

**Robles v YMCAs of N.Y. State, Inc.**

2008 NY Slip Op 30055(U)

January 8, 2008

Supreme Court, New York County

Docket Number: 0601382/2006

Judge: Jane S. Solomon

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PRESENT: SOLOMON  
*Justice*

PART 55

**JOSEPH ROBLES**

- v -

**YMCAS OF NEW YORK STATE**

INDEX NO. 601382/2006

MOTION DATE 1 - 7 - 2008

MOTION SEQ. NO. 001

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to 10 were read on this motion to/for summary judgment

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	<u>1 - 5</u>
Answering Affidavits — Exhibits _____	<u>6 - 9</u>
Replying Affidavits _____	<u>10</u>

Cross-Motion:  Yes  No

Upon the foregoing papers, It is ordered that this motion **is decided in accordance with the annexed memorandum decision and order.**

**FILED**  
JAN 14 2008  
NEW YORK  
COUNTY CLERKS OFFICE

Dated: 1-8-08

  
**JANE S. SOLOMON** J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate  DO NOT POST  REFERENCE

FOR THE FOLLOWING REASON(S):

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

-----X

JOSEPH ROBLES,

Plaintiff,

INDEX NO. 601382/2006

-against-

YMCAS OF NEW YORK STATE, INC., A NEW  
YORK STATE CORPORATION, D/B/A THE  
HARLEM YMCA; YMCA OF GREATER NEW  
YORK, A NEW YORK STATE CORPORATION,  
D/B/A THE HARLEM YMCA,

DECISION and ORDER

Defendants.

**FILED**

JAN 14 2008

NEW YORK  
COUNTY CLERK'S OFFICE

-----X  
JANE S. SOLOMON, J.

In this wrongful termination case, defendants YMCAs of New York State, Inc., a New York State Corporation, d/b/a/ The Harlem YMCA, and YMCA of Greater New York, a New York State Corporation, d/b/a The Harlem YMCA (collectively, the "YMCA") move for summary judgment to dismiss the Complaint. Plaintiff Joseph Robles ("Robles") opposes the motion, which is granted as follows.

**Background**

The YMCA is a citywide, not-for-profit organization that provides a number of services to New York City communities through nineteen local branches, including a branch in Harlem, which is located at 180 West 135<sup>th</sup> Street in Manhattan. Robles

was employed by the YMCA at its Harlem branch for approximately 13 years before his termination on or about November 1, 2004.

Robles never entered into a contract of employment with the YMCA, but the YMCA did give him a copy of its Employee Handbook. The Employee Handbook, in part, states:

EMPLOYMENT-AT-WILL

UNDER THE EMPLOYMENT-AT-WILL DOCTRINE, AN EMPLOYEE HIRED FOR AN INDEFINITE PERIOD MAY QUIT WORK AT ANY TIME AND THE EMPLOYER MAY DISCHARGE THE EMPLOYEE AT ANY TIME, FOR ANY REASON AND FOR NO REASON AT ALL. THIS GENERAL RULE IS THE POLICY OF THE ASSOCIATION AND APPLIES IN NEW YORK STATE UNLESS THERE IS AN EXPRESS CONTRACT OF EMPLOYMENT FOR A DEFINITE TERM.

This handbook represents the policies and procedures that will generally be followed with respect to the terms and conditions of your employment. This is not an employment contract between the YMCA of Greater New York and its employees. The Association reserves the right to modify these guidelines, without notice, as it deems appropriate.

Robles' Notice of Termination, dated November 1, 2004, provides that Frederick Jeffers from the YMCA's Building Maintenance department performed an inspection that day at the "Main Building and the Youth Center," and discovered that emergency lights were not working at several locations. The Notice further states that Robles was "to test all Exit lights and emergency light every Monday in the main building from the

Basement through to the 11, Floors[sic],” and that he had been verbally reminded to perform this task on several occasions.

Robles commenced this action in or around April 2006 bringing two claims for wrongful discharge. The first claim alleges a violation of public policy; the second alleges breach of an implied contract based on the YMCA's Employee Handbook. In the Complaint, Robles alleges that he had “informed his supervisors on numerous occasions prior to his termination that the Emergency Light System was chronically defective, but [that] no remedial action was ever taken.” Robles further contends that under relevant New York State and City Fire and Building Codes, OSHA Safety Rules and National Fire Protection Associations guidelines, it is unlawful for an employee to test or repair exit and emergency lights without an appropriate and valid state issued electrical or fire safety inspector license, and that the YMCA knew or should have known he was not so licensed and still insisted on holding him responsible for the repairs.

The YMCA now moves under CPLR § 3212 for summary judgment to dismiss the Complaint.

#### Discussion

Absent an express agreement to alter the at-will nature of employment, an employer in New York has an unqualified right to dismiss an employee at any time for any reason or even

[\* 5]

for no reason. See Murphy v. American Home Prods. Corp., 58 N.Y.2d 293 (1984). Moreover, the Court of Appeals has held that there is no exception to the employment-at-will doctrine for a firing that occurred because an employee refused to engage in conduct that violated various statutes. See Horn v. New York Times, 100 N.Y.2d 85 (2003).

In his opposition papers, Robles seeks to expand the narrow exception created by the Court of Appeals in Wieder v. Skala, 80 N.Y.2d 628 (1992). In Wieder, an attorney employed at-will by a law firm alleged that he was terminated when he insisted that the firm report to the Disciplinary Committee the alleged professional misconduct of another associate. The Court concluded that the "unique characteristics of the legal profession in respect of this core Disciplinary Rule [DR 1-103(A)] make the relationship of an associate to a law firm employer intrinsically different from" other professions, and thus, the plaintiff-attorney had a valid claim for breach of contract based on an implied-in-law obligation in his relationship with the law firm. Id. at 637-38.

Robles contends that this case can be differentiated from Horn v. New York Times, *supra*. There, the Court declined to extend the Wieder exception because the plaintiff and defendant did not share a "common professional enterprise." Here, Robles

argues that he and the YMCA shared the YMCA's "mission to promote social values through programs and services that build spirit, mind and body." Further, the YMCA requires new employees to attend an orientation program entitled "We Are One" that is "designed to help new Employees understand the mission, heritage, values and contribution of the YMCA," which certainly involves "obedience to National, State and Local law," including New York City electrical codes.

Robles arguments are not persuasive. Although the YMCA disputes that it has violated any statutes in assigning work to Robles, the dispute is immaterial because, following Wieder, New York courts have refused to extend the exception to non-attorney employees. See e.g. Mulder v. Donaldson, Lufkin & Jenrette, 208 A.D.2d 301 (1<sup>st</sup> Dep't 1995). Thus, Robles' claims that the YMCA violated New York City Fire and Building codes, OSHA Safety and National Fire Protection Association guidelines do not give rise to a claim for wrongful termination.

With respect to Robles' second claim, the YMCA Employee Handbook contains an explicit disclaimer and thus, cannot be construed as an employment contract from which he can claim a breach of contract or detrimental reliance. See Lobosco v. New York Telephone Company/NYNEX, 96 N.Y.2d 312 (2001).

Accordingly, it hereby is

ORDERED that the motion for summary judgment is granted, and the Complaint is dismissed, with costs and disbursements to the YMCA as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly.

Dated: January 8, 2008

ENTER:

  
\_\_\_\_\_

J.S.C.

**JANE S. SOLOMON**

**FILED**

JAN 14 2008

NEW YORK  
COUNTY CLERK'S OFFICE