

Kamchi v Weissman

2012 NY Slip Op 33729(U)

July 19, 2012

Supreme Court, Rockland County

Docket Number: 034344/11

Judge: Linda S. Jamieson

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Disp x Dec Seq. # 1 Type dismiss

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

PRESENT: HON. LINDA S. JAMIESON
-----X

DAVID KAMCHI, LYNN KAMCHI and CAROL
BOXER, on behalf of themselves and all
other Members of Congregation Shaarey
Israel, similarly situated, and MICHAEL
DICK, formerly Rabbi of Congregation
Shaarey Israel,

Plaintiffs,

-against-

Index No. 034344/11

DECISION AND ORDER

CHARNA WEISSMAN, individually and as
President of the Board of Trustees of
Congregation Shaarey Israel, et al.,

Defendants.

-----X

The following papers numbered 1 to 3 were read on this
motion:

<u>Paper</u>	<u>Number</u>
Notice of Motion, Affirmation, Affidavit and Exhibits ¹	1
Memorandum of Law in Opposition	2
Reply Affirmation	3

Defendants, over 40 members of a Board of Trustees (the
"Board") of a synagogue, bring this motion seeking to dismiss the
action. This case arises out of a dispute over whether or not
the contract for plaintiff Rabbi Dick should have been renewed

¹Defendants failed to attach a copy of the complaint - the very
document that they seek to dismiss - to their motion papers. Failure
to do so in the future shall warrant denial of the motion.

when it expired, by its terms, on July 31, 2011. Plaintiffs, certain members of Congregation Shaarey Israel (the "Congregation"), a synagogue in Suffern, feel that the Board of the Congregation ignored their firmly-held views when the Board decided not to renew the Rabbi's contract in October 2010.

As set forth in the Complaint, at a meeting of the Board on October 28, 2010, defendant Weissman, the President of the Board, sua sponte raised the issue of the expiration and/or renewal of the Rabbi's contract. Plaintiffs allege in the complaint that Ms. Weissman urged the Board not to renew the contract. Thereafter, the Board voted, and Ms. Weissman's proposal was accepted. Once the Rabbi learned of this event, he contacted another Board member, defendant Podos, and voiced his objection to the manner in which the issue of his contract had been addressed. The complaint alleges that "in response, Rabbi Dick was threatened with immediate termination" if he acted so as to disrupt the Congregation in any way. Without belaboring each and every event that occurred between October 2010 and March 2011, suffice it to say that eventually, the Board held a special meeting on March 8, 2011 concerning the Rabbi's contract. Although a discussion occurred at that meeting, no vote of the Congregation was held. Despite further attempts by certain members of the Congregation to hold a vote or otherwise renew the Rabbi's contract, no such vote was ever held, and the contract lapsed. This action followed.

This dispute is admittedly governed by two things: Religious Corporations Law § 200 and the Bylaws of the Congregation. Religious Corporations Law § 200 provides, in relevant part, that "The trustees of an incorporated church to which this article is applicable, shall have no power to settle or remove or fix **the salary of the minister**. . . ." ² (Emphasis added). This statute applies only to the salary of the minister (here, rabbi) - the trustees cannot choose the salary of the minister, or take such salary away from the minister. It plainly does not apply to the selection, hiring or firing of a minister, as plaintiffs assert. Plaintiffs' interpretation of this section, skewed by their deliberate misquoting of it, is thus entirely misplaced.

A review of the Bylaws of the Congregation shows that "A Rabbi shall be employed, engaged, retained and hired for a period of time and upon such terms to be determined by the Board of Trustees and the Congregation. . . . The Members, at a Congregational meeting, shall approve the **hiring** of the Rabbi." (Emphasis added). The Bylaws thus clearly state that the members of the Congregation must vote only on the hiring of the rabbi. The members have no right to vote on any other aspect of the

²Counsel for plaintiffs deliberately misquotes this provision, by eliminating the phrase "or fix the salary of the" from the sentence quoted above. This omission utterly changes the meaning of the statute. Counsel for plaintiffs are warned never to engage in such misrepresentation.

rabbi's employment, such as whether a contract should be allowed to expire.

The leading case on this subject is *Saffra v. Rockwood Park Jewish Center, Inc.*, 239 A.D.2d 507, 658 N.Y.S.2d 43 (2d Dept. 1997). In that case, as here, the rabbi's contract expired by its terms. The Court held that "The petitioner's argument based on Religious Corporation Law § 200 is unpersuasive. **While the actions of the Board of Trustees . . . indicated its desire not to continue the employment of the petitioner, it did not affirmatively terminate his employment.** The petitioner's termination occurred solely because the contract expired. Thus, the Board did not usurp the authority of the congregation members." (Emphasis added). That is exactly what happened here. The Board indicated its desire not to continue the employment of Rabbi Dick. The Board did not "affirmatively terminate his employment," but Rabbi Dick's "termination occurred solely because the contract expired."

