

Giglietti v Bottalico

2013 NY Slip Op 31983(U)

August 22, 2013

Sup Ct, New York County

Docket Number: 104343/10

Judge: Louis B. York

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

2

LOUIS E. YORK
J.S.C.

PRESENT: _____

PART _____

Index Number : 104343/2010
GIGLIETTI, ANTHONY
vs.
BOTTALICO, ANTHONY
SEQUENCE NUMBER : 001
SUMMARY JUDGMENT

Justice
FILED

AUG 27 2013

COUNTY CLERK'S OFFICE
NEW YORK

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

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

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

Dated: 8/27/13

Levy
LOUIS E. YORK
J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
 DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

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

----- X
ANTHONY GIGLIETTI, JR.,

Plaintiff,

Index No. 104343/10

- against -

ANTHONY BOTTALICO, as General Chairmen,
THE ASSOCIATION OF COMMUTER RAIL
EMPLOYEES and MTA METRO-NORTH
RAILROAD COMPANY,

Defendants.

FILED

AUG 27 2013

COUNTY CLERK'S OFFICE
NEW YORK

----- X

York, J.S.C.:

In this action plaintiff Anthony Giglietti, Jr. ("Giglietti"), a former Metro-North assistant conductor, alleges that defendant Metro-North Railroad Company ("Metro-North") improperly influenced Anthony Bottalico ("Bottalico"), the General Chairmen of his union, the Association of Commuter Rail Employees ("ACRE"), during Giglietti's appeal of his dismissal from Metro-North. Giglietti commenced his case by filing a summons and verified complaint in the Supreme Court Court of New York on April 2, 2010. The case was removed to federal court in May 2010 because Giglietti's action asserted claims under federal law (the Railway Labor Act - 45 U.S.C. § 151) - in particular that (1) ACRE breached its duty of fair representation, and (2) Metro-North breached the collective bargaining agreement. In addition, Giglietti alleged, under State law, that Metro-North interfered with plaintiff's contract with ACRE and that Metro-North intentionally inflicted emotional distress upon Giglietti. The Southern District of New York dismissed Giglietti's federal causes of action, finding the fact that Metro-North pays the Chairman of ACRE's salary, without more, is not sufficient evidence of collusion or unfair representation between ACRE and Metro-North. The District Court stated that all federal claims

against Metro-North should fail, but declined to exercise supplemental jurisdiction over Giglietti's State law claims. Instead, the District Court remanded the State law claims to the New York County Supreme Court. Giglietti's State law claims remain the same: (1) Metro-North engaged in tortious contractual interference, and (2) Metro-North intentionally caused him emotional distress. Metro-North now moves for summary judgment dismissing the contractual interference cause of action on the grounds that (1) the Railway Labor Act preempts plaintiff's claim and (2) "law of the case" and collateral estoppel prevents plaintiff from arguing that Metro-North breached the Collective Bargaining Agreement. Metro-North also seeks dismissal of plaintiff's emotional distress cause of action because plaintiff cannot prove this claim's required elements.

For the reasons below, the court grants summary judgment.

Background

In his Affidavit in Opposition, dated April 11, 2013, Giglietti states that he was accused of theft of three train tickets in the amount of \$43.00, and thus dismissed from his job at Metro-North. Metro-North became aware of this theft when its spotters caught Giglietti failing to issue receipts for the three tickets on separate occasions. Bottalico represented Giglietti on appeal of this dismissal in his capacity as chairman of ACRE, a representative organization authorized to act on behalf of members such as Giglietti. Giglietti claims that the newly implemented Ticket Issuing Machines ("ticket machines") were faulty and failed to produce receipts for these tickets, and that he did not intentionally steal from the railroad. Giglietti alleges that Metro-North improperly influenced Bottalico during this appeal. In particular, Giglietti argues this because Bottalico received his salary from Metro-North. Plaintiff alleges that this relationship between

Bottalico and Metro-North allowed Metro-North to improperly influence Bottalico because it caused him to try to keep Metro-North happy.

