657 [2005]; *Winicki v The City of Olean*, 203 AD3d 893, 894 [1994].) Thus, the claim for tortious interference with the LICH resident

agreement cannot lie against LICH. Furthermore, inasmuch as LICH ceased to exist as a separate entity upon its acquisition by SUNY Downstate, it could not have interfered with plaintiff's SUNY Downstate resident agreement. (*See Ward v Cross County Multiplex Cinemas, Inc.*, 62 AD3d 466 [2009].)

Any defamatory statement made by LICH had to have occurred prior to its acquisition by SUNY Downstate in May 2011 (*id.*) and the third cause of action for defamation, therefore, is time-barred as to LICH. (CPLR 215[3].) Plaintiff's attempt to avoid the effect of the statute of limitations by asserting that new causes of action accrued upon each publication of allegedly false information stemming from LICH records is unavailing. To the extent the complaint could be read to seek to hold LICH responsible for subsequent republication by SUNY Downstate of allegedly defamatory statements by LICH during its existence, plaintiff has not alleged facts sufficient to justify a rare departure from the general rule that only the party who repeats a defamatory statement is responsible for the damages resulting from that distinct libel or slander. (*See Geraci v Probst*, 15 NY3d 336 [2010].) Moreover, plaintiff's exhibits demonstrate that the house form complained of was a SUNY Downstate document and the distribution thereof alleged were acts by SUNY Downstate.

The allegations of the fourth and fifth causes of action for interference with prospective economic relations and negligent transmission of false information, respectively, concern acts that occurred after LICH had been acquired by SUNY Downstate and had no legally cognizable existence. As such, the generally alleged wrongs cannot be attributed to LICH and movant cannot be held responsible therefor. (*See Ward*, 62 AD3d at 467.) As previously stated, the house form referenced in these causes of action is identified on its face as a SUNY Downstate document.

The sixth cause of action for injunctive relief is based upon the wrongs alleged in the third, fourth and fifth causes of action and similarly fails to state a cause of action against LICH.

Accordingly, the complaint as asserted against LICH is dismissed.

Dated: Long Island City, NY
August 14, 2015

ROBERT J. McDONALD
J.S.C.