

Vassenelli v City of Syracuse
2015 NY Slip Op 32835(U)
February 25, 2015
Supreme Court, Onondaga County
Docket Number: 2014EF97
Judge: Hugh A. Gilbert
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At a Term of Supreme Court held in
and for the County of Onondaga,
in the City of Watertown, New York.

PRESENT: HONORABLE HUGH A. GILBERT
Supreme Court Justice

STATE OF NEW YORK
SUPREME COURT COUNTY OF ONONDAGA

NICHOLAS L. VASSENELLI,

Plaintiff,

MEMORANDUM
DECISION AND ORDER

Index No. 2014EF97

RJI No. 33-14-0960

-vs-

THE CITY OF SYRACUSE, STEPHANIE A. MINER,
in her individual and official capacity as Mayor of The
City of Syracuse, FRANK L. FOWLER, in his individual
and official capacity as Chief of Police for The City
of Syracuse, JUDY CULETON, in her individual capacity
as former Director of the Human Resources Division of
the Syracuse Police Department, MATTHEW DRISCOLL,
in his individual capacity as former Mayor of The City of
Syracuse, GARY MIGUEL, in his individual capacity as
former Chief of Police for The City of Syracuse, SERGEANT
RICHARD PERRIN, in his individual and official capacity,
POMCO GROUP a/k/a POMCO, INC., individually and as
an agent for The City of Syracuse, SHARON MILLER, in
her individual capacity as a former agent of the City of
Syracuse and SHARON ERIKSSON, in her individual
capacity as a former agent of the City of Syracuse,
DAVID BARRETTE, in his individual and official capacity
as a Deputy Chief of the City of Syracuse Police
Department, SERGEANT MICHAEL MOUREY, in his
individual and official capacity as the employee in charge
of the Medical Section of the City of Syracuse Police
Department; PMA MANAGEMENT CORP.; CAROL WAHL;
and JOHN DOE(S) and JANE DOE(S),

Defendants.

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Defendants PMA Management Corp. and Carol Wahl have moved to dismiss the Amended Complaint pursuant to CPLR §3211 on the grounds that there is a defense founded upon documentary evidence as well as collateral estoppel and failure to state a cause of action. The Amended Complaint contains twelve causes of action alleging promissory and/or equitable estoppel, breach of contract, negligence, gross negligence, fraud, statutory violation of Sections 349 and 350 of the General Business Law of New York, negligent and intentional infliction of emotional distress, retaliation under the Americans with Disabilities Act, retaliation under the Rehabilitation Act, retaliation under 42 USC §1983, violations of the ADA, and violation of the Rehabilitation Act.

The first cause of action therein is entitled promissory and/or equitable estoppel. Plaintiff alleges that Defendants, officers, agents or official bodies acting within the scope of their authority made a promise and/or affirmative representation to disabled police officers that their medical needs would be paid in full. While the first cause of action, like all the following causes of action, is an omnibus one it does apply to these two Defendants specifically. It is undisputed that these two Defendants were not involved in 2009. These Defendants assert that they had no involvement whatsoever with regard to Plaintiff until they entered into a contract with the City of Syracuse in September of 2013. An estoppel rests upon the word or deed of one party upon which another rightfully relies, and so

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relying changes his position to his or her injury. **Mooney vs. Nationwide Mutual Insurance Co.**, 172 AD2d 144, 148-149 (1991). With regard to equitable estoppel, the claimant must demonstrate that the other party made a misrepresentation upon which he or she relied. **Greene vs. Abbott Laboratories**, 148 AD2d 403, 405 (1989). We find that Plaintiff may not maintain a claim for promissory or equitable estoppel. Defendants had a relationship with the City of Syracuse beginning in 2013 as an independent contractor but had no relationship with plaintiff. The first cause of action is dismissed.

