

Golia v Vieira
2019 NY Slip Op 33517(U)
October 1, 2019
Supreme Court, Queens County
Docket Number: 702457/2014
Judge: Salvatore J. Modica
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: PART 37

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DR. MICHAEL GOLIA,

Plaintiff,

-- against --

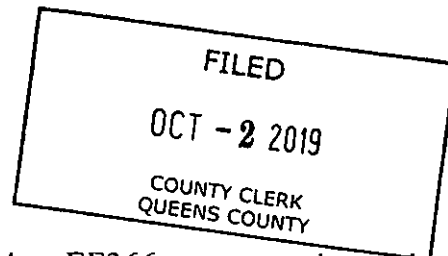
DR. JEFFREY VIEIRA, DR. LAWRENCE WOLF,
and DR. ROBERT LEVEY, et al.,

Defendants.
-----X

DECISION AND ORDER

Index No. 702457/2014

Motion Sequence Number 10



SALVATORE J. MODICA, J.:

The following papers found on NYSCEF, numbered EF284 to EF366, were read on this motion by defendants for dismissal pursuant to CPLR 3211(a) or for summary judgment pursuant to CPLR 3212; and plaintiff's cross motion for an (a) order pursuant to CPLR 3126 striking the answer of the defendants, for their failure to appear four times for deposition; (b) or alternatively, for an order precluding the defendants from offering any evidence on the issue of liability, (c) extending plaintiff's time to file a Note of Issue due to outstanding discovery; (d) for partial summary judgment on the complaint against Dr. Jeffrey Vieira for the plaintiff's first and second causes of action; (e) dismissing the Doctor Defendants' affirmative defenses in their entirety; (f) denying and dismissing the Doctor Defendants' motion to dismiss and for summary judgment in its entirety; and for such other and further relief as this Court deems just and proper.

Papers Numbered

Notices of Motions - Affidavits - Exhibits..... EF284-EF301
Notice of Cross Motion - Affidavits - Exhibits..... EF302-EF366

The defendants' motion to dismiss the complaint pursuant to CPLR 3211(a) is granted in its entirety. Based on the Court's decision, the remaining motion by the defendants for summary judgment and the plaintiff's cross-motion is denied as moot.

The instant matter was administratively transferred to this Court on April 26, 2019. On May 1, 2019, after hearing oral argument in this case, the matter was adjourned for decision. The Court notes that the appellate history underlying this case is fairly extensive. *See Golia v. Vieira*, 162 A.D.3d 864 (2nd Dept. 2018); *see also Golia v Vieira*, 162 A.D.3d

865 (2nd Dept. 2018). ¹ In a decision and order, dated October 20, 2016, and entered October 31, 2016, another Judge of this Court set forth the facts of this case as follows:

Plaintiff was appointed to the Long Island College Hospital (LICH) graduate medical education training program (residency program) for a term of 12 months beginning June 23, 2010 and ending on June 22, 2011. The terms and conditions of the appointment were set forth in the resident agreement between plaintiff and LICH dated April 9, 2010. The agreement provided that reappointment was in the sole discretion of the Chair of the Department and would be contingent upon several factors, including satisfactory completion of all training components, satisfactory performance evaluation, and no closure or reduction in the size of the program. In addition to the resident agreement, plaintiff's residency with LICH was subject to a collective bargaining agreement between the Service Employees International Union, Committee of Interns and Residents (the union) and LICH.

In May 2011, LICH and its residency program were acquired by the State University of New York Downstate Medical Center (SUNY Downstate). In connection with the acquisition, plaintiff entered into a resident agreement with SUNY Downstate for an appointment to its residency program effective May 1, 2011 and ending June 22, 2011, as a temporary clinical assistant. According to the terms of the SUNY Downstate agreement, the appointment was subject to renewal on an annual basis, in accordance with the laws of the state and the policies of the SUNY board of trustees, and subject to the final approval of the president of SUNY Downstate. The agreement also provided that plaintiff's employment with LICH would terminate upon the closing of SUNY Downstate's acquisition of LICH and that in consideration of his employment with SUNY Downstate, plaintiff waived and released any claims for termination of his LICH employment against SUNY, SUNY Downstate and LICH. This action arises out of the nonrenewal of the resident agreement upon the completion of plaintiff's first 12-month term.

¹ The plaintiff also filed an action in the Court of Claims against the State of New York. That action against New York State was ultimately dismissed by a Judge of that Court for his failure to file a timely notice of claim. The Appellate Division, Second Department, affirmed the dismissal in a 2018 decision and order. *See Golia v State of New York*, 162 A.D.3d 861 (2nd Dept. 2018).

On April 10, 2014, the plaintiff commenced the instant action in Supreme Court, by the filing of a summons with notice against LICH, Dr. Jeffrey Vieira, Dr. Lawrence Wolf, and Dr. Robert Levey, seeking injunctive relief and damages for, *inter alia*, breach of contract and defamation. At all relevant times, Dr. Vieira served as the Director of the Residency Program; Dr. Wolf and Dr. Leves were Associate Program Directors.

