

Guralnik v Stein

2016 NY Slip Op 31784(U)

September 23, 2016

Supreme Court, New York County

Docket Number: 151916/2016

Judge: Geoffrey D. Wright

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
MIKHAIL GURALNIK,

Plaintiffs,

-against-

Index # 151916/2016

DECISION /ORDER

JUDITH A. STEIN, TERESA OMBRES and
INNA SHAPKINA,

Defendants.

Present:
Hon. Geoffrey D. Wright

-----X Acting Justice Supreme Court

RECITATION , AS REQUIRED BY CPLR 2219(A), of the papers considered in the review of this Motion/Order to dismiss.

PAPERS	NUMBERED
Notice of Motion and Affidavits Annexed.....	_____ 1, 2,3
Order to Show Cause and Affidavits Annexed	_____
Answering Affidavits.....	_____ 4, 5, 6
Replying Affidavits.....	_____
Exhibits.....	_____
Memoranda.....In Reply	_____ 7, 8 _____

Upon the foregoing cited papers, the Decision/Order on this motion to dismiss is as follows:

Motion sequence numbers 001, 002 and 003 are consolidated for disposition.

The three Defendants in this case, Defendant, Judith A. Stein (“Stein”), Teresa Ombres (“Ombres”) and Inna Shapkina (“Shapkina”) move individually for an order pursuant to CPLR 3211(a)(1) and 3211 (a)(7) dismissing the complaint and any cross-claims against them and they essentially make the same arguments in support of their respective motion. For the reasons discussed below, the motions are granted.

The instant action stems from a custody case pending in Queens Family Court between Shapkina and Plaintiff. Plaintiff, Mikhail Guralnik brings this action against Defendants, Judith Stein, Teresa Ombres and Inna Shapkina in connection with alleged false representations made by Defendants concerning the professional experience of Defendant, Judith Stein (“Stein”). Stein was retained by Plaintiff and Shapkina to treat their child (the “Child”) who was exhibiting behavioral issues as well being retained to

provide therapy to the family. Stein is a Licensed Clinical Social Worker with a PhD., in Public Health. Plaintiff asserts that Stein is not a therapist and does not possess the training, education and other relevant qualifications in the field of psychology necessary to render therapy to the Child. Plaintiff further alleges that he relied upon false representations, that Stein was a licensed psychologist, when he agreed to have the child begin therapy with Stein and that he has suffered damages because he paid for the therapy sessions and he has been deprived of his custodial rights with respect to the child. Plaintiff brings four causes of action (1) false advertising, (2) battery, (3) intentional interference with contractual relations and (4) fraud .

Plaintiff and Shapkina were previously married and share joint custody of a teenage daughter. On September 23, 2004, Plaintiff and Shapkina entered into a settlement agreement which set forth terms regarding shared parenting responsibilities of their child who at that time was not yet three years old. On January 12, 2005, a Judgment of Divorce was issued by the Supreme Court of New York County, incorporating by reference the Settlement agreement of September 23, 2004.

Shapkina filed a Petition for Sole Custody in Queens County, Family Court on August 31, 2015 as she and Plaintiff shared joint custody of the Child. At some point, it was decided by both Plaintiff and Shapkina to arrange for treatment for their child who began engaging in self destructive behavior. It is undisputed that in September 2015, Plaintiff had a meeting with Shapkina and Teresa Ombres (“Ombres”), Shapkina’s attorney, at which time it was decided to retain Stein for the purposes of treating the Child. Ombres and Stein were both members of a professional organization and Ombres referred Stein to Shapkina. Stein was not in attendance when the decision to retain her services was made. At this meeting between Plaintiff, Shapkina and Ombres, Stein’s qualifications were discussed.

Beginning in October 2015, Stein began providing therapy sessions with the Child individually as well as with one or both parents. During the therapy sessions Stein became aware of certain information which led her to recommend in January 2016 that the Child and Plaintiff live apart from one another as the Child resided with Plaintiff every other week.

On January 22, 2016 after a session with the Child, Stein recommended that Shapkina take the Child to the Psychiatric Department at the Bellevue Hospital Center in Manhattan.

On February 18, 2016, Plaintiff filed an Emergency Order to Show Cause with the Family Court in Queens County, seeking an Order granting him exclusive custodial decision making authority over the Child and an Order granting him permission to enroll the Child in a boarding school recommended by an educational specialist.

On February 24, 2016, a hearing was held in Family Court in Queens County on the Emergency Order to Show Cause filed by the Plaintiff. In attendance were Plaintiff, his counsel, Shapkina and her counsel Ombres and Maricel Gonzalez (“Gonzalez”) the Child’s Law Guardian. During this hearing Plaintiff’s objections to Stein treating the Child and her qualifications were argued before the Court. The Court decided and the Law Guardian assigned to the Child agreed, that it was in the best interest of the Child to remain in treatment with Stein.

Thereafter, Plaintiff commenced this action against the three defendants alleging (1) Fraud (2) False Advertising (3) Battery (4) Intentional Interference with Contractual Relations.