The second cause of action is for breach of contract involving alleged contractual rights. There is no question that the terms of a contract binds the parties thereto. **Pen-Mor Thoroughbred Farms, Inc. vs. Ricatto**, 122 AD2d 201 (1986). The signer of a contract is bound by its contents generally. **Manufacturers and Traders Trust Company vs. S.W.U. Associates**, 105 AD2d 1118, 1119 (1984). This Court, however, cannot determine there is any contract, or contractual relationship between Plaintiff and these two Defendants. The second cause of action is dismissed.

The third and fourth causes of action assert that all Defendants maintain a special relationship with Plaintiff that requires Defendants to act with care and not subject Plaintiff to harm or risk thereof; and that Defendants have

H acted with gross and/or ordinary negligence and reckless disregard to Plaintiff's rights, needs, medical treatment and privacy. The basic definition of a negligence cause of action is (1) the Defendant owes Plaintiff a duty of reasonable care; (2) a breach of that duty; and (3) a resulting injury proximately caused by the breach.

A **Siegel vs. Hofstra University**, 154 AD2d 449, 450 (1989). In other words, an action for negligence does not lie unless there exists a duty on the part of the Defendant and a corresponding right in the Plaintiff. **Cohen vs. Wales**, 133 AD2d 94, 95 (1987). These Defendants have persuaded this Court that the role undertaken by them pursuant to their contract with the City of Syracuse did not create a duty to Plaintiff which was breached by them. Therefore, the claims for ordinary or gross negligence are dismissed.

G The fifth cause of action involves "fraudulent conduct. . .where they have expressly and/or impliedly represented to Plaintiff's medical providers" certain financial information. The elements of a fraud claim are a material misrepresentation of fact, made with knowledge of its falsity, with the intent to deceive, justifiable reliance and damages. **Mergler vs. Crystal Props. Assocs.**, 179 AD2d 177, 181 (1992). Upon reviewing the contractual relationship between these Defendants and the City of Syracuse, this Court fails to determine how these elements exist with regard to these Defendants. Furthermore, in order to plead a prima facie case of fraud, a Plaintiff must allege each of the elements of fraud with

particularity and must support each element with an allegation of fact. **Fink vs. Citizens Mortgage Banking, Ltd**, 148 AD2d 578 (1989). The Court determines that Plaintiff has failed to do so with regard to these two Defendants. This cause of action is dismissed.

The sixth cause of action asserts violations of General Business Law §§349 and 350, which prescribes, in the interpretation of Plaintiff, deceptive acts or practices in the conduct of any business, trade, or commerce or in the furnishing of any service in the state of New York. These statutory provisions give the Attorney General broad enforcement powers to secure an honest market place where trust, and not deception, prevails. **Goshen vs. Mutual Life Insurance Company of New York**, 98 NY2d 314, 323-24 (2002). The Plaintiff seeks to apply these statutes to a purported fraudulent conduct which aims to dupe healthcare providers into believing that rates of compensation for Plaintiff's healthcare providers must conform to the workers compensation fee schedule when the City of Syracuse does not have workers compensation for its police officers. Defendants urge that they do not come within the purview of these statutes in this private civil lawsuit because they did not advertise any goods or services to Plaintiff. This Court cannot determine how Defendants' contract with the City of Syracuse meets the requirement of having a broad impact on consumers at large, **Canario vs. Gunn**, 300 AD2d 332, 333 (2002), or that it has a broader impact than a private contract

dispute. *Pension Fund vs. Marine Bank*, 85 NY2d 20, 25 (1995). This cause of action is dismissed.

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The seventh cause of action for intentional and/or reckless and/or negligent infliction of emotional distress asserts concerted actions and omissions by Defendants that were outrageous. These Defendants point out to this Court that this tort has the four elements of: (1) extreme and outrageous conduct; (2) intent to cause, or disregard of a substantial probability of causing, severe emotional distress; (3) a causal connection between the conduct and injury; (4) severe emotional distress. *Howell vs. New York Post Co.*, 81 NY2d 115, 121 (1993). Plaintiff fails to satisfy this criteria, nor is there the requisite duty for negligent infliction of emotional distress. This seventh cause of action is dismissed.

