

Wigdor v Soulcycle, LLC

2015 NY Slip Op 30546(U)

April 13, 2015

Supreme Court, New York County

Docket Number: 161572/14

Judge: Donna M. Mills

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

DOUGLAS H. WIGDOR,

INDEX NO.
161572/14

Plaintiff,

- against -

SOULCYCLE, LLC, JULIE RICE, ELIZABETH
CUTLER, and MELISSA SCHOFFER,

DECISION/ORDER

Defendants.

DONNA M. MILLS, J:

In this action, plaintiff Douglas H. Wigdor ("Wigdor or plaintiff") sues defendants SoulCycle, LLC ("SoulCycle"), Julie Rice, Elizabeth Cutler, and Melissa Schoffer (collectively referred to as "defendants"). Defendants now move, pursuant to CPLR 3211(a)(7), for dismissal of the complaint for failure to state a cause of action.

Plaintiff alleges that on May 2, 2013, he filed an action on behalf of Nick Oram in the United States District Court in the Southern District of New York alleging, inter alia, violations of the New York Labor Law by SoulCycle, including but not limited to, failure to properly pay wages for all hours worked. Plaintiff further alleges that the defendants banned him from entering any of SoulCycle's locations because he filed the aforementioned lawsuit against the defendants.

In the instant action plaintiff brings four causes of action against the defendants. Plaintiff's first cause of action falls under Labor Law ("NYLL") 215. Plaintiff's second cause of action, alleges retaliation under the California Labor Code ("CDC"). Plaintiff's third cause of action is for a prima facie tort. Finally, plaintiff's fourth cause of action is for a breach of obligation of good faith and fair dealing. Defendants contend that the entire complaint should be dismissed for failure to state a cause of action.

On a motion to dismiss for failure to state a cause of action pursuant to CPLR 3211 (a) (7), "the sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law [,] a motion for dismissal will fail" (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]).

When evaluating a defendant's motion to dismiss, pursuant to CPLR 3211 (a) (7), the test "is not whether the plaintiff has artfully drafted the complaint but whether, deeming the complaint to allege whatever can be reasonably implied from its statements, a cause of action can be sustained." *Jones Lang Wooton USA v LeBoeuf, Lamb, Greene & McRae*, 243 AD2d 168, 176 (1st Dept 1998), quoting *Stendig, Inc. v Thom Rock Realty Co.*, 163 AD2d 46, 48 (1st Dept 1990). To this end, the court must accept all of the facts alleged in the complaint as true, and determine whether they fit within any "cognizable legal theory." *Arnav Indus., Inc. Retirement Trust v Brown, Raysman, Millstein, Felder & Steiner, L.L.P.*, 96 NY2d 300, 303 (2001). However, where the allegation in the complaint consist only of bare legal conclusions, or of factual claims which are inherently incredible or are flatly contradicted by documentary evidence, the foregoing considerations do not apply. See e.g. *Tectrade Intl. Ltd. v Fertilizer Dev. and Inv., B.V.*, 258 AD2d 349 (1st Dept 1999).

Labor Law § 215 prohibits discharging an employee in retaliation for making a complaint that the employer "has violated any provision of this chapter, or because such employee has caused to be instituted a proceeding under or related to this chapter". "[T]his chapter" refers to any provision of the Labor Law (see, Labor Law § 1; *Leibowitz v. Bank Leumi Trust Co. of N.Y.*, 152 A.D.2d 169, 174, 548 N.Y.S.2d 513).

In this case, the plaintiff alleged that his representation of a client in a federal lawsuit

resulted in the defendants retaliating against him by wrongfully banning him from SoulCycle's premises.

