

Boesen v Prattsburgh Cent. School Dist.

2008 NY Slip Op 30608(U)

March 3, 2008

Supreme Court, Steuben County

Docket Number: 0098184/2008

Judge: Marianne Furfure

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**State of New York
County of Steuben**

Supreme Court

BRET BOESEN,

Plaintiff,

DECISION

vs.

Index No. 98,184

**PRATTSBURGH CENTRAL SCHOOL
DISTRICT and JEFFREY BLACK,
Defendants.**

Appearances: Wiggins, Kopko & Crane, Ithaca (by Edward E. Kopko, of counsel) for Plaintiff

*Hogan, Sarzynski, Lynch, Surowka & DeWind, LLP,
Binghamton (by Amy J. Lucenti, of counsel) for Defendants*

This case comes before the Court on defendants’ pre-answer motion pursuant to CPLR 3211(a)(7) to dismiss the complaint charging defendant Jeffrey Black (Black) and, vicariously, his employer, Prattsburgh Central School District (School District), with defamation. Defendants allege that the complaint must be dismissed because the required Notice of Claim was not timely filed, plaintiff failed to allege sufficient facts to support a cause of action for defamation, and Black is protected from a charge of defamation by absolute privilege. Plaintiff opposed defendants’ dismissal motion and submitted on the papers. On the return date of the motion, defendants’ counsel withdrew the claim that the Notice of Claim was untimely, conceding that it had been timely filed. The Court reserved decision on defendants’ motion.

This action arises from statements allegedly made by defendant Black to Suzanne Kallgren, an individual who contacted the School District claiming to be checking plaintiff's references for a teaching position in Michigan. Plaintiff claims that during Black's professional evaluation of plaintiff, Black made several defamatory statements that were false and inaccurate and which resulted in financial loss to plaintiff because he was not hired as a teacher. Defendants claim that the complaint must be dismissed because, even if Black made the allegedly defamatory comments, he did so while discharging his duties as Superintendent of the School District. Defendants maintain that Black is protected under the common law by the absolute privilege which extends to government officials entrusted with administrative or policy-making responsibilities who make statements during the discharge of those responsibilities.

In reviewing a motion to dismiss pursuant to CPLR 3211(a)(7), "the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one" (*Leon v. Martinez*, 84 NY2d 83, 88 [1994] citing *Guggenheimer v. Ginzburg*, 43 NY2d 268 [1977]). The facts set forth in the pleading are accepted by the Court as true and the plaintiff is given the benefit of every favorable inference to determine whether the facts alleged fit into any legal theory. Dismissal is warranted only if the facts alleged fail to state a cause of action as a matter of law (*Leon v. Martinez*, 84 NY2d 83, 88 [1994]).

Absolute privilege is the complete immunity from liability for defamation which is granted to select public officials with respect to statements made in the discharge of their duties (*600 W. 115th St. Corp. v. VonGutfeld*, 80 NY2d 130, 135 [1992]; *Clark v. McGee*, 49 NY2d 613,617 [1980]; *Stukuls v. State of New York*, 42 NY2d 272, 278 [1977]; *Santavicca v. City of Yonkers*, 132 AD2d 656, 657 [2nd Dept. 1987]). This privilege is available only to those individuals who, in making the challenged statements, are discharging a public function related to the duties of their position (*600 W. 115th St. Corp. v. VonGutfeld*, 80 NY2d 130, 135-136 [1992]). The superintendent of a school district is a member of the class of public officials who are protected by absolute immunity (*Santavicca v. City of Yonkers*, Id.).

In this case, even accepting as true that Black made the allegedly defamatory comments to Ms. Kallgren, Black is protected from a charge of defamation by virtue of the fact that his comments were made by him within the scope and discharge of his responsibilities as Superintendent for the School District. Black's comments were in response to inquiries made concerning plaintiff's strengths and weaknesses as a teacher, his rapport with other teachers, co-workers, students, and parents, his management skills, and the reason plaintiff separated from the School District. The comments were given in response to an allegedly professional inquiry made by another school district and were within Black's responsibilities as chief executive office of the school and supervisor of all school employees (Education Law Sections

1804(1), 1711). Therefore, Black's comments, whether defamatory or not, were protected by absolute privilege.

Given this determination, defendants' other arguments need not be addressed. For the reasons stated above, defendants' motion to dismiss the complaint for failure to state a cause of action is granted.

Defendants' counsel to submit Order.

Dated: March 3, 2008.

ENTER:



Hon. Marianne Furfure
Acting Supreme Court Justice