

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

2006 NY Slip Op 30464(U)

January 11, 2006

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

PART 55

Index Number : 123556/2002

LAWRENCE, RABBI STEVEN

vs

UNION OF ORTHODOX JEWISH

Sequence Number : 003

SUMMARY JUDGMENT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

FILED
JAN 20 2006
NEW YORK
CLERK'S OFFICE

PAPERS NUMBERED

1-4

5-6

7-8

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

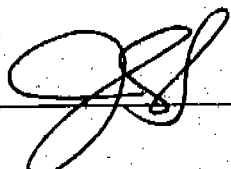
Upon the foregoing papers, it is ordered that this motion

*is denied in
accord with attached Decision & Order.
NJS 1-30-06 conference at 2PM.*

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

JANE S. SOLOMON

Dated: 1-11-06



J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

-----X
Rabbi Steven Lawrence,

Plaintiff,

-against-

INDEX NO. 123556/02

DECISION AND ORDER

Union of Orthodox Jewish Congregations
Of America, Rabbi Menachem Genack and
Kehilah Kashrus, Inc.

Defendants.
-----X

JANE S. SOLOMON, J.

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Defendant Kehilah Kashrus, Inc. ("Kehilah") moves for summary judgment pursuant to CPLR § 3212 to dismiss the remaining claim in this action, for tortious interference with business relations, against it. The causes of action for slander and libel against Kehilah were dismissed by an earlier order, and the entire complaint has been dismissed as against the other defendants, Union of Orthodox Jewish Congregations of America ("the OU") and Rabbi Menachem Genack ("Genack"). The previous order denied Kehilah's first motion of summary judgment on this remaining cause of action, because there was no evidence offered in support of the motion. For the reasons set forth below, the motion now before me is also denied.

This action arises from the termination of Plaintiff Rabbi Steven Lawrence ("Lawrence") from his position as Rav

Hamachshir of Empire Kosher Foods, Inc. ("Empire"). Empire, a leading supplier of kosher poultry, contracts with OU, a not-for-profit organization that certifies, among other things, that Rabbis are proficient in the ritual slaughter and inspection of poultry. As part of the services it provides Empire, OU supervises the performance of Rabbis working at its slaughtering facility. Genack is the Rabbinic Administrator of the Kashrus Division of the OU. Lawrence was hired on March 27, 2000, upon the recommendation of Genack. On October 3, 2000, Empire placed Lawrence on a 60-day suspension due to his alleged unsatisfactory performance. According to Genack, Lawrence's job performance did not improve. On February 10, 2001, Genack told him that he would ultimately have to be replaced, and Empire terminated him as of April 23, 2001. Genack contended, as did Empire, 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.

Kehilah is a not-for-profit organization of Rabbis that ensures, evidently for consumers, that kosher foods are prepared properly under Jewish Law. Lawrence claims that Kehilah caused him to be terminated from his position by sending letters to Empire threatening a boycott of Empire's client-stores if

Lawrence's employment was continued. Lawrence offers, as evidence, a memo sent on March 29, 2001 by Kehilah to "all meat establishments" requesting that they refuse to sell Empire products. He also offers a letter that Kehilah sent to Genack on April 18, 2001, thanking him for leading the effort to replace Lawrence.

Kehilah moves again for summary judgment on an affidavit of a Rabbi who claims Kehilah thought Lawrence should be fired because he wasn't working a five-day week, and relies on the legal theory that Lawrence's at-will employment insulates it, although this argument was discounted in my earlier decision. It also contends that Jewish theology controls the case so that this court should dismiss it as a matter of first amendment theory.

Lawrence argues that the court's denial of the first summary judgment motion forecloses a subsequent motion for summary judgment because there is, he claims, no new evidence. The Appellate Division, First Department, dealt with this issue recently in Olszewski v. Park Terrace Gardens, Inc., et al., 18 A.D.3d 349 (1st Dept. 2005). In that case, the court allowed defendants' second motion for summary judgment because the motion "raised different arguments and adduced evidence that" was not previously available. Id. Indeed, the function of the rule against subsequent motions is to prevent "successive fragmented

attacks upon a cause of action" by withholding or failing to urge "a ground for summary judgment." Levitz v. Robbins Music Corporation, 17 A.D.2d 801 (1st Dept. 1962). Under the circumstances here, Kehilah moved for summary judgment along with the other defendants before discovery. Kehilah had not then deposed Lawrence. The subsequent motion is allowed because Kehilah now relies on evidence that was not available before, namely the deposition of Lawrence, and its moving affidavit.

In an action for tortious interference with business relations, the plaintiff must prove 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). The evidence Lawrence offers, including his affidavit and the correspondence between the parties, is sufficient to establish each element of the cause of action. Kehilah's affidavit here conflicts with the evidence offered by Empire and Genack, and it is not clear what role the affiant had in the underlying events; he speaks of the entity's collective conduct.

Kehilah's argument that Jewish Law governs this dispute and that the matter is not subject to this court's jurisdiction as a matter of First Amendment jurisprudence is unavailing.

Parties are not free to evade the law by claiming that their decisions are inherently protected because they are religious in nature. Jews for Jesus, 968 F.2d 286, 297 (2nd Cir. 1992). In Jews for Jesus, the Second Circuit noted that a Freedom of Religion defense would fail if it is used only to enable otherwise unlawful acts. Id. In fact, in that case, the Second Circuit ruled specifically that "both caselaw and commentary recognize that a boycott designed to secure an unlawful objective is not protected by the First Amendment." Id.

Under the circumstances, there remain triable issues of fact between the parties.

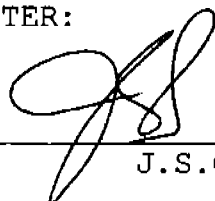
Accordingly, it hereby is

ORDERED that the motion for summary judgment is denied; and it further is

ORDERED that counsel shall appear for a pre-trial conference on January 30, 2006 in Part 55, room 432, 60 Centre Street, New York, New York 10007 at 4:00 PM

Dated: January //, 2006

ENTER:



J.S.C

JANE S. SOLOMON

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