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The eighth cause of action asserts that Defendants are retaliating by refusing to approve or cover certain treatments. The eighth cause of action alleges that Plaintiff is disabled and complained about the lack of approval for certain medical treatment. This assumes a contractual relationship, whether employment or otherwise, which is not being honored by these two Defendants. With a most liberal reading, this Court cannot find this cause of action sustainable as against these two Defendants. This cause of action is dismissed.

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The ninth cause of action asserts that the prior Federal action was brought under “the Rehabilitation Act” so that the Defendants’ actions in this State action “also violate the Anti-Retaliation Act”. The initial difficulty this Court has is that these Defendants were not involved in the Federal action and would have no basis to retaliate for the Plaintiff filing it. This Court further cannot discern how this cause of action is applicable to these two Defendants and the services they provide for the City of Syracuse. The ninth cause of action is dismissed.

The tenth cause of action is for retaliation pursuant to 42 USC §1983 with regard to the institution of the Federal action. The over generalized and vague inclusion of these two Defendants herein does not appear sustainable with regard to their limited relationship with the City of Syracuse. This dismissal would apply to the eleventh and twelfth causes of action as well. A Section 1983 Plaintiff must address a wrong which can be ascribed to municipal decision makers. **City of Oklahoma City vs. Tuttle**, 105 S. Ct. 2427, 2435, 471 US 808, 821 (1985). These last five causes of action would each appear to fall within the public policy that liability is predicated upon deprivation derived from a policy or custom of the municipality. **Manti vs. New York City Tr. Auth.**, 165 AD2d 373, 378 (1991). These remaining causes of action are dismissed.

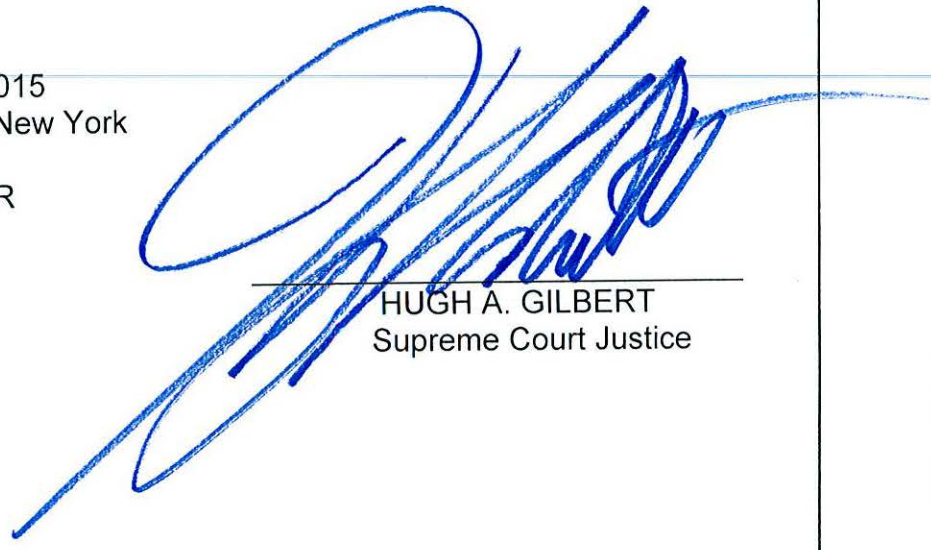
THEREFORE, it is

ORDERED, ADJUDGED AND DECREED that the motion by Defendants PMA Management Corp. and Carol Wahl to dismiss the Amended Complaint as against them is granted.

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Dated: February 25, 2015
at Watertown, New York

ENTER



HUGH A. GILBERT
Supreme Court Justice

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