

Snyder v Claremont Children's School

2009 NY Slip Op 32251(U)

September 15, 2009

Supreme Court, New York County

Docket Number: 106452/07

Judge: Debra A. James

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

PRESENT: DEBRA A. JAMES
Justice

PART 59

BONNIE SNYDER,
Plaintiff,

Index No.: 106452/07

Motion Date: 03/03/09

- v -

Motion Seq. No.: 01

CLAREMONT CHILDREN'S SCHOOL, MET SCHOOLS,
INC., and DONNA COHEN,
Defendants.

Motion Cal. No.: 123

The following papers, numbered 1 to 5 were read on this motion for summary judgment.

Notice of Motion/Order to Show Cause -Affdavits -Exhibits _____
Answering Affidavits - Exhibits _____
Replying Affidavits - Exhibits _____

| PAPERS NUMBERED | |
|-----------------|-------|
| 1, 2 | _____ |
| 3, 4 | _____ |
| 5 | _____ |

Cross-Motion: Yes No

Upon the foregoing papers,

FILED
SEP 16 2009
COUNTY CLERK'S OFFICE
NEW YORK

Defendants' pre-discovery motion for summary judgment raises an issue of first impression: whether the "common interest" privilege that is an affirmative defense against a claim for defamation applies to communications to parents by school authorities concerning a teacher.

It is undisputed that on March 19, 2007, the Director of defendant Claremont Children's School sent an email to parents of plaintiff's class informing them of the plaintiff's immediate dismissal in the middle of the school year and accusing plaintiff

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

Check One: FINAL DISPOSITION NON-FINAL DISPOSITION
Check If appropriate: DO NOT POST REFERENCE

of jeopardizing the health, safety and well being of a child in her care. Plaintiff claims that the statement is defamatory and seeks damages as a result.

The affidavits submitted in support of and opposition to the motion merely establish that there are disputed issues of fact as to the incidents that led to plaintiff's dismissal and whether the statement set forth in the email is true, and therefore not defamatory.¹ In addition to plaintiff's affidavit, plaintiff also submits an email from the parent in question dated March 12, 2007, stating that the parent had contacted the manufacturer of the product and determined that it was safe for her child and gave explicit permission for the product to be used by her child at school contradicting the parent's affidavit in support of the motion. Furthermore, there is no admissible evidence submitted that any action of the plaintiff endangered the "health, safety and welfare" of a child even assuming, arguendo, that defendants' version of plaintiff's activities is correct.² Accordingly,

¹ The court notes that neither party has attached a copy of the pleadings to the motion papers and the court herein, for the sake of efficiency, relies upon the filed copies of the pleadings.

² With respect to the February 2007 incident, the emergency room record submitted in support of the motion fails to support its conclusion as to the source of the child's condition and is directly contradicted by the emails from the child's doctor submitted by the plaintiff in opposition.

plaintiff has sufficiently raised an issue of fact as to defendants' affirmative defense of non-falsity.

With respect to the defendants' defense of privilege, the Court has stated that

One such conditional, or qualified, privilege extends to a "communication made by one person to another upon a subject in which both have an interest" (Stillman v Ford, 22 NY2d 48, 53 [1968]). This "common interest" privilege (see, Restatement § 596) has been applied, for example, to employees of an organization (see, Loughry v Lincoln First Bank, 67 NY2d 369, 376[1986]), members of a faculty tenure committee (Stukuls v State of New York, 42 NY2d 272 [1977]) and constituent physicians of a health insurance plan (Shapiro v Health Ins. Plan, 7 NY2d 56, 60-61 [1959]). The rationale for applying the privilege in these circumstances is that so long as the privilege is not abused, the flow of information between persons sharing a common interest should not be impeded.

Lieberman v Gelstein, 80 NY2d 429, 437 (1992). However, the privilege does not extend to all statements by a former employer where there is no more than a shared pecuniary interest. Once the plaintiff was discharged "the institutional relationship that ordinarily might give rise to a common interest or duty to speak was all but eliminated. . . . In order for the privilege to apply, 'the relation of the parties should be such as to afford reasonable ground for supposing an innocent motive for giving the information, and to deprive the act of an appearance of officious intermeddling with the affairs of others.'" Silverman v Clark, 35 AD3d 1, 11-12 (1st Dept 2006) quoting Lewis v Chapman, 16 NY 369, 375 (1857).

The court holds that the common interest privilege is not applicable to the statement here because the school and the parents lacked the necessary common interest. Persuasive logic can be drawn from a District Court opinion considering similar statements made about a fired camp counselor wherein the Court stated

Even if [the camp]'s comments could be construed as the low opinion of a disgruntled former employer, parents could reasonably assume that [the camp] was privy to unseemly facts regarding plaintiff--unknown to the parents--that supported such an opinion. Such statements are actionable. . . .

Contrary to [the camp]'s argument, its alleged statements are not subject to the common interest privilege, as the camp and the parents' interests are not directly aligned. While [the camp] and the parents share a common interest in the welfare of their campers/children, [the camp]'s comments may also have been motivated by [the camp]'s need to explain [plaintiff]'s sudden termination Therefore, "it is more accurate to say that their interests coincided," since [plaintiff]'s reputation impacted several interests, only one of which Summit and the parents shared.

Camp Summit of Summitville, Inc. v Visinski, 2007 WL 1152894, *11-12, (US Dist Ct, SD NY, 06-Civ-4994, McMahon, J., April 16, 2007).

Similarly in this case, the defendants' statements are not mere opinions as the phrase "on more than one occasion" implies a factual basis for the conclusion reached by the author. While the parents share a common interest in the safety of the children in the class, the defendants also had other interests not shared by the parents such as protecting themselves from possible

liability and/or the loss of the child's tuition. In fact, defendants' affidavit cites pressure from this single parent as part of the basis for plaintiff's termination. Therefore, defendants' post-termination email fails to satisfy any "common interest" with the parents to whom it was sent and is not privileged.

With respect to defendant MetSchools, defendants fail to offer any admissible evidence to provide prima facie support for their allegations that MetSchools may not be held liable under a theory of respondeat superior and therefore that portion of the motion shall also be denied.

Accordingly, it is

ORDERED that the defendants' motion for summary judgment is DENIED; and it is further

ORDERED that the parties shall appear at a preliminary conference on October 20, 2009, at 9:30 A.M., in Part 59, Room 1254, 111 Centre Street, New York, New York 10013.

This is the decision and order of the court.

Dated: September 15, 2009

ENTER:

Debra A. James
J.S.C.
DEBRA A. JAMES
J.S.C.

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