The parties agree that Bottalico appealed Metro-North's decision to both the Highest Appeals Officer in the Metro-North's Labor Department and the Special Board of Adjustment, and that each appeal was denied and Giglietti's dismissal was upheld. The parties dispute whether Metro-North's power over Bottalico caused Bottalico to refuse to intercede and get him rehired, and whether this influence constitutes a tortious contractual interference. Additionally, Giglietti alleges that Bottalico did not inform him of the appeal to the Special Board of Adjustment and therefore he could not aid in his own defense. Giglietti argues that Metro-North's influence over Bottalico caused him monetary losses and emotional distress.

Metro-North argues that plaintiff's termination was lawful and that it did not influence any of Bottalico's actions or decisions. Additionally, Metro-North contends that the Railway Labor Act preempts the interference claim and that the doctrine of the law of the case bars relitigation of the case's merits. Finally, Defendant contends that plaintiff has not suffered actionable emotional distress under New York State law.

Discussion

Under CPLR 3212(b), a motion for summary judgment "shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party." Under CPLR 3211(a)(7), a party may dismiss one or all causes of action if the "pleading fails to state a cause of action."

Improper Contractual Interference

Defendant argues for summary judgment dismissing this cause of action based on the federal preemption. As this is a threshold question, the Court address it first. United States v. Kimbell Foods, Inc., 440 U.S. 715, 727 (1979). Federal law governs federal programs and preempts State law claims. Id. Plaintiff counters that because the District Court declined to exercise supplemental jurisdiction over his State law claims, the Federal and State law claims are unrelated and thus are not preempted. The Railway Labor Act is a federal program established to provide a prompt and orderly settlement of all disputes or grievances regarding the “interpretation or application of agreements covering rates of pay, *rules*, or working conditions.” 45 U.S.C. § 151 (emphasis added). The Railway Labor Act states that all state labor law claims that require an interpretation of application of the Collective Bargaining Agreement must be settled under the Railway Labor Act’s arbitration process. See Hawaiian Airlines, Inc. v. Norris, 512 U.S. 246, 252 (1994). In these situations, the Railway Labor Act preempts any State law claim. Id. at 261. Therefore, State law causes of action that fall within the purview of the Railway Labor Act are preempted by the federal law.

The Collective Bargaining Agreement governs railroad conductor’s employment with Metro-North and this Court lacks subject matter jurisdiction over any State law claims that arise under the agreement. Plaintiff alleges this cause of action does not require an interpretation of his Collective Bargaining Agreement with ACRE but stands on its own as a viable State cause of action. However, as defendant points out, plaintiff’s amended complaint references the Collective Bargaining Agreement in the context of this claim, alleging that defendant’s payment of the ACRE’s Chairman directly interferes with ACRE’s ability to be plaintiff’s bargaining

representative.¹ Also, neither plaintiff's complaint nor his affidavit point to any other contract with his union that may be at issue. Any agreement plaintiff has with ACRE is governed by the Collective Bargaining Agreement. Therefore, this interference claim must apply either an interpretation or an application of the Collective Bargaining Agreement – which, as stated, is governed by federal law – and is preempted. Hawaiian Airlines, 512 U.S. at 252.

Even if the Court did not find preemption it would dismiss based on the law of the case and collateral estoppel. Under the law of the case, a party having “full and fair opportunity to litigate the initial determination” of an issue may not request a retrial for that issue. People v. Evans, 94 N.Y.2d 499, 501, 706 N.Y.S.2d 678, 680 (2000). Additionally, “collateral estoppel permits the determination of an issue of fact or law raised in a subsequent action by reference to a previous judgment on a different cause of action in which the same issue was necessarily raised and decided.” Continental Cas. Co. v. Rapid-American Corp., 80 N.Y.2d 640, 649, 593 N.Y.S.2d 966, 970 (1993). The facts at issue in plaintiff's cause of action were litigated federal court. Contrary to plaintiff's contention, law of the case applies although the District Court did not exercise jurisdiction over his contractual interference claim. As defendant states, the District Court's holding that there was no evidence of collusion or unfair representation between ACRE and Metro-North governs this claim, which is virtually identical to his federal claim concerning ACRE's duty of fair representation. See Continental, 80 N.Y.2d at 649, 593 N.Y.S.2d at 970.