On January 9, 2015, in response to a demand by the defendants, the plaintiff filed a complaint, alleging six causes of action against LICH, Dr. Vieira, Dr. Wolf, and Dr. Levey. LICH filed a motion to dismiss the complaint as against it and the application was granted in a decision and order, dated August 14, 2015. *See Golia v Vieira*, 2015 N.Y. Misc. LEXIS 3361 (Queens Co. 2015). When the plaintiff renewed the motion to dismiss, the Court, in a decision and order dated February 1, 2016, reconsidered its decision solely to the extent of sustaining the first two causes of action against LICH. Both sides filed appeals, which were dismissed as academic in light of the amended complaint filed by the plaintiff on April 5, 2016, pursuant to CPLR 3025(a), following LICH's March 16, 2016 service of an answer to the original complaint. *See Golia v Vieira*, 162 A.D.3d 864 (2nd Dept. 2018).

In his amended complaint, the plaintiff alleged nine causes of action against defendants LICH, Dr. Veira, Dr. Wolf, and Dr. Levey, collectively and individually. The first cause of action alleged breach of contract in that the defendants failed to provide the plaintiff with notice of his right to appeal the decision not to renew the LICH resident agreement; the second cause of action alleged breach of contract in that the defendants failed to provide the plaintiff with a plan of remediation. The third cause of action alleged that LICH tortiously interfered with the SUNY resident agreement by inducing SUNY Downstate not to renew it.

“The fourth cause of action, which seeks damages for defamation, alleged that the New York State Department of Labor ‘was told as late as October 11, 2013 based upon information transmitted by LICH and its agents, servants, and employees that [the plaintiff] was ‘fired,’ that ‘upon information and belief,’ [d]efendants also repeated this demonstrably false statement to residency programs with whom [the plaintiff] had interviewed” after the SUNY resident agreement was not renewed in June 2011, and that “[u]pon information and belief, under color of authority of LICH, Defendants transmitted defamatory statements about [the plaintiff’s] ‘termination,’ or his academic competency to North Shore University Hospital on or about and between April 2, 2013 and April 17, 2013.” *Golia v Vieira, supra* 162 A.D.3d at 869.

The fifth, sixth, and seventh causes of action seek damages for tortious interference with contract and prospective economic relations, The eighth cause of action seeks damages for negligent transmission of false information. The ninth cause of action seeks injunctive

relief, “including expurgation of the term “terminated” or “fired” from his personnel file.”
Id.

LICH moved in Supreme Court to dismiss the amended complaint pursuant to CPLR 3211(a). The motion court, in a decision and order entered October 20, 2016, dismissed causes of action three through nine and sustained the first two causes of action. Both LICH and the plaintiff filed appeals. The Second Department, affirmed the trial court’s order dismissing causes of action three through nine. The Appellate Division, however, reversed the decision sustaining the first two causes of action. *See Golia v Vieira*, 162 A.D.3d 865 (2nd Dept. 2018). The amended complaint against LICH was, accordingly, dismissed in its entirety.

As noted by the Appellate Division, in order “[t]o succeed on a motion to dismiss based upon documentary evidence pursuant to CPLR 3211 (a) (1), the documentary evidence must utterly refute the plaintiff’s claim.” *Golia v Vieira*, *supra* 162 A.D.3d at 867. With respect to the first two causes of action in the amended complaint, the Second Department concluded that, as established by the documentary evidence presented in this case, the breach of contract causes of action “were governed by the LICH resident agreement as well as the Collective Bargaining Agreement (“CBA”), and that the plaintiff failed to pursue the grievance procedure contained in the CBA and exhaust his administrative remedies.” *Id.* (citations omitted).

In that respect, the Appellate Division specifically rejected the plaintiff’s attempt to exempt himself from the grievance procedure of the CBA. In the words of the Court, “[c]ontrary to the plaintiff’s contention, the fact that he is no longer challenging the nonrenewal of the LICH resident agreement, but, rather, the content of the notice and the failure to provide him with a plan of remediation, does not exempt him from the grievance procedure set forth in the CBA.” *Id.* The Court further noted “the merger clause in the LICH resident agreement established that the plaintiff is precluded from relying upon extrinsic proof to add to or vary its terms.” *Id.* at 867-68.

