

**Hoffman v Three Vil. Cent. School Dist.**

2007 NY Slip Op 31947(U)

June 29, 2007

Supreme Court, Suffolk County

Docket Number: 0033552/2006

Judge: Paul J. Baisley

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SUPREME COURT - STATE OF NEW YORK  
DCM - SUFFOLK COUNTY

**P R E S E N T:**

**HON. PAUL J. BAISLEY, JR., J.S.C.**

INDEX NO.: 33552-2006

MOTION DATE: March 14, 2007

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LAUREL HOFFMAN,

Plaintiff,

MOT NO.: 001 MG

002 MOT D

-against-

THREE VILLAGE CENTRAL SCHOOL DISTRICT,  
THREE VILLAGE CENTRAL SCHOOL DISTRICT  
BOARD OF EDUCATION, CHERYL PEDISICH,  
LORNA LEWIS, MICHELLE VIRGA, MARY  
LYNCH, HEATHER SALAS, THOMAS COLLETTI,  
FRANK J. CARASITI, THREE VILLAGE  
TEACHERS ASSOCIATION, and CLAUDIA  
REINHART,

Defendants.

**DEFENDANTS' ATTORNEYS:**

DEVITT SPELLMAN BARRETT, LLP

By: Thomas J. Spellman, Esq.

Atty. for Three Village Central S.D., Cheryl

Pedisich, Lorna Lewis, Michelle Virga,

Mary Lynch, Heather Salas, Thomas

Colletti

50 Route 111

Smithtown, New York 11787

BOARD OF COOPERATIVE EDUCATIONAL  
SERVICES,

Nominal Defendant.

JAMES R. SANDNER, ESQ.

Atty. for Defts. Three Village Teachers

Assn. and Claudia Reinhart

52 Broadway,, 9<sup>th</sup> Floor

New York, New York 10004

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**PLAINTIFF'S ATTORNEY:**

JEFFREY ROSENBERG & ASSOCIATES, LLC

425 Park Avenue, 5<sup>th</sup> Floor

New York, New York 10022

Upon the following papers numbered 1 to 38 read on these motions to dismiss ; Notice of Motion/ Order to Show Cause and supporting papers 1- 5 ;14-29 ; Answering Affidavits and supporting papers 6-9 ;30-34 ; Replying Affidavits and supporting papers 10-13;35-37; Other 38; it is

**ORDERED** that this motion by the Three Villages Central School District, Three Villages Central School District Board of Education, Cheryl Pedisich, Lorna Lewis, Michelle Virga, Mary Lynch, Hather Salas, Thomas Colletti, Frank J. Carasiti, and Claudia Reinhart (hereinafter the School District), for summary judgment dismissing the complaint for failure to establish a viable claim is considered under CPLR 3212 together with a motion by the Three Village Teachers Association and Claudia Reinhart to dismiss the complaint. They are determined as follows:

Plaintiff was a drug and alcohol counselor at the Ward Melville High School hired by the Board of Cooperative Education Services (hereinafter BOCES). In her complaint, plaintiff alleges

that she was terminated in violation of a counseling agreement between the School District and BOCES to provide counseling services to the students and seeks damages for breach of that contract; that she was defamed in her profession by the statement that she had a “disconnect” vis-a-vis the Ward Melville staff, that she refused to follow the rules and had no respect for education; that as a third party beneficiary of the counseling agreement, the defendants tortiously interfered with the renewal of that contract which resulted in the her wrongful termination and loss of prospective economic advantage; and that the defendants breached their fiduciary duty to the public by failing to renew her contract and hiring a less qualified individual.

Defendant, School District seeks dismissal as to the claims for breach of contract and tortious interference with said contract because the plaintiff was not a party to the contract nor a third party beneficiary thereof. Plaintiff is clearly not a party to the contract between BOCES and the School District. In order for a person to enforce a contract as a third-party beneficiary, the benefit must be immediate in such a sense and to such a degree as to indicate the assumption of a duty to make reparation if the benefit is lost. Absent such intent, the third party is merely an incidental beneficiary with no right to enforce the contract. An incidental beneficiary may derive benefit from the performance of a contract though he or she is neither the promisee nor the one to whom performance is to be rendered. A party claiming the status of a third party beneficiary has the burden of proof.

Here, there is no allegation that the parties to the contract intended to make reparation to the plaintiff should the benefit i.e. the counseling services to the district be lost (*Oursler v. Women's Interart Center, Inc.*, 170 A.D.2d 407, 566 N.Y.S.2d 295). The mere fact that plaintiff was employed in this position for fourteen years does not vest her with the status of a third party beneficiary. In fact, BOCES has denied in its answer that the plaintiff was a third party beneficiary of the contract. Accordingly, the claims for breach of contract and tortious interference with contract are without a legal basis and are dismissed.

