

**Lawrence v Union of Orthodox Jewish Congregation
of America**

2004 NY Slip Op 30272(U)

October 20, 2004

Supreme Court, New York County

Docket Number: 123556/02

Judge: Jane S. Solomon

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

PRESENT: JANE S. SOLOMON
Justice

PART 55

Lawrence

INDEX NO. 12355b/2002
MOTION DATE 10/18/04
MOTION SEQ. NO. 1
MOTION CAL. NO. _____

Union of Orthodox Jewish Congregations

The following papers, numbered 1 to 15 were read on this motion to/for Summary judgment

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits _____
Answering Affidavits — Exhibits _____
Replying Affidavits _____

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PAPERS NUMBERED	
1-5	
6-13	
14-15	

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that ~~this motion~~ expanding upon
the colloquy & decision on the record
of 10/18/04 ~~is granted~~
~~denied~~ The motions are
decided as put forth in the annexed
memorandum decision & orders.

Dated: 10/20/04

JANE S. SOLOMON
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 55

-----X

RABBI STEVEN LAWRENCE,

Plaintiff,

Index No. 123556/02

-against-

UNION OF ORTHODOX JEWISH CONGREGATION
OF AMERICA, RABBI MENACHEM GENACK, and
KEHILAH KASHRUS, INC.,

Defendants

JANE S. SOLOMON, J.:

Defendants Union of Orthodox Jewish Congregations of America ("the OU"), Rabbi Menachem Genack ("Genack"), and Kehilah Kashrus, Inc. ("Kehilah") move pursuant to CPLR § 3212 for summary judgment dismissing the complaint in this action for tortious interference with business relations and defamation, libel and slander. For the reasons set forth below, the Union's and Genack's motions are granted in their entirety, and Kehilah's motion is granted in part.

Facts

The OU is a not-for-profit organization that certifies, among other things, that Rabbis are proficient in the ritual slaughter and inspection of poultry to ensure compliance with Jewish law. Empire Kosher Poultry ("Empire"), a leading supplier of kosher poultry, retains the OU as its certifying agency. As part of providing services to Empire, the OU supervises the

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performance of Rabbis working at its slaughtering facility.

Genack is the Rabbinic Administrator of the Kashrus Division of the OU. He is responsible for the oversight of the Rabbinical staff employed by Empire. As part of his duties, he consults with Empire regarding its compliance with religious law, including the performance of its Rabbis.

Upon Empire's request, Genack recommended plaintiff Rabbi Steven Lawrence ("Lawrence") for the open position of Rav Hamachshir (Head Rabbi) at its Pennsylvania factory. The position is jointly appointed by the OU with the consent of Empire. Lawrence was hired on March 27, 2000. In the position, he was responsible for the oversight of Empire's slaughtering procedures and its staff of over 60 Rabbis.

On October 3, 2000, Empire placed Lawrence on a 60-day suspension due to his alleged unsatisfactory performance. According to Genack, Lawrence's performance did not improve. On February 20, 2001, Genack told him that he would ultimately have to be replaced, and Empire terminated him as of April 23, 2001. Genack contends that this was because Lawrence (1) lacked the technical skills required for the position; (2) was unable to effectively manage Empire's staff of Rabbis; and (3) failed to instill confidence in Empire's Rabbinic staff and other Rabbinic organizations.

Lawrence contends that he was fired because Genack made

false and malicious statements to Empire regarding his ability to perform the required job functions and his overall job performance. In arguing so, he relies heavily upon a November 2, 2001 letter written by Genack to Michael Strear of Empire, which states that the decision to dismiss Lawrence was made "purely on the basis of [his] performance and ability...".

Further, Lawrence alleges that the economic pressure Kehilah placed upon Empire directly led to his dismissal.¹ In support of this position, he attaches to his response to defendants' motions a March 29, 2001 memorandum sent by Kehilah "to all meat establishments" ordering them to stop carrying Empire products until further notice and an April 18, 2001 letter Kehilah sent to Genack thanking him for leading the effort to replace Lawrence. He contends that these documents evidence Kehilah's efforts to force Empire to replace him.

Lawrence initially filed a claim with the Equal Employment Opportunity Commission ("EEOC") on August 16, 2001, alleging that he was discriminated against based on his age, because a younger, less-qualified Rabbi was hired to replace him. The EEOC reviewed his claim, and dismissed it on December 31,

¹ None of the parties describes Kehilah's relationship to any of the other parties. However, based on the documents submitted, I can infer that it also oversees the production of kosher foods, though not for Empire, and provides assurance to a class of observant Jews that particular products are prepared in accordance with religious law.

