

Johnson v Heartshare Human Serv. of N.Y.
2015 NY Slip Op 30504(U)
March 13, 2015
Sup Ct, Kings County
Docket Number: 505976/2013
Judge: David I. Schmidt
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At an IAS Term, Part 47 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 13th day of March, 2015.

P R E S E N T:
HON. DAVID I. SCHMIDT,
Justice.

DECISION AND ORDER

YVONNE JOHNSON,

Index No. 505976/2013

Plaintiff,

Mot. Seq. No(s). 1

--against--

HEARTSHARE HUMAN SERVICES OF NEW YORK, THE CITY OF NEW YORK, MS. FORD, whose first Name is unknown and KENDRA MULZAC,

Defendants.

The following papers read herein:	NYSCEF Doc #:
Notice of Motion/Cross Motion, Affidavits (Affirmations), and Memoranda of Law Annexed	5, 6, 7, 8
Opposing Affidavits (Affirmations) Annexed	10, 11
Reply Affidavits (Affirmations) Annexed	12
Memoranda of Law	15, 16, 17, 18

Upon the foregoing papers, in this tort action, plaintiff YVONNE JOHNSON ("Plaintiff"), alleges that on or about July 31, 2012, she was engaged in a private and confidential conversation with Defendant Ford, a supervisor with Defendant HEARTSHARE HUMAN SERVICES OF NEW YORK ("Heartshare"). According to Plaintiff's complaint, Heartshare provides "personal care foster care and other care services

to the general population and the community and is owned, controlled and/or funded by defendant [The City of New York". (Plaintiff's complaint, ¶ 4) Plaintiff alleges that she provides foster care for two of her grand-nieces and was discussing with Ms. Ford who would provide foster care in her place for several weeks while she traveled. Plaintiff alleges that part of those discussions with Ms. Ford included negative statements made by Plaintiff with regard to one of the proposed temporary caregivers, Plaintiff's niece Sadorah Oakley. Plaintiff alleges that she was subsequently "confronted and threatened by Sadorah Oakley" because Ms. Ford allegedly shared the information with Defendant Kendra Mulzac who then allegedly disclosed Plaintiff's negative opinions of Ms. Oakley to Ms. Oakley. (Plaintiff's complaint, ¶ 11) Thereafter Plaintiff alleges that she confronted Heartshare about the dissemination of the information and that confrontation resulted in Heartshare retaliating by filing a report with the "Administration of Children Services" attempting to remove the children from Plaintiff's care. According to the complaint, the Administration for Children's Services filed charges against the Plaintiff and the charges were subsequently dismissed and the case was closed (Plaintiff's complaint, ¶ 13). Based on the above factual allegations, Plaintiff brought the instant action against the Defendants alleging that Heartshare and New York City were negligent in the hiring, retention or supervision of Ford and Mulzac. Plaintiff claims that the dissemination of the confidential information resulted in the Plaintiff being "...confronted and threatened by Sadorah Oakley. The impact of the communication has caused pain and isolation from one side of the family." (Plaintiff's complaint, ¶ 11).

By motion dated January 8, 2014, Defendants moved to dismiss the Plaintiff's complaint for failure to state a cause of action. In opposition to the motion, Plaintiff submitted an affidavit amplifying the allegations in the complaint. Both parties made additional submissions to the court based on the July 2, 2014 interim order requiring the parties to address the applicability of Social Services Law § 372 to the instant set of facts.

When considering a CPLR 3211(a)(7) motion to dismiss, a court should afford a plaintiff's complaint the benefit of a liberal construction and presume that all facts alleged therein are true. In determining the motion the plaintiff is to be afforded the benefit of every favorable inference, and the court should decide if the facts as alleged fit within any cognizable legal theory (*see Leon v. Martinez*, 84 NY2d 83 [1994]; *Hecht v. Andover Associates Management Corp.*, 114 AD3d 638 [2nd Dept. 2014]). In addition, in determining a motion made pursuant to CPLR 3211(a)(7), a court may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint (*see Rovello v. Orofino Realty Co.*, 40 NY2d 633 [1976]) and, upon consideration of said affidavits "the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one" (*Guggenheimer v. Ginzburg*, 43 NY2d 268, 275 [1977]). When the allegations in the complaint consist of bare legal conclusions they are not presumed to be true, nor are they accorded every favorable inference (*see Morris v. Morris*, 306 AD2d 449 [2nd Dept. 2003]).