Finally, to be liable for tortious interference with a contract, a plaintiff must prove defendant intentionally, unjustifiably and successfully induced the third-party to breach the contract. See Lama Holding Co. v. Smith Barney, 88 N.Y.2d 413, 424, 646 N.Y.S.2d 76, 82

¹ The District Court held that the compensation structure is insufficient evidence to support an inference that the Union does not represent its members appropriately. Additionally, the District Court noted that the agreement has been in place for over 10 years. This Court also notes that, if plaintiff's argument were correct, the Union could not represent its members.

(1996). There is no tortious interference “absent fraud, collusion, malice, or bad faith.” Halevi v. Fisher, 81 A.D.3d 504, 505, 917 N.Y.S.2d 156, 158 (1st Dept. 2011). Plaintiff also did not establish this element of the cause of action.

Intentional Infliction of Emotional Distress

Defendant argues the Court should dismiss the cause of action for intentional infliction of emotional distress because plaintiff has not satisfied the four required elements. These are: (1) extreme and outrageous conduct; (2) intent to cause, or disregard probability of causing, severe emotional distress; (3) a causal connection between the conduct and injury; and (4) severe emotional distress. Lau v. S & M Enterprises, 72 A.D.3d 497, 498, 898 N.Y.S.2d 42, 43 (1st Dept. 2010). New York courts tend to focus on the first element to filter out trivial complaints. See Howell v. New York Post Co., Inc., 81 N.Y.2d 115, 121, 596 N.Y.S.2d 350, 353 (1993). Extreme and outrageous conduct exists only where “the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.” Id. at 122, 596 N.Y.S.2d at 353. Wrongful termination is insufficient, without more, to satisfy the strict standards of intentional infliction of emotional distress. See Kamen v. Berkeley Co-op. Towers Section II Corp., 98 A.D.3d 1086, 1087, 952 N.Y.S.2d 48, 49 (2nd Dept. 2012). Additionally, it is not outrageous for an employer to bring disciplinary charges against an employee it suspects of theft. See Khan v. Duane Reade, 7 A.D.3d 311, 312, 776 N.Y.S.2d 281, 281 (1st Dept. 2004).

Here, defendant’s alleged actions fall short of this rigorous standard. Metro-North’s termination of plaintiff is not outrageous in character or utterly intolerable in a civilized community. See Howell, 81 N.Y.2d at 122, 596 N.Y.S.2d at 353. Metro-North caught plaintiff failing to issue receipts to spotters on three different occasions and claims he kept the money

from these sales. See Khan, 7 A.D.3d at 312, 776 N.Y.S.2d at 281. Regardless of the amount of money involved, it is not extreme or outrageous for Metro-North to believe that theft is a reasonable ground for termination, that this is part of a larger pattern of theft by plaintiff, or, for other reasons, that this is sufficient cause for termination. Even if the ticket machines did not produce the required receipts, this does not explain why plaintiff did not turn in the money at the end of his shift. Additionally, plaintiff's bill of particulars provides no information supporting his contention that he suffers from emotional distress.

Plaintiff claims that he suffered emotional distress because ACRE has interceded in the past to prevent the dismissal of employees who stole larger amounts of money. However, plaintiff provides no evidence supporting this allegation. Plaintiff also provides no evidence that incidents involving other employees were treated differently. Plaintiff also does not explain how ACRE's treatment of other employees intentionally inflicted emotional distress on him. In addition, to succeed on this claim plaintiff would have to prove that Metro-North either intended or disregarded a substantial risk of causing severe emotional distress and he has not done so.

For the reasons above, it is

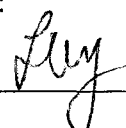
ORDERED that defendant's motion for summary judgment is granted and the case is dismissed.

FILED

AUG 27 2013

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Louis B. York, J.S.C.

Dated: 8/22/13