Contrary to the plaintiff's contention, the text of Labor Law § 215 does not reveal a clear intent to authorize a claim where an employer retaliates against an attorney that represents a former employee of the employer. Indeed, neither the plain language of the statute nor its legislative history, as revealed by the 1967 bill jacket accompanying its enactment and the 1986 bill jacket accompanying its amendment, contemplates an action by someone other than an employee making complaints regarding a former employer. Rather, the clear intention was to provide a cause of action for an employee against current and former employers for discriminatory or retaliatory acts (see e.g. 585 *Liverpool v. Con-Way, Inc.*, 2010 WL 4791697, 7–9, 2010 U.S. Dist LEXIS 122419, 27–33 [E.D.N.Y.]; *Higueros v. New York State Catholic Health Plan, Inc.*, 526 F.Supp.2d 342, 347). Since plaintiff was not an employee of defendants, the first cause of action shall be dismissed.

For similar reasons to plaintiff's NYLL §215 claim, plaintiff's second cause of action alleging retaliation under the CLC should be dismissed for failure to state a claim. Plaintiff provides no support for his argument that retaliation claims under the CLC should be expanded to allow for third party plaintiffs who are not and have never been employed by the defendants.

Turning to the plaintiff's third cause of action, the requisite elements of a cause of action for prima facie tort are: (1) the intentional infliction of harm; (2) which results in special damages; (3) without any excuse or justification; (4) by an act or series of acts which would otherwise be lawful. *Freihofer v Hearst Corp.*, 65 NY2d 135 (1985). In

addition, "there is no recovery in prima facie tort unless malevolence is the sole motive for defendant's otherwise unlawful act or . . . unless defendant acts from 'disinterested malevolence' [internal citation omitted]." *Burns Jackson Miller Summit & Spitzer v Lindner*, 59 NY2d 314, 333 (1983).

Here, other than conclusory contentions, there are no facts supporting the assertion that defendants sole motivation for banning plaintiff from SoulCycle premises was intended to maliciously injure plaintiff. While plaintiff's pleadings are liberally interpreted in the context of a CPLR 3211(a)(7) motion, such liberal standard will not save allegations that consist of bare legal conclusions. Disinterested malevolence having not been shown, it is not necessary to address the other elements of a prima facie tort that defendants contend are also lacking.

Defendants also seek to dismiss plaintiff's breach of obligation of good faith and fair dealing claim arguing, that plaintiff and SoulCycle did not enter into a contractual relationship. A cause of action based upon a breach of a covenant of good faith and fair dealing requires a contractual obligation between the parties (see *Phoenix Capital Invs. LLC v. Ellington Mgt. Group, L.L.C.*, 51 A.D.3d 549, 550, 859 N.Y.S.2d 46 [2008]; *Triton Partners v. Prudential Sec.*, 301 A.D.2d 411, 752 N.Y.S.2d 870 [2003]).

Plaintiff contends that by banning him from its facilities, defendants have breached their obligation of good faith and fair dealing toward him. Contrary to the defendants' contention, it is alleged in the complaint that plaintiff created an online account with SoulCycle, which he routinely used to schedule classes. Indeed, defendants' own documents show that plaintiff took 13 classes at SoulCycle in the one-

month period from April 9, 2013 to May 6, 2013. Since plaintiff has pled an underlying obligation between himself and SoulCycle when he electronically agreed to SoulCycle's terms and conditions, this cause of action against SoulCycle stands. However, the plaintiff did not have a contract with the individual defendants, and as such the cause of action against them shall be dismissed.

Accordingly, it is

ORDERED that the motion of defendants Julie Rice, Elizabeth Cutler, and Melissa Schoffer to dismiss the complaint herein is granted and the complaint is dismissed in its entirety as against said defendants, and the Clerk of the Court is directed to enter judgment accordingly in favor of said defendants; and it is further

ORDERED that the first three causes of action is dismissed against defendant SoulCycle; and it is further

ORDERED that the action is severed and continued against the remaining defendant; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all further papers filed with the court bear the amended caption; and it is further

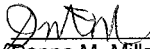
ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room 158), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that defendant SoulCycle is directed to serve an answer to the complaint within 20 days after service of a copy of this order with notice of entry; and it is further;

ORDERED that counsel are directed to appear for a preliminary conference in Room 574, 111 Centre Street, on June 12, 2015, at 10 AM.

Dated: 4-13-15

So Ordered



Donna M. Mills, J.S.C.

DONNA M. MILLS, J.S.C.