

Griffiths v Triangle Servs., Inc.

2008 NY Slip Op 32098(U)

July 24, 2008

Supreme Court, New York County

Docket Number: 0113789/2007

Judge: Milton A. Tingling

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. Milton A. Tingling
Justice

PART 44

Griffiths, E

INDEX NO. 113789/07

- v -

MOTION DATE _____

Triangle

MOTION SEQ. NO. 002

MOTION CAL. NO. _____

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

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1

2

3

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed decision.

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

FILED
JUL 28 2008
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 7/24/08

mat
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

-----X

GRIFFITHS, ENID,

Plaintiff,

-against-

TRIANGLE SERVICES, INC., and GCI GROUP

Defendants.

-----X

DECISION AND ORDER

Index No. 113789-07

FILED
JUL 28 2008
COUNTY CLERK'S OFFICE
NEW YORK

Defendant TRIANGLE SERVICES., INC. ("TRIANGLE"), a private corporation that provides janitorial services for GCI GROUP (GCI), moves for an order dismissing the Complaint pursuant to CPLR §3211 and/or granting summary judgment pursuant to CPLR §3212.

On September 20, 2006, GCI held an office party on the 24th floor at 825 Third Avenue, where food and wine were served. As a night cleaner, it was Plaintiff's responsibility to clean the area where the party had taken place. On or about September 21, 2006, Tom Raymond, the Facilities Manager for 825 Third Avenue reported to José Noble, the Building Supervisor, that several bottles of wine were missing from GCI's premises.

TRIANGLE claims that it conducted an investigation and spoke with several of the cleaners, who all denied taking any of the bottles of wine from GCI's premises. Mr. Noble alleges that later, the Plaintiff told him that she saw GCI employees removing the bottles, and that during a second conversation, she allegedly told him she also saw catering employees remove the bottles of wine.

Mr. Noble alleges that on September 22, 2006, he received a telephone call from Antonio Grissales, Head of Security for 825 Third Avenue, who told Mr. Noble that the building's security camera allegedly showed the Plaintiff leaving the building carrying two large shopping bags. Mr. Grissales claims that video shows the Plaintiff entering the building before her shift but does not show her carrying any large bags or bottles. In addition, Mr. Noble claims that a camera in the building elevator captures an image of the Plaintiff with a bag across her shoulder that allegedly appears to contain a bottle.

Mr. Noble also claims that on September 25, 2006, he received a telephone call from Clarissel Luna, a vacation replacement cleaner, who allegedly stated that "she needed to speak to [him] right away about the missing wine." Mr. Noble states that Ms. Luna informed him that she *did* have knowledge about the missing wine and "felt guilty" for not telling him sooner. According to Mr. Noble, Ms. Luna told him that the Plaintiff gave Ms. Luna a bottle of wine, which Ms. Luna allegedly brought to Mr. Noble. On September 27, 2006, Ms. Luna provided Mr. Noble with a written affidavit stating same. Mr. Noble claims that the wine bottle that Ms. Luna returned was the same brand that was being served at the party.

In her Affidavit, Plaintiff states that she has had an unblemished record for the 37 years she has worked as a cleaner at 825 Third Avenue, and that she would not jeopardize her employment over a few bottles of wine. Plaintiff states that she believes TRIANGLE wrongfully terminated her in order to be able to "clear out the older cleaners and hire more youthful cleaners who would accept lower salaries."

In October 2006, Peter Lush, the Daytime Operations manager/Labor Relations Manager, spoke to the Plaintiff with her union representatives at the Union headquarters in New York. Plaintiff denied removing the wine and claimed that she was carrying old uniforms in her bags in

the elevator. Defendant subsequently fired the Plaintiff and the termination was challenged in an arbitration proceeding under the contracts grievance procedure.

At arbitration, Bernard Young, the Contract Arbitrator, stated, "If we have a 'he said, she said' situation whereby there is conflicting testimony, should not the pendulum swing to the 37 year employee versus the vacation replacement...[i]t's her word that the incident took place versus that of the [Plaintiff]."

