Romanello v Intesa Sanpaolo, S.p.A.
2010 NY Slip Op 33206(U)
October 12, 2010
Sup Ct, NY County
Docket Number: 109314/09
Judge: Louis B. York
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SCANNED ON 10/20/2010

[* 1]

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

PRESENT: LOUIS B. YORK J.S.C. Justice

PART 2

Romanello

INDEX NO. 109314/09

MOTION DATE

- v -

Intesa Sanpaolo

MOTION SEQ. NO. 002

MOTION CAL. NO.

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

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION.

FILED
OCT 20 2010
NEW YORK
COUNTY CLERK'S OFFICE

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

Dated: 10/12/10

LOUIS B. YORK J.S.C.

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

☐ SUBMIT ORDER/ JUDG. ☐ SETTLE ORDER/ JUDG.

[* 2]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 2

--X

GUISEPPE ROMANELLO,

Plaintiff,

-against-

INTESA SANPAOLO, S.p.A. and ANN STEFAN,

Defendants.

--X

Index No. 109314/09

FILED
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LOUIS B. YORK, J.:

Plaintiff, Mr. Guiseppe Romanello, is an individual residing in Lynbrook, New York, and a former executive of defendant, Intesa Sanpaolo, S.p.A. (Intesa). Romanello worked for Intesa and its predecessor for some 25 years before his termination. This motion seeks, pursuant to CPLR 2221 (d), reargument of this court's prior decision, filed on May 24, 2010, which: (i) partially granted defendants' motion to dismiss to the extent that the first, second, third, fourth, fifth, eighth, and ninth causes of action of the complaint were severed and dismissed; and (ii) severed and dismissed the complaint in its entirety as against defendant Ann Stefan (Decision and Order). Upon reargument, plaintiffs seek to reinstate all causes of action because the court overlooked and/or misapprehended critical matters of fact and law on its initial determination. CPLR 2221 (d) (2).

Plaintiff argues that: (i) with regard to the causes of action under the New York State and New York City Human Rights Laws (NYSHRL & NYCHRL, respectively), the court misapplied the decision in *Phillips v City of New York* (66 AD3d 170, 178-180 [1st Dept 2009]) because Romanello's statements, in response to the question of whether he intends to return to work,

including that he "remains unable to return to work in any capacity" and that he had "an uncertain prognosis, making a return to work date that is indeterminate at this time," were actually "classic requests" for extended leave; (ii) the court overlooked the "classic requests" so made, which constitute a basis for retaliation claims under the NYSHRL and NYCHRL; (iii) the court improperly found that legal expenses cannot be recovered for an initial denial of coverage by plaintiff's insurer, followed by payment under the policy, and that such activity did not, in any event, constitute a breach of contract; (iv) with regard to the claim for defamation, the court overlooked the impact of the words contained in the complaint, denied the plaintiff the opportunity to find words, *in haec verba*, to support the claim through discovery, and ignored damage to plaintiff's reputation by allegations that would constitute a Class C Felony under Penal Law § 176.05; and (v) with regard to the claim for invasion of privacy, the court overlooked that Stefan "reviewed" and misapprehended the medical records in question and requested further information from plaintiff's physicians, after which the court went on to misapprehend *Doe v Community Health Plan-Kaiser Corp.* (268 AD2d 183 [3rd Dept 2000]) and *Randi A.J. v Long Island Surgi-Center* (46 AD3d 74 [2nd Dept 2007]), which "refer to a variety of laws – as Mr. Romanello does to HIPAA – as a source of the duty of recipients of medical information to keep such information confidential."

With regard to (i), the court did not rely upon the cited case for its decision, nor did it take any inferences at all from the correspondence between Romanello and Intesa. The court stated that

> [i]n communicating about the possibility of his return to work, Romenello, through counsel, stated that: (i) "since on or about January 9, 2008, [he] has been suffering from severe and disabling illnesses that have prevented him, and

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> continue to prevent him, from working in any capacity, let alone in the capacity in which he had been serving Intesa until that time;" (ii) he "remains unable to return to work in any capacity because of his disabling condition, which have been amply documented;" and (iii) he "has been sick and unable to work, with an uncertain prognosis and a return to work date that is indeterminate at this time." Josephson Aff., Exh. 6.

Decision and Order, at 6. The court used the explicit quotations, not any inferences. Plainly, there is no "classic request" of any kind for accommodation.

With regard to (ii) above, the court, having noted no request, classic or otherwise, for accommodation of any kind, correctly noted that: "Intesa has demonstrated that Romanello's termination did not implicate either of the Human Rights Acts, and, as a result, could not be the basis of a retaliation claim under either." Decision and Order, at 7.