On a motion to dismiss a pleading for legal insufficiency pursuant to CPLR 3211(a)(7), the court “accept[s] the facts alleged as true and determine[s] simply whether the facts alleged fit within any cognizable legal theory.” *Morone v. Morone*, 50 N.Y.2d 481, 484 (1980) (citation omitted). The pleading is to be liberally construed, accepting all the facts alleged therein to be true, and according the allegations the benefit of every possible favorable inference. See *Goshen v. Mutual Life Ins. Co. of NY*, 98 N.Y.2d 314 (2002). Where the allegations are ambiguous, the court resolves the ambiguities in plaintiff’s favor. *Snyder v. Bronfman*, 13 N.Y.3d 504 (2009).

On a motion to dismiss pursuant to CPLR 3211(a)(1), “a dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law.” *Leon v. Martinez*, 84 N.Y.2d 83, 87–88 (1994). “To be considered ‘documentary,’ evidence must be unambiguous and of undisputed authenticity.” *Fontanetta v. Doe*, 73 A.D.3d 78, 86 (2nd Dept 2010), citing, *Siegel’s Practice Commentaries, McKinney’s Cons. Laws of N.Y.*, Book 7B, at 21-22, CPLR 3211(a)(1), C3211:10; see also *Tsimerman v. Janoff*, 40 A.D.3d 242 (1st Dep’t 2007).

The crux of Plaintiff’s complaint is directed at the qualifications of Stein. The Complaint alleges that Stein committed fraud by falsely representing to Plaintiff that she is a doctor and a psychologist with sufficient training and education to treat the Child and that he would not have agreed to allow Stein to provide therapy to the Child had he known that Stein is not a licensed psychologist and not a medical doctor. In addition he alleges that Shapkina and Ombres aided in this misrepresentation by concealing that fact that Ombres was friendly with Stein and was retained to provide negative information on the Plaintiff in an attempt to sway the pending custody trial in favor of Shapkina.

Plaintiff does not dispute that he met with Shapkina and Ombres and agreed to allow Stein to treat the Child. Rather, he claims that he was led to believe by Ombres and Shapkina that Stein was a doctor and a psychologist and that she is unqualified to treat the Child.

The Defendants argue that while Stein may not be a medical doctor she does in fact hold a PhD in Public Health and a Master's degree in clinical social work a fact Plaintiff could have ascertained from the website. They argue that Plaintiff had also participated in treatment with Stein and the Child for approximately four months and it appeared that he was satisfied with the progress Stein was making with the Child as was reflected in Plaintiff's Affidavit in support of the Emergency Order to Show Cause. Defendants argue that once Stein suggested that Plaintiff and the Child live apart, he then decided to file the Order to Show Cause in Family Court. In addition, they argue that the instant case is baseless, frivolous and an attempt to circumvent the decision from the Family Court hearing. The Defendants argue that the decision to retain Stein was made by Plaintiff and Shapkina and that Ombres only knew Stein from the professional organization. Ombres denies socializing with Stein outside of their participation in this organizations and further denies recommending Stein to obtain any advantage for Shapkina.

Defendants argue that Pursuant to the Marital Settlement Agreement, Page 3, Article II Sections A and B, the Plaintiff and Shapkina share responsibilities for decision making in the areas inter alia of non-emergency medical and health care, developmental decisions and general welfare and that if they are not able to reach an agreement, a mediator or other appropriate professional would be utilized to make a determination which was exactly what occurred at the hearing in Family Court.

The issue of Stein treating the Child and her qualifications were raised and argued at the Family Court hearing and the Court decided that Stein would continue to treat the Child. Plaintiff could have, but did not seek any relief from that decision and this Court will not entertain the Plaintiff's four causes of action in the instant case.


However, the Court has reviewed the Plaintiff's argument and finds that Plaintiff has failed to meet his burden in that Plaintiff arguments fail to rise to the level of presenting sufficient facts to warrant denying the motions to dismiss. Indeed, even if the Court were to accept the facts as true, the facts fail to fit into any cognizable legal theory. Instead, Plaintiff makes baseless allegations.

Accordingly, it is Ordered that the motion by Defendant, Judith A. Stein ("Stein"), for an Order pursuant to CPLR 3211(a)(1) and 3211 (a)(7) dismissing the complaint and all cross-claims is granted and it is further

Ordered that the motion by Defendant Teresa Ombres ("Ombres") for an Order pursuant to CPLR 3211 (a)(1) and CPLR 3211 (a)(7) dismissing the complaint and all cross-claims against her is granted and it is further,

Ordered that the motion by Inna Shapkina (“Shapkina”) for an Order pursuant to CPLR 3211(a)(1) and 3211 (a)(7) dismissing the complaint and all cross-claims against her is granted. The Court declines to impose sanctions at this time.

Dated: September 23, 2016


GEOFFREY D. WRIGHT
AISC

JUDGE GEOFFREY D. WRIGHT
Acting Justice of the Supreme Court