Mehrhof v Monroe-Woodbury Cent. Sch. Dist.
2017 NY Slip Op 33077(U)
May 1, 2017
Supreme Court, Orange County
Docket Number: 006561-2016
Judge: Elaine Slobod
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ORIGINAL

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE
-------------------------------------X
EDWARD J. MEHRHOF,

Plaintiff,

-against-

MONROE-WOODBURY CENTRAL SCHOOL DISTRICT, BOARD OF EDUCATION OF THE MONROE-WOODBURY SCHOOL DISTRICT and ELENI KIKRAS CARTER,

Defendants,
-------------------------------------X

DECISION & ORDER
Index No. 006561-2016
Motion Seq. #2

P R E S E N T : HON. ELAINE SLOBOD, JSC

The following sets of papers numbered 1 to 4 were considered on the motion by Defendants for dismissal:

Notice of Motion; Pascale Affirmation; Maher Affidavit; Exhibits A-I;	1-2
Affirmation in Opposition; Mehrhof Affidavit; Exhibits 1- 5;	3
Reply Affirmation; Exhibit J	4

Upon review of the foregoing, it is

ORDERED that defendant's motion is granted; and it is further **ORDERED** that the complaint is dismissed.

It is undisputed that plaintiff was formerly employed as the Superintendent of and for the School District pursuant to an employment contract dated January 27, 2010 for an initial term of three (3) years from July 1, 2010 through June 30, 2013. An Amendment dated July 12, 2013 extended plaintiff's employment contract through June 30, 2015.

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Plaintiff alleges that he was wrongfully suspended on May 22, 2014 by the Board and the District for the 2014-2015 school year based upon false and defamatory allegations. He was paid his base salary for the 2014-2015 school year and then forced to retire as of June 30, 2015. Plaintiff brings this action for breach of contract and tortious interference with Plaintiff's prospective business advantage.

Defendants move to dismiss plaintiff's second cause of action for failure to state of a cause of action pursuant to CPLR 3211(a)(7).

The required elements of a cause of action for tortious interference with prospective business relations are as follows: (a) a prospective business relationship with a third party; (b) the defendant's interference with that relationship; (c) undertaken with the sole purpose of harming the plaintiff or by using wrongful means; and (d) causing injury to the plaintiff. (*See Guard-Life Corp. v. S. Parker Hardware Mfg. Corp.*, 50 N.Y.2d 183 [1990]; *Carvel Corp. v. Noonan*, 3 N.Y.3d 182 [2004]; *NBT Bancorp Inc. v. Fleet/Norstar Financial Group, Inc.*, 87 N.Y.2d 614 [1996]). Plaintiff must also allege that defendants' conduct was motivated solely by malice or to inflict injury by unlawful means, beyond mere self-interest or other economic considerations (*see Shared Communications Services of ESR, Inc. v Goldman Sachs & Co.*, 23 AD3d 162, 803 NYS2d 512 [1st Dept 2005]).

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Plaintiff has failed to state a claim against defendants for tortious interference absent allegations identifying the third party with whom plaintiff was offered employment and that defendants were motivated solely by malice or to inflict injury by unlawful means (*Klapper v Graziano* 129 AD3d 674 [2d Dept 2015]). A tortious interference claim must be based on a business relationship with an identifiable party or parties. Interference of plaintiff's relationship with the public at large is not sufficient to maintain a tortious interference claim, existing and potential employers are not sufficient to establish a claim. Allegations that would suggest that plaintiff should have been hired because of his experience and background is nothing more than pure speculation.

As established by defendants, plaintiff failed to "identify any specific ... business relationship that [it] was prevented from entering into as a result of defendants' interference (*Baker v Guardian Life Ins. Co. of America*, 12 AD3d 285, 785 NYS2d 437 [1st Dept 2004]). Plaintiffs conclusory statement that defendant interfered with plaintiff's ability to obtain subsequent employment is insufficient. There could be a number of reasons why plaintiff has not obtained subsequent employment having nothing to do with the defendant. Plaintiff has not submitted the name of one prospective employer. In fact, there has been no showing by the plaintiff that he has received any specific job

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offer, that defendants were aware of such offer, that defendants directed some wrongful activity toward the potential employer or that the employment offer was rescinded and would have been consummated but for defendants' wrongful conduct.