The fact that the Bylaws allow the members of the Congregation to "vote for Class IV Trustees and **on any question affecting the Congregation**" (emphasis added) does not change this analysis. The employment of the rabbi is specifically addressed in Article XII, and the members are granted the right to vote on the hiring of the rabbi only. Plaintiffs' argument - that the extension of the contract would fall under the "any question

affecting the Congregation"³ provision would broaden the meaning of Article XII. It would also make unnecessary the language providing for a vote for the "hiring" of the rabbi. This contradicts a well-established principle of legal interpretation. See *Two Guys from Harrison-N.Y., Inc. v. S.F.R. Realty Associates*, 63 N.Y.2d 396, 482 N.Y.S.2d 465 (1984) ("In construing a contract, one of a court's goals is to avoid an interpretation that would leave contractual clauses meaningless."); *Ruttenberg v. Davidge Data Systems Corp.*, 215 A.D.2d 191, 626 N.Y.S.2d 174 (1st Dept. 1995) ("It is a recognized rule of construction that a court should not adopt an interpretation which will operate to leave a provision of a contract without force and effect.") (quotations omitted). Having found that neither Religious Corporation Law § 200 nor the Bylaws form a basis for liability, the Court need not reach defendants' claims of immunity.

Accordingly, the Court grants the motion, and dismisses the First, Second, Third, Fourth, Sixth and Seventh Causes of Action. The Court notes that defendants failed to list the Seventh Cause of Action in its list of causes of action to be dismissed. As the Seventh Cause of Action ("Defendants' actions in conspiring to deny him the opportunity of a renewal or extension of his

³This provision is so broad as to be virtually impossible to interpret; a "question affecting the Congregation" could range from the important (what time services should be held) to the trivial (what brand of kosher wine should be used).

employment as CSI's rabbi violated his rights under law.") is based entirely on the premise that defendants did something wrong by not allowing the vote, and the Court has already determined that a vote was unnecessary, this Cause of Action too must fail as a matter of law.

Turning to the Fifth Cause of Action, for slander and defamation against Bill Bradin for certain statements he allegedly made about Rabbi Dick in March 2011, the Court observes that "Whether particular statements are susceptible of a defamatory meaning – and therefore actionable – presents a question of law." *Yonaty v. Mincolla*, 945 N.Y.S.2d 774 (3d Dept. 2012). "Generally, a plaintiff asserting a cause of action sounding in slander must allege special damages contemplating the loss of something having economic or pecuniary value." *Id.* Here, Rabbi Dick has not alleged special damages aside from the loss of his position at the Congregation. But the allegedly slanderous statements made by Mr. Bradin occurred at the March 2011 meeting – five months after the Board had already voted not to renew the Rabbi's contract. It is not possible for Rabbi Dick to have suffered damages in the form of the loss of renewal of his position from the alleged slander that occurred **after** defendants had already decided not to renew his contract.

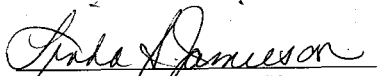
Even if the alleged statements were slander per se,⁴ in which case special damages need not be alleged, there is a qualified privilege that applies here, because the statements were alleged to have been made in a meeting of the Congregation. *O'Neill v. New York University*, 944 N.Y.S.2d 503 (1st Dept. 2012) ("Even though a statement is defamatory, there exists a qualified privilege where the communication is made to persons who have some common interest in the subject matter."). The only way that plaintiffs can overcome this privilege is to show that Mr. Bradin "made the defamatory statement with malice or reckless disregard for the truth or falsity of the statement." Plaintiffs have not alleged that Mr. Bradin made these statements at the March 2011 meeting with malice or reckless disregard for the truth. Putting aside the argument that some of the statements may be pure expressions of opinion, which are not actionable, plaintiffs do not allege that Mr. Bradin specifically acted with malice towards Rabbi Dick when he spoke in March 2011. Indeed, the only reference to malice and ill will in the complaint is one general reference in the Fourth Cause of Action, alleging intentional interference with Rabbi Dick's relationship with the Congregation, in which plaintiffs state generally that "the defendants [sic] actions were motivated by malice and ill intent

⁴Slander per se applies to statements that impugn a party's reputations in his or her trade, business or profession. *Glazier v. Harris*, 95 A.D.3d 538, 944 N.Y.S.2d 75 (1st Dept. 2012).

toward Rabbi Dick." This is not sufficient to allege slander by Mr. Bradin in March 2011 and, accordingly, the Fifth Cause of Action is also dismissed.

The foregoing constitutes the decision and order of the Court.

Dated: New City, New York
July 19, 2012


HON. LINDA S. JAMIESON
Justice of the Supreme Court

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