

Ramos v Jasa Corp.

2015 NY Slip Op 30569(U)

March 11, 2015

Sup Ct, Bronx County

Docket Number: 301607/14

Judge: Mark Friedlander

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**NEW YORK SUPREME COURT - COUNTY OF BRONX
PART IA-25**

HECTOR RAMOS,

Plaintiff,

MEMORANDUM DECISION/ORDER

Index No.: 301607/14

-against-

JASA CORPORATION,
JASA HOUSING MANAGEMENT SERVICES
FOR THE AGING, INC.,
BRIGHTON BEACH HOUSING DEVELOPMENT
FUND CORPORATION,
DONALD MANNING, in his capacity as Director of
Housing JASA Housing Management Services of the
Aging, Inc. And
MARCELLA LEFF, in her capacity as Housing Manager,
JASA Housing Management Services of the Aging,

Defendants.

HON. MARK FRIEDLANDER

Defendants, Jasa Corporation (“Jasa”), Brighton Beach Housing Development Fund Corporation (BBHD”), Jasa Housing Management Services for the Aging, Inc. (“Jasa-HMS”), Donald Manning and Marcella Leff, move for an order, pursuant to CPLR §§3211(a)(5) and (a)(7), dismissing plaintiff’s complaint with prejudice. Defendants’ motion is decided as hereinafter indicated.

According to plaintiff’s complaint, plaintiff was hired by defendants Jasa-HMS and/or BBHD as a superintendent of maintenance for one of the buildings they managed, known as the Scheuer House of Brighton Beach. In essence, plaintiff alleges that he was terminated from his employment by the defendants, without cause and in violation of defendants’ own disciplinary

rules. Plaintiff's complaint consists of six causes of action. The first cause of action alleges wrongful termination. The second cause of action alleges a prima facie tort. The third cause of action alleges intentional infliction of emotional distress. The fourth cause of action alleges reckless infliction of emotional distress. The fifth cause of action alleges "respondeat superior." The sixth cause of action seeks reimbursement for tools and personal items lost during hurricane Sandy.

On June 5, 2006, plaintiff signed an acknowledgment with Jasa, which provides, in relevant part, as follows:

I hereby acknowledge that I have received a copy of the JASA Human Resources Policy and Procedures Manual. This manual represents a general statement of the policies and benefits provided by JASA and a General overview of the responsibilities and obligations of JASA employees. **I also understand that, as such, this manual is not a contract of employment.** I also understand that the contents of this manual are subject to revision or modification by JASA." (**Boldface added**).

It is unnecessary to recite the substance of the incident that resulted in plaintiff's termination of employment by defendants, as plaintiff's employment was an employment at will, which is terminable by either party at any time, with or without cause, and is not actionable. *Lobosco v. N.Y. Tel. Co./NYNEX*, 96 N.Y.2d 312 (2001); *Murphy v. Amer. Home Prods. Corp.*, 58 N.Y.2d 293, 297 (1983). Accordingly, plaintiff's first cause of action for wrongful termination is dismissed.

The requisite elements of a cause of action sounding in prima facie tort are (1) the intentional infliction of harm, (2) resulting in special damages, (3) without excuse or

justification, by act or series of acts which are otherwise legal. *Arep Fifty-Seventh, LLC v. PMGP Assocs., L.P.*, 115 A.D.3d 402 (1st Dept.). In addition thereto, a plaintiff must allege that disinterested malevolence was the sole motivation for the conduct of which he or she complains. *Id.* at 403. The plaintiff's complaint fails to allege disinterested malevolence as the sole motivation for defendants' conduct. In any event, even if so alleged, a prima facie tort is governed by a one year statute of limitations, *Angel v. Bank of Tokyo-Mitsubishi, Ltd.*, 39 A.D.3d 368 370 (1st Dept. 2007), and plaintiff fails to allege any conduct on the part of defendants within one year prior to his commencement of this action. Accordingly, plaintiff's second cause of action is dismissed.

The requisite elements of a cause of action for a claim of intentional infliction of emotional distress are (1) extreme and outrageous conduct, (2) an intent to cause—or disregard of a substantial probability of causing—severe emotional distress, (3) a causal connection between the conduct and the injury, and (4) the resultant severe emotional distress. *Lau v. S & M Enterprises*, 72 A.D.3d 497 (1st Dept. 2010). The plaintiff's complaint fails to allege any conduct on the part of the defendants which is sufficiently extreme or outrageous. In any event, even if so alleged, the tort of intentional infliction of emotional distress is governed by a one year statute of limitations, *Ross v. Louise Wise Services*, 8 N.Y.3d 478, 491 (2007); CPLR§215(3), and plaintiff fails to allege any conduct on the part of defendants within one year prior to his commencement of this action. Accordingly, plaintiff's third cause of action is dismissed.

The tort of reckless infliction of emotional distress appears to be subsumed in the tort of intentional infliction of emotional distress. In *Freihofer v. Hearst Corp.*, 65 N.Y.2d 135, 143 (1985), the Court stated, that:

“In *Fischer v. Maloney* (supra), we adopted the rule set forth in Restatement (Second) of Torts §46(1) that ‘One who by extreme and outrageous conduct intentionally or *recklessly* causes severe emotional distress to another is subject to liability for such emotional distress.’” (*Italics added*).

For the reasons stated above, the fourth cause of action sounding in reckless infliction of emotional distress is also dismissed.

Defendants’ contesting of plaintiff’s claim for unemployment insurance benefits before the New York State Department of Labor does not extend the statute of limitations for prima facie tort, intentional infliction of emotional distress or reckless infliction of emotional distress.

The fifth cause of action alleging respondeat superior is not addressed by plaintiff in his opposition papers. However, having dismissed the first, second, third and fourth causes of action against all defendants, the doctrine of respondeat superior has no application and the fifth cause of action is dismissed.

The sixth cause of action alleges, upon information and belief, that the severe flooding caused by Hurricane Sandy in 2012 caused irreparable damage to plaintiff’s tools and personal property kept in a storage room on defendants’ property, that defendants submitted a claim to their insurance carrier (including a claim for loss of plaintiff’s personal property and tools), that defendants received payment from their insurance company and never honored plaintiff’s reimbursement claim and never paid him for his lost property. In support of defendants’ motion to dismiss this cause of action, defendants submit the affidavit of Lilia Marinin-Calves, CPA (“Lilia”), the Director of Finance of Jasa. In her affidavit, Lilia states that, in essence, defendants neither submitted a claim nor received payment for the value of Scheuer House property that was lost or damages during the storm, nor did they seek reimbursement for the personal property of

any Jasa employee of tenant. In opposition to this branch of the motion, plaintiff claims, without any citation to statute or case law, that the loss of his tools and personal property should be compensated by defendants. Plaintiff's sixth cause of action is dismissed.

Defendants' motion for dismissal of plaintiff's complaint is granted, and plaintiff's complaint is dismissed in its entirety.

The foregoing constitutes the Decision and Order of the Court.

Dated: 3/11/15



MARK FRIEDLANDER, J.S.C.