

Rosenwasser v Carroll
2017 NY Slip Op 32392(U)
May 12, 2017
Supreme Court, New York County
Docket Number: 105186/2011
Judge: David B. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY PART 58

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MATTHEW J. ROSENWASSER,

Index No.: 105186/2011

Plaintiff,

-against-

JOHN CARROLL & FORDHAM UNIVERSITY

Defendants.

FILED
MAY 22 2017
COUNTY CLERK'S OFFICE
NEW YORK

DECISION/ORDER
Present: Hon. David B. Cohen

Recitation, as required by CPLR §2219(a), of the papers considered in the underlying motion:

<u>Papers</u>	<u>Number</u>
Notice of Motion for Summary Judgment and affidavits annexed.....	1
Affirmation in Opposition and affidavits.....	2
Reply.....	3

Upon the foregoing cited papers, the decision/order on this motion for summary judgment pursuant to CPLR 3212 is as follows:

Plaintiff Matthew J. Rosenwasser had registered and taken two classes at defendant Fordham University in Fall 2008 and Fall 2009. On January 21, 2010, at a time period when plaintiff was not currently enrolled or taking any classes at Fordham, plaintiff submitted an application for Alumni Borrowing Privileges to the Quinn Library of Fordham and was issued an alumni library card. Plaintiff contends that the alumni application was provided to him because there was no other card for a “working-class student that was paying off a large tuition bill.” Plaintiff was able to obtain access to the Fordham library through this card. Between January 2010 and May 2010, plaintiff came to the library often and spoke with many people including a security guard named Melinda Joyner. On May 14, 2010, Joyner complained to the Fordham Safety and Security Department that she felt harassed by plaintiff. Joyner complained about

several instances, including that she felt that plaintiff had followed her down the street to the subway, that plaintiff flashed the headlights of a car at her one day and that she found plaintiff in the corridor at 2:00 am upon exiting the locker room. Joyner complained that she felt harassed by plaintiff. Following Joyner's complaint, on May 17, 2010, three security guards approached plaintiff in the library and ordered him to leave the library and go with them. The guards did not grab plaintiff, nor place plaintiff in handcuffs. The security guards brought plaintiff to a security office where they proceeded to ask plaintiff questions about Joyner's allegations.

On May 19, 2010, Joyner's complaint was reduced to a written form, on which the type of incident is listed as "harassment." Plaintiff wrote several emails to various Fordham staff attempting to explain and defend against the complaint made by Joyner. On May 21, 2010, John Carroll, the head of the Fordham Safety and Security Department wrote a letter to plaintiff stating that plaintiff was not currently enrolled at Fordham, had no legitimate reason to be on any Fordham campus and there was no reason to discuss, defend or consider Joyner's allegations. The letter went on to advise plaintiff that he was not permitted on Fordham University property for any reason and should plaintiff disregard this, campus security was permitted to take him into custody and file trespassing charges.

At some point, Fordham became aware that plaintiff had obtained an alumni library card and paid the \$100 fee. Fordham then sent plaintiff a refund for his library card as he was not an alumni of Fordham. Fordham did not rescind the prohibition on plaintiff's entry on Fordham property. According to the University Code of Conduct, Fordham reserves the right to withdraw the privilege of an invitee or licensee on its premises.

Plaintiff commenced this action and alleges seven causes of action against the currently named defendants, Joyner and Joyner's employer, Summit Security. Following motion practice, on October 11, 2011, Justice Mills dismissed Joyner and Summit from this action. Justice Mills also dismissed the 1st, 3rd, 4th, 5th, 6th and 7th causes of action.¹ The remaining cause of action alleges that Fordham and Carroll failed to follow university procedures in permanently banning plaintiff from campus. Specifically, the second cause of action alleges that defendants failed to provide him with the due process required under Fordham's sexual harassment policy by not performing a proper investigation, by not referring the sexual harassment allegations to Fordham's Director of Equity and Equal Opportunity, by not maintaining confidentiality and other portions of the sexual harassment policy.

Summary judgment is a drastic remedy that should not be granted where there exists a triable issue of fact (*Intergrated Logistics Consultants v. Fidata Corp.*, 131 AD2d 338 [1st Dept 1987]; *Ratner v. Elovitz*, 198 AD2d 184 [1st Dept 1993]). On a summary judgment motion, the court must view all evidence in a light most favorable to the non-moving party (*Rodriguez v. Parkchester South Condominium Inc.*, 178 AD2d 231 [1st Dept 1991]). The moving party must show that as a matter of law it is entitled to judgment [*Alvarez v. Prospect Hosp.*, 68 NY2d 320 324 [1986)]. The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]). After

¹ Although the Ordered paragraphs do not clearly specify that the 3rd Cause of action was dismissed, the 3rd cause of action was for intentional infliction of emotional distress which Justice Mills clearly ruled must be dismissed in the body of the decision.

the moving party has demonstrated its *prima facie* entitlement to summary judgment, the party opposing the motion must demonstrate by admissible evidence the existence of a factual issue requiring a trial (*Zuckerman v. City of New York*, 49 NY2d 557 [1980]).

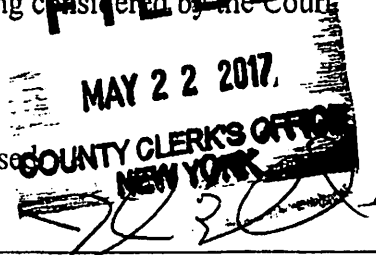
Here, defendants have submitted the deposition of Mr. Carroll, who stated that Joyner did not ever file a complaint for sexual harassment. Joyner's complaint was for harassment and at no time did Joyner complain that she was being sexually harassed. Further, Carroll specifically testified that the written report states that the incident report type was for harassment and not sexual harassment. In sum, defendant acknowledges that it did not follow the sexual harassment procedures for the simple reason that this was not a sexual harassment matter but one of regular harassment.

Plaintiff argues that the actions alleges by Joyner are actions that would constitute sexual harassment. However, even if true, Joyner did not complaint of sexual harassment and Fordham took actions based upon what her complaint was for, regular harassment. As defendants' were not investigating a claim for sexual harassment, Fordham was not under any duty to follow the sexual harassment policy. Upon learning that plaintiff was not an enrolled student, defendants exercised their rights under the University Code of Conduct and withdrew plaintiff's privilege as an invitee or licensee. Plaintiff's allegations that defendants have violated his Federal rights was not pled, is being brought up at this juncture for the first time and is not being considered by the Court

For the above reasons it is therefore

ORDERED, that the remaining cause of action is dismissed

Dated: May 12, 2017
New York, NY

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Hon. David B. Cohen, J.S.C