Guez v City of New York
2006 NY Slip Op 30859(U)
March 2, 2006
Supreme Court, New York County
Docket Number: 112788/2004
Judge: Michael D. Stallman

[* 1]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 5

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Francis Guez,

Plaintiff,

- against -

City of New York and New York City Department of Education,

Defendants.

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Index No. 112788/2004

Decision and Order

HON. MICHAEL D. STALLMAN, J.:

In this action, plaintiff Francis Guez, a retired school teacher, maintains that defendants placed him on an Ineligible/Inquiry list in violation of a stipulation of settlement with the Department of Education, and in violation of federal and state civil rights laws. According to plaintiff, this "blacklist" has prevented him from obtaining employment at a parochial school in Queens, and at other schools in Westchester County and New Jersey.

Pursuant to CPLR 3211, defendants now move to dismiss the complaint. By order dated November 17, 2005, the Court gave notice to the parties that the motion to dismiss would be converted to a motion for summary judgment, and afforded the parties the opportunity for additional submissions.

BACKGROUND

Plaintiff was a former teacher of the New York City school system for 32 years. In June 2003, plaintiff agreed to irrevocable retirement instead of facing disciplinary charges over allegations of an inappropriate relationship with a student while plaintiff was a guidance counselor at a Bronx High School. Plaintiff irrevocably retired as a teacher and guidance counselor on August 31, 2003.

By a letter dated September 15, 2003, the Department of Education (DOE) advised him that it had placed him on its Ineligible/Inquiry list for teaching positions,[1] because of the allegations of an inappropriate relationship. By a letter dated September 24, 2003 to DOE, plaintiff's attorney stated that the DOE's letter of September 15 constitutes a willful breach of the stipulation, and stated that all copies of the September 15th letter and the information contained therein should be physically purged and expunged from DOE's files and records.

Plaintiff has not found teaching jobs at any other schools outside the New York City school system since his retirement. He believes that, when the other schools inquire into his teaching background, DOE informs them of the allegedly inappropriate relationship.

On September 3, 2004, plaintiff commenced this action, alleging five causes of action: (1) breach of contract, (2) tortious interference with prospective contractual relations, (3) violations of federal civil rights laws, (4) violation of state civil rights laws, and (5) a permanent injunction and specific performance.

DISCUSSION

Plaintiff's first cause of action is dismissed as time-barred. Although phrased as a breach of contract claim, the first cause of action is based on plaintiff's assertion that the administrative determination that placed him on the Ineligible/Inquiry list was contrary to law because it violated the stipulation. Because it challenges the legality of an administrative determination, it should have been brought as an Article 78 petition.

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[1] Being listed on the Ineligible/Inquiry list prevents plaintiff from applying for, or continuing to work in, any per session activity.

> "When the damage allegedly sustained arises from a breach of the contract by a public official or governmental body, then the claim must be resolved through the application of traditional rules of contract law. On the other hand, when a petitioner asserts that the determination of a governmental body or public official is 'in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion' and seeks nullification of same, then an article 78 proceeding is the appropriate vehicle through which the claim may be addressed (CPLR 7803)."

Abiele Contr. v New York City Sch. Constr. Auth., 91 NY2d 1, 8 (1997). Here, the stipulation does not expressly prohibit the DOE from placing plaintiff onto the Incligible/Inquiry list. Although plaintiff argues that this was a disciplinary measure which the DOE promised not to take, the record shows that plaintiff was placed onto the list after his irrevocable resignation. Plaintiff offers no evidence nor cites to any DOE regulation that would indicate that placement on the Ineligible list is a form of discipline. Plaintiff does not show that DOE violated a specific contractual right. In essence, plaintiff is challenging the agency's determination. The challenge is subject to a four month statute of limitations. Given that plaintiff received notice of the agency's action almost a year before he commenced this action, this cause of action is time-barred. The letter from plaintiff's counsel to DOE demanding that plaintiff's removal from the list does not serve to toll or extend the statute of limitations. Lubin v Board of Educ. of the City of New York, 60 NY2d 974, 976 (1983).

Plaintiff's second cause of action, for tortious interference with contractual relations, is also dismissed. First, plaintiff offers no evidence that DOE had actually communicated with any of the school with which plaintiff had interviews. Assuming DOE had informed those schools of the allegedly inappropriate relationship, plaintiff cannot show that such conduct was sufficiently "'culpable' to create liability for interference with prospective contracts or other non-binding economic relations." Carvel Corp. v Noonan, 3 NY3d 182, 190 (2004).

Plaintiff believes that defendants defamed him. Although tortious interference with contractual relations can be based on defamatory acts (see Butler v Delaware Otsego Corp., 218 AD2d 357, 361 [3d Dept 1996]), defendants have shown that any statements to potential employers would be, at least, subject to a qualified privilege based on common interest. See Liberman v Gelstein, 80 NY2d 429, 437 (1992). Plaintiff has not shown that defendants acted with malice, i.e., spite or ill-will, or a high degree of awareness of the probable falsity of their statements. Ibid. Thus, any statements that defendants made to the schools as to the plaintiff's record were privileged.

If defendants' conduct is not independently tortious, plaintiff cannot recover unless he demonstrates that defendants engaged in conduct "for the sole purpose of inflicting intentional harm on plaintiff[]." Carvel Corp., 3 NY3d at 190. As discussed above, plaintiff offered no evidence that defendants acted out of spite or ill-will. Therefore, this cause of action is dismissed.

Plaintiff's third and fourth causes of action fail to state any cause of action. Plaintiff has not set forth the federal or state civil rights statutes that defendants allegedly violated. Finally, plaintiff's fifth cause of action, for a permanent injunction and specific performance, is dismissed because plaintiff articulates no other viable legal theories for this relief.

The Court need not reach defendants' argument that the City of New York and the DOE are separate municipal entities.

Accordingly, it is

ORDERED that the motion to dismiss is granted and the complaint is dismissed with costs and disbursements to defendant as taxed by the Clerk; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

This constitutes the decision and order of the Court.

Dated: March 7, 2006
New York, New York

ENTER:

J.S.C.

HON. MICHAEL D. STALLMAN