(*See, e.g.*, *Carvel Corp. v. Noonan*, 3 N.Y.3d 182 [2004]; *NBT Bancorp Inc. v. Fleet/Norstar Financial Group, Inc.*, 87 N.Y.2d 614 [1996])

Plaintiff's tortious interference claim cannot stand also since the alleged harm to plaintiff resulted from reputational injuries due to defendants' alleged defamatory statements (*Dobies v Brefka*, 273 AD2d 776 [3d Dept 2000] (declining "to reinstate the claim for tortious interference with economic advantage in the absence of an alleged act of interference with a contract or business relationship distinct from the general declaration of injury to reputation")).

Further, Plaintiff has failed to allege that defendants acted with the sole purpose of intentionally inflicting harm by unlawful means, beyond mere self-interest or other economic considerations (*see Shared Communications Services of ESR, Inc. v Goldman Sachs & Co.*, 23 AD3d 162 [1st Dept 2005]). The alleged defamatory statements which led to an "investigation" but not prosecution, of plaintiff by the Orange County District Attorney's office nor those made to an unidentified "private investigator" constitute wrongful conduct directed to a

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prospective third party employer so as to prevent such employer from hiring the plaintiff.

Therefore, plaintiff has failed to state a tortious interference with business relations claim and dismissal of this claim is warranted.

Defendants move to dismiss plaintiff's breach of contract claim pursuant to CPLR 3211(a)(1)- documentary evidence and (a)(5) - statute of limitations.

A motion to dismiss a complaint pursuant to CPLR 3211(a)(1) may be granted only if the documentary evidence submitted utterly refutes the factual allegations of the complaint and conclusively establishes a defense to the claims as a matter of law (*see Granada Condominium III Assn. v. Palomino*, 78 A.D.3d 996, 996, [2d Dept. 2010]; *Fontanetta v. John Doe 1*, 73 A.D.3d 78, 83 [2d Dept. 2010]; *Goshen v. Mutual Life Ins. Co. of N.Y.*, 98 N.Y.2d 314, 326 [2002]). "In order for evidence to qualify as 'documentary,' it must be unambiguous, authentic, and undeniable" (*Granada Condominium III Assn. v. Palomino*, *supra* at 996, *quoting Fontanetta v. John Doe 1*, 73 A.D.3d at 84-86 [2d Dept. 2010]).

In her opposition, plaintiff submits the June 11, 2014 correspondence from Ms. Carter to plaintiff which clearly reflects that the Board revoked the contract extension on January 13, 2014 in plaintiff's evaluation (prior to his termination on May 22, 2014) and then again on June 11, 2014 to determine if the

contract would be extended in light of plaintiff's appeal and determined that it would not be extended. By doing so, plaintiff has authenticated the Board Resolutions.

Accordingly, they constitute "documentary evidence" for the purposes of CPLR 3211(a)(1). The Resolutions clearly establish that plaintiff's contract was not renewed beyond the 2014-2015 school year. Plaintiff is not entitled to any claim for salary and benefits for the 2015-2016 school year.

In the amended complaint, plaintiff admits that he was paid his base salary for the 2014-2015 school year but claims that he is owed for accrued leave days.

Defendants compare the language in paragraph (6)(B) regarding vacation time with paragraph 6(C) regarding leave time and point out that while the former may provide for payment of unused vacation time calculated by using a specific formula, the later only provides that unused leave time can be "utilized" with Board approval.

In opposition, plaintiff fails to address or controvert such argument which, in effect, is equivalent to a concession of the issue (*Kuehne v Nagel v Baiden* 36 NY2d 539 [1975]). Not only does plaintiff submit a copy of the contract, he does not argue that the terms are ambiguous or that any extrinsic evidence must be considered in its interpretation. The Court finds that the contract unequivocally establishes that plaintiff is not entitled

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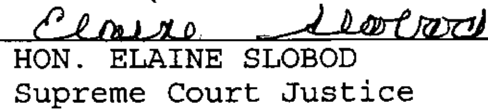
to a cash payment for any accrued leave days.

This order shall constitute the decision of the Court.

E N T E R

Dated: ~~April~~ May 1 2017
Goshen, New York



HON. ELAINE SLOBOD
Supreme Court Justice

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