2001, when it issued a notice of right to sue. He then brought suit against Empire in the Western District of Pennsylvania, alleging age discrimination and retaliation for his filing of the EEOC complaint, in violation of the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621, et seq., and the Pennsylvania Human Relations Act, 43 P.S. § 951. That court dismissed his claims with prejudice for failure to prosecute on September 11, 2002. Lawrence then filed suit here on October 30, 2002 against the current defendants.

Discussion

Defendants move for summary judgment on the grounds that (1) Lawrence's claims are time-barred pursuant to CPLR § 215; (2) the libel claim as to Genack's November 21, 2001 letter should be dismissed, because it is protected by an absolute privilege; (3) Lawrence cannot state a claim for tortious interference, because he was an at-will employee; and (4) he now is estopped from alleging any basis for his termination but age discrimination.

In opposition, Lawrence argues that (1) his claims are not time-barred, because the statute of limitations should have been stayed during the pendency of his EEOC complaint or, in the alternative, a three-year limitations period applies to his tortious interference claims; (2) the claimed privilege does not

apply to Genack's letter, because he exhibited malice; (3) an at-will employee can state a claim for tortious interference; and (4) the doctrine of estoppel does not apply.

The statute of limitations for an intentional tort, including defamation, libel, or slander, is one year. See CPLR § 215(3). The complaint in this matter was filed in October 2002, and Lawrence was fired in April 2001. More than one year has passed between the time that the allegedly defamatory, libelous or slanderous statements resulting in Lawrence's dismissal were uttered. Thus, all claims based on these statements would be time-barred, unless the limitations period was tolled during the pendency of Lawrence's EEOC claims.

The New York legislature has not explicitly tolled the statute of limitations in this situation, but the majority of federal courts within the Second Circuit have held that the limitations period is not tolled. See, e.g., Stordeur v. Computer Assoc. Int'l, Inc., 995 F. Supp. 94, 99-100 (E.D.N.Y. 1998) (collecting cases). Absent explicit word on the matter from the legislature and New York state precedent to the contrary, I find no compelling reason to depart from the holdings of the federal courts in this circuit.

Lawrence also alleges libel based on Genack's November 21, 2001 letter to the EEOC. Genack's letter was written in response to a request the EEOC made on Empire regarding

Lawrence's dismissal. Genack was not a third-party to Lawrence's hiring and firing; rather, he was, at least, an equal party in determining who should serve as Rav Hamachshir at Empire's factory. Given his role, it is reasonable that Empire would turn to him to support its position that it did not discriminate against Lawrence based on his age. Considering the context of the letter, it is clear that it was written solely in response to the EEOC request, regardless of whether it was addressed to the EEOC or Empire, and it cannot stand as the basis of a libel claim. See Park Knoll Assoc. v. Schmidt, 59 N.Y.2d 205, 209-11 (1983).

Thus, all of Lawrence's claims for defamation, libel and slander are dismissed as either time-barred or privileged.

With regard to the tortious interference claims, they are not time-barred. The statute of limitations on these claims is three years. CPLR § 214. Defendants' efforts to characterize them as veiled defamation claims so as to trigger the one-year statute of limitations is unavailing.

Defendants also seek summary judgment as to Lawrence's tortious interference claims on the ground that the cause of action is not available to an at-will employee. Generally, it is only available for inducing the breach of contract. However, the Court of Appeals has been clear that a claim for tortious interference with business relations is available where the

plaintiff can show that a third party would have entered into contractual relations or continued its existing business relations with the plaintiff but for the defendant's conduct. See Guard-Life Corp. v. S. Parker Hardware Manu. Corp., 50 N.Y.2d 183 (1980).

Lawrence has not provided the court with any evidence to support a tortious interference claim against the OU or Genack in response to their showing on these motions. His claim against Kehilah remains, because Kehilah has provided no evidence in support of its motion. The lawyer's moving affirmation only joined in the matters raised by the OU and Genack. Triable issues of fact thus remain as to whether Kehilah exerted economic pressure on Empire to ensure that it fired Lawrence, and its reasons for doing so. This is so even mindful of the recent decision of the Court of Appeals in Carvel Corp. v. Noonan, ___ N.Y.2d ___, 2004 WL 2320368 (Oct. 14, 2004).

With regard to the estoppel argument as to the remaining tortious interference claim against Kehilah, it is without merit. This is the first proceeding by Lawrence against Kehilah.

Accordingly, as stated on the record, it is

ORDERED that the motions for summary judgment by defendants the OU and Genack are granted, and the complaint is dismissed as to them, with costs and disbursements as taxed; and

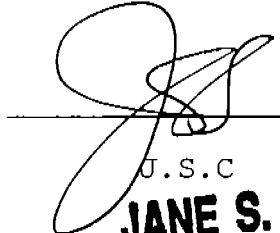
it further is

ORDERED that the motion of Kehilah is granted as to the second cause of action, which is dismissed as to it, and denied as to the first cause of action, which is severed for trial; and it further is

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: October 20, 2004

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