Where negligence actions are premised on the doctrine of respondeat superior, employers may be determined to be vicariously liable for tortious conduct committed by

an employee where the employee was acting within the scope of employment (*see Horvath v. L & B Gardens, Inc.*, 89 AD3d 803 [2 Dept. 2011]). Generally, where an employee is acting within the scope of his or her employment, the employer is liable for the employee's negligence under a theory of respondeat superior and no claim may proceed against the employer for negligent hiring, retention, supervision or training (*see Talavera v. Arbit*, 18 AD3d 738 [2 Dept. 2005]).

Alternatively, in situations where a claim based on vicarious liability for an employee's negligence does not lie, an employer may still face liability exposure based on a claim of negligent hiring and supervision where the employer knew or should have known of the employee's propensity for the conduct which caused the injury (*see State Farm Ins. Co. v. Central Parking Systems, Inc.*, 18 AD3d 859 [2 Dept. 2005]).

Under either of the above theories of liability, "a finding of negligence may be based only upon the breach of a duty. If, in connection with the acts complained of, the defendant owes no duty to the plaintiff, the action must fail. Although juries determine whether and to what extent a particular duty was breached, it is for the courts first to determine whether any duty exists" (*Darby v. Compagnie Natl. Air France*, 96 NY2d 343, 347 [2001]).¹

¹ Plaintiff's complaint and affidavit are generally silent regarding her purported injuries except for the reference to the "pain and isolation" she has suffered due to a threat allegedly made by Sadorah Oakley and the purported shunning from "one side of her family" (Plaintiff's complaint, ¶ 11). Thus, in affording Plaintiff every benefit, including the possibility that Plaintiff may have a cognizable claim for negligent infliction of emotion distress, the court must first examine the issue of whether or not a duty exists because the "circumstances under which recovery may be had for purely emotional harm are extremely limited and, thus, a cause of action seeking such recovery must generally be premised upon a breach of a duty owed directly to the plaintiff

In determining whether a duty exists a court balances several factors “including the reasonable expectations of parties and society generally, the proliferation of claims, the likelihood of unlimited or insurer-like liability, disproportionate risk and reparation allocation, and public policies affecting the expansion or limitation of new channels of liability” (*Palka v Servicemaster Mgt. Servs. Corp.*, 83 NY2d 579, 586 [1994]).

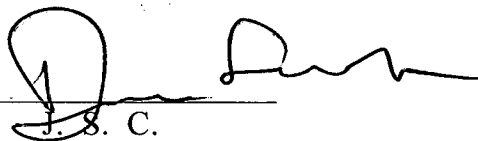
Plaintiff commenced this litigation based upon the theory that Defendants breached a common law duty to keep the information Plaintiff provided to them about Plaintiff’s niece confidential. The court, after reviewing the initial submissions of the parties, directing the parties to submit additional briefs with regard to the applicability of Social Services Law § 372. Based on the instant set of facts, the court declines to find that Plaintiff pleaded a cause of action pursuant to which Defendants owed Plaintiff a common law duty of confidentiality. The complaint and the Plaintiff’s affidavit consist primarily of bare legal conclusions and do not allege any facts that would support a determination that the parties had a reasonable expectation that the information that Plaintiff provided to Defendants would be kept confidential. Further, since Defendants’ are charged with the responsibility of guaranteeing the safety and welfare of the foster children they place, it is imperative that they be able to thoroughly investigate all potential fosters care guardians and make determinations as to their fitness to serve in that capacity without the risk of implicating an amorphous duty of confidentiality. Further, the instant set of facts does not implicate any violation of the statutory confidentiality mandated by Social Services Law § 372 inasmuch

which either endangered the plaintiff’s physical safety or caused the plaintiff fear for his or her own physical safety” (*Lancellotti v. Howard*, 155 A.D.2d 588, 589-590 [2 Dept. 1989]).

as none of the allegations outline that the information at issue is protected under the statute. Therefore, Defendants' motion is granted and Plaintiff's complaint is dismissed in its entirety.

This constitutes the Decision and Order of the Court.

E N T E R,



A handwritten signature in black ink, appearing to read 'D. Schmidt', is written over a horizontal line. Below the line, the initials 'J. S. C.' are printed.

HON. DAVID I. SCHMIDT