Defendant TSI terminated Plaintiff's employment in a letter to Plaintiff and copied Yolanta Shabot of 32 BJ SEIU ("the Union") to the letter. Plaintiff's Complaint alleges that the termination letter that was sent to her Union was intended to "deprive [her] of her good name, reputation and the esteem of her peers and customers and to bring her into disastrous scandal, ridicule and professional disrepute before her peers, associates...and the public in general and to hold plaintiff up to public scorn, ridicule and disgrace."

Plaintiff also alleges that Defendant TRIANGLE "did with actual malice, falsely and wrongfully write and deliver a letter to Plaintiff and Yolanta Shabot of 32 BJ SEIU, accusing Plaintiff of taking the missing bottles of wine..."

In addition, Plaintiff claims that Defendant GCI "did with actual malice, falsely and wrongfully write and deliver a letter to TSI 'requesting Triangle Services employee Enid Griffith no longer be permitted on our premises as a result of the investigation conducted to investigate the missing bottles of wine...'"

Plaintiff states that by reason of the Defendants' letters, she "has been deprived of her occupation having been terminated from her employment, and has suffered a tremendous amount of embarrassment, humiliation and mental agony, have [sic] been held in contempt, distrust and ridicule, and has been disparaged..."

Defendant TRIANGLE states that Plaintiff's Complaint fails to state a claim of defamation. As to Defendant's motion to dismiss pursuant to CPLR §3211, a court must afford the plaintiff the benefit of every possible favorable inference to determine whether the allegations fit within any cognizable legal theory. *Morone v. Morone*, 50 N.Y.2d 481, 484. Defendant argues that according CPLR §3016(a), the Plaintiff must identify the particular words alleged to be defamatory. However, Plaintiff's reply affirmation states that the parts of Defendant's letter to the Union that are quoted in the Complaint are the particular words alleged to be defamatory; "As a result of the investigation conducted to investigate the missing bottles of wine from the office of GCI on the 24th floor of 825 Third Avenue...you are being terminated...pending further investigation."

Therefore, the language quoted from the letter can easily be interpreted within a cognizable legal theory; defamation. The aforementioned letter names Plaintiff's reason for termination as the missing bottles of wine, though the Head of Security stated that the bag Plaintiff was carrying only "appear[ed] to be containing a bottle." Defendant does not provide any proof that Ms. Luna did not steal the wine herself, instead of obtaining it from the Plaintiff. By stating that Plaintiff was terminated as a result of an investigation into missing bottles of wine, Defendant may have engaged in defamation by damaging Plaintiff's reputation.

As to Defendant TRIANGLE's motion for summary judgment, summary judgment should not be granted in cases where there are genuine issues of material fact in dispute. *Winegrad, et al., v. New York University Medical Center, et al.*, 64 N.Y.2d 851, 853 (1985). Since the Defendant's witness Ms. Luna has no evidence to corroborate that the Plaintiff stole the bottles of wine and gave her one of the bottles, it is a disputed fact whether the Plaintiff stole the bottles of wine.

In addition, Plaintiff and Defendant disagree as to whether the statements TRIANGLE made to the Union are protected by a qualified privilege, or whether TRIANGLE had a duty to report Plaintiff's termination under the collective bargaining agreement. Therefore, the notification of the Union is a disputed matter which would preclude summary judgment. The passages of the collective bargaining agreement to which Defendant cites refer to a requirement of notifying the employee of the reason for their termination, but not the Union.

Since there are material issues of fact in dispute with regard to the taking of the wine and the Defendant's notification of the Union of Plaintiff's termination, summary judgment does not lie.

Accordingly, Defendant TRIANGLE's motions to dismiss and/or summary judgment are hereby denied.

Dated: July 24, 2008



 J.S.C.
HON. MILTON A. TRUGLING
J.S.C.

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