Defendant, School District also seeks dismissal of the defamation claim because it fails to meet the pleading requirements of CPLR 3016 which requires that the particular words complained of be stated in the complaint including the time, place and manner of their utterance. Besides failing to indicate the time, place and manner of their utterance, the defendants argue that the words complained of are non-actionable opinion to which the plaintiff in part admits were true in that she did not follow the rules because she issued too many late passes to her students. Furthermore, the words were communicated among teachers and staff members who enjoy a qualified privilege as having been made by one person to another upon a subject in which they have a common interest.

Plaintiff's complaint contains approximately 22 pages of introductory facts in which she relates that the Three Village Teachers Association (hereinafter TVTA) conspired to influence the School District to terminate her; that she was having problems relating to the “crisis team” with whom she worked including defendants: Pedisich, Virga and Salas; that she came to understand that the reason her position was in jeopardy was because she wrote too many passes for students and because there was a “disconnect” between the plaintiff and the PPS (Pupil Personal Services) staff, as well as the fact that she was insubordinate in resisting a meeting with Lorna Lewis, the Assistant Superintendent of Educational Services. She states that she told her colleagues about this with a view to eliciting their support in her favor (see paragraph 106 of the complaint). She further states that the defamatory words are: that she had a “disconnect” vis-vis the Ward Melville staff, that she refused

to follow the rules and had no respect for education. She indicates that these words were used at a meeting with Mr. Carasiti, the School District Superintendent, in which her continued employment status was discussed among School District personnel.

The law of qualified privilege makes clear that a bona fide communication made upon any subject matter in which the party communicating has an interest, or in reference to which he has a duty, is privileged if made to a person having a corresponding interest or duty, although it contains incriminating matter which, without this privilege, would be slanderous and actionable. This rule of law grew out of the desirability in the public interest of encouraging a full and fair statement by persons having a legal or moral duty to communicate their knowledge and information about a person in whom they have an interest to another who also has an interest in such person. Such privilege is known as a "qualified privilege" because it does not extend beyond such statements as the writer makes in the performance of such duty and in good faith believing them to be true. When defendant's statements are presumptively privileged the rule is that, in order to render them actionable, it is incumbent on the plaintiff to prove that they were false and that the defendant was actuated by express malice or actual ill-will. While there are numerous cases in which it is said that as to privileged communications the good faith of the defendant and the existence of actual malice are questions of fact for the jury, the expression must not be misunderstood. Those questions are for the jury only where there is evidence in the case warranting their submission to the jury, and the burden of proof is on the plaintiff. Falsity is not sufficient for an inference of malice. It must be consistent only with a desire to injure the plaintiff to justify sending the question of malice to the jury. By actual malice is meant personal spite or ill will, or culpable recklessness or negligence (*Stukuls v. State*, 42 N.Y.2d 272, 397 N.Y.S.2d 740, 366 N.E.2d 829).

Here, the plaintiff acknowledges that she was having difficulties getting along with her colleagues and that she did in fact issue too many passes. Accordingly, the words which were communicated were not without a factual basis. Furthermore, the words were communicated at a School District meeting in which her continued employment was being discussed. Accordingly, it falls within the ambit of a "qualified privilege" which can only be defeated by a showing of malice. Plaintiff does not state that the School District acted out of ill will toward her but only that it was unduly influenced by the TVTA which she alleges acted in retribution for her support of certain employees and her work habits. The court finds that the words complained of were not false and that there is no proof that the School District even believed the statements about the plaintiff were untrue (*Lieberman v. Gelstein*, 80 N.Y.2d 429, 590 N.Y.S.2d 857, 605 N.E.2d 344).

Plaintiff counters that the motion for summary judgment is premature because she needs additional discovery in order to support her general allegations that there was publication to third persons and that there was impermissible coercion by the TVTA. Mere speculation or hope that discovery will reveal material or relevant information necessary to defeat summary judgment is insufficient. The party asserting that evidence could be obtained through discovery which would defeat the summary judgment motion must demonstrate to the court a good faith factual basis for that belief (*Joachim v. Flanzig* 3 Misc.3d 371, 773 N.Y.S.2d 267).

Here, the plaintiff does not proffer any fact that would support a belief that there is proof that the alleged defamatory words were spoken out of the school environment so as to defeat the qualified privilege nor that the School District believed the alleged defamatory words were untrue and were spoken to injure the plaintiff. The fact that the TVTA may have harbored ill will toward the plaintiff