With regard to (iii) above, the court correctly found that Romanello failed to show

> highly culpable conduct (*i.e.* wrongful means) on the part of Intesa. *See NBT Bancorp v Fleet/Norstar Fin. Group*, 87 NY2d 614, 621 (1996); *see also Guard-Life Corp. v Parker Hardware Mfg. Corp.*, 50 NY2d 183, 193-194 (1980). The complaint alleges, at best that Intesa attempted to persuade Prudential to deny coverage, which does not constitute wrongful means. *See id.* at 191 ("'wrongful means' [includes] physical violence, fraud or misrepresentation, civil suits and criminal prosecutions, and some degrees of economic pressure; *they do not, however, include persuasion alone although it is knowingly directed at interference with the contract*") (emphasis added).

Decision and Order, at 9.

Moreover, the motion for reargument, through extensive convolution, alleges that the court misapprehended *Sukup v State of New York* (19 NY2d 519, 522 [1967]), which, in direct opposition to plaintiff's suggestions, clearly states that: "[i]t is equally well settled that an insured cannot recover his legal expenses in a controversy with a carrier over coverage, even though the carrier loses the controversy and is held responsible for the risk." *See id.* at 522,

citing *Doyle v Allstate Ins. Co.*, 1 NY2d 439, 444 (1956); *Manko v City of Buffalo*, 296 NY 905 (1947), *affg* 271 App Div 286 (4th Dept 1947); *Heath v State of New York*, 303 NY 658 (1951), *affg* 278 App Div 8 (3rd Dept); *Davis Acoustical Corp. v Hanover Ins. Co.*, 22 AD2d 843 (3rd Dept 1964); and *Great Amer. Ind. Co. v Audlane Realty Corp.*, 163 Misc 301 (Mun Ct, NY County 1937).

With regard to (iv) above, the court did not overlook, but rather, cited the very language it is claimed the court overlooked. However, the court also stated that

> the complaint patently attempts to paraphrase the statements of Stefan, by noting that she uttered certain words, or "other words synonymous therewith." Such imprecision not only opens the complaint to the question of whether the words were ever published, but also renders the complaint defective as a matter of law. *See Ramos v Madison Sq. Garden Corp.*, 257 AD2d 492, 493 (1st Dept 1999); *Murganti v Weber*, 248 AD2d 208, 208-209 (1st Dept 1998); *Gardner*, 28 AD2d at 667.

Decision and Order, at 11.

Further, the court noted that "Romanello does not specify any time or manner of communication of the alleged defamatory material. *See Seltzer v Fields*, 20 AD2d 60, 64 (1st Dept 1963), *affd* 14 NY2d 624 (1964) ('present practice requires that plaintiff allege the time, manner, and the persons to whom the publication was made')." *Id.*

With regard to (v) above, the court correctly noted, that

> the Health Insurance Portability and Accountability Act (HIPAA), to which the complaint obliquely refers, "does not create any private right of action. Instead, patients who perceive themselves aggrieved by non-compliance with HIPAA are relegated to filing a complaint pursuing an administrative process under HIPAA, thereby allowing the Secretary of HHS to pursue any rights or remedies on behalf of the patient." *Holzle v Healthcare Servs. Group*, 7 Misc 3d 1027(A), NY Slip Op 50770(U) (Sup Ct, Niagara County 2005) (citations omitted).

Decision and Order, at 12-13.

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Next, the motion to reargue alleges that the court misapprehended *Doe v Community Health Plan-Kaiser Corp.* (268 AD2d 183 [3rd Dept 2000]) by stating that

> "the duty not to disclose confidential personal information springs from the implied covenant of trust and confidence that is inherent in the physician patient relationship, the breach of which is actionable as a tort" (*id.* at 187), is also misplaced. Intesa is not in a physician-patient type of relationship with Romanello.

Decision and Order, at 13. The court adheres to this statement.

In addition, the motion to reargue perplexingly offers that the court misapprehended both *Doe v Community Health Plan-Kaiser Corp.* (268 AD2d 183, *supra*) and *Randi A.J. v Long Island Surgi-Center* (46 AD3d 74, *supra*), as referring to medical providers. The case titles alone speak for efficacy of this aspect of the motion to reargue: both matters involved health care facilities, while this matter does not. In addition, the court did not reference *Randi A.J. v Long Island Surgi-Center* at all.

While the motion to reargue is denied in its entirety, the plaintiffs correctly point out that the order language of the Decision and Order improperly refers to summary judgment, where no summary judgment motion was made. The court engages its power under CPLR 5019 to correct the order language of the Decision and Order as follows: (i) the words "for summary judgment" shall be stricken from the first and second paragraphs of the Order; and (ii) the words "to dismiss" shall be substituted in each paragraph therefor. This constitutes the Decision and Order of the court.

Dated: 10/12/10

FILED

OCT 20 2010

NEW YORK COUNTY CLERK'S OFFICE

ENTER: [signature]

J.S.C.

J.S.C.