The third cause of action in the amended complaint alleges that LICH tortiously interfered with the SUNY resident agreement by inducing SUNY Downstate not to renew it. As the Appellate Division noted on the LICH appeal, “[t]he existence of a binding contract is an essential element of a cause of action to recover damages for tortious interference with a contract.” The Court further noted that “LICH submitted documentary evidence establishing that the decision not to renew the plaintiff’s residency was made by LICH at the latest on February 9, 2011. In light of this factor and that “it is undisputed that the plaintiff did not sign the SUNY resident agreement until May 2, 2011, LICH conclusively established, as a matter of law, that the SUNY resident agreement was not in existence at the

time the decision was made not to renew the plaintiff's residency." *Id.* "Since the documentary evidence submitted by LICH "resolve[d] all factual issues as a matter of law, and conclusively dispose[d] of the plaintiff's claim," Supreme Court properly dismissed the third cause of action pursuant to CPLR 3211 (a) (1). *Id.*

In affirming Supreme Court's dismissal of the fourth cause of action in the amended complaint, seeking damages in defamation, the Appellate Division noted that "[t]he allegations [set forth in this] cause of action did not satisfy the special pleading requirements of CPLR 3016 (a), as they did not set forth the actual words complained of, and they also failed to specify the particular persons to whom LICH allegedly published the alleged defamatory statements." *Id.*, at (citations omitted).

In dismissing "the fifth, sixth, and seventh causes of action in the amended complaint, seeking damages for tortious interference with prospective economic relations," the Second Department, noting its agreement with Supreme Court, expressly found that "the plaintiff's vague and conclusory factual allegations do not state a cause of action, and thus, dismissal of those causes of action insofar as asserted against LICH pursuant to CPLR 3211 (a) (7) was warranted." *Id.*, at 869-70.

The eighth cause of action in the amended complaint against LICH was dismissed inasmuch as this cause of action is premised "on the same facts as the cause of action to recover damages for defamation, and failed to allege a distinct, cognizable cause of action." *Id.*; see also *Edem v Grandbelle Intl., Inc.*, 118 AD3d 848, 849 (2nd Dept. 2014).

Given the dismissal of the first eight causes of action, the Appellate Division, agreeing with Supreme Court, concluded that "the amended complaint fails to allege a basis for injunctive relief." *Id.* at 870; see *Tri-Star Light. Corp. v Goldstein*, 151 AD3d 1102, 1107 [2017]). Accordingly, the ninth cause of action, seeking injunctive relief, was dismissed pursuant to CPLR 3211 (a).

Defendants Dr. Vieira, Dr. Wolf, and Dr. Levey now move to dismiss the complaint against them. After reviewing the Second Department's decision in *Golia v Vieira*, this Court concludes that the rationale underlying the dismissal of the plaintiff's complaint in its entirety against LICH necessarily applies to the remaining three defendant doctors. See *Golia v Vieira, supra* 162 A.D.3d at 865 (2nd Dept. 2018). Stated another way, given that the lawsuit against LICH is predicated on the alleged actions and/or omissions of the three defendant doctors, all of whom were employed by LICH, the dismissal against LICH requires that the same relief be granted as to these three defendants. See *Frontier Ins. Co. v. State*, 299 A.D.2d 600, 600-02 (3rd Dept. 2002); see also Public Officer Law § 17; Cf. *Crookendale v New York City Health and Hospitals Corp.*, ___AD3d___, 2019 WL 4145481 (1st Dept.

September 3, 2019)(Inasmuch as “[t]he City HRL does not differentiate between sexual harassment and other forms of gender discrimination, but requires that ‘sexual harassment’ be viewed as ‘one species of sex- or gender-based discrimination,’ [t]he motion court should not have dismissed the claim of gender discrimination while sustaining the claim of hostile work environment due to sexual harassment.”)

In addition, the same pleading defects that led the motion court and Appellate Division to dismiss those causes of action against LICH necessarily apply to the defendant doctors. In that regard, the Court finds that the plaintiff has not set forth convincing reasons why the dismissal in favor of LICH should not apply equally to the three remaining defendants.

Accordingly, the Court finds that the plaintiff’s failure to pursue the grievance procedure contained in the CBA and exhaust his administrative remedies apply equally to these three doctors. For this reason, those branches of the motion by the three defendant doctors to dismiss the first and second causes of action in the amended complaint alleging breach of contract is granted pursuant to CPLR 3211(a)(1).

In addition, given that the undisputed documentary evidence established that there was no existing contract in effect when the decision was made not to renew the plaintiff’s residency, the third cause of action in the amended complaint, alleging tortious interference with a contract, is dismissed pursuant to CPLR 3211(a)(1).

The fourth and eighth causes of action are dismissed in light of the plaintiff’s failure to satisfy the special pleading requirement contained in CPLR 3016(a).

Given the vague and conclusory factual allegations by the plaintiff in support of the fifth, sixth, and seventh causes of action in the amended complaint, the motions by the three defendant doctors to dismiss those three causes of actions for failure to state a cause of action, are granted pursuant to CPLR 3211(a)(7). *See Golia v Vieira, supra* 162 A.D.3d at 869-70.

In light of the dismissal of the first eight causes of action in the amended complaint, there is no basis upon which to grant injunctive relief. For this reason, the ninth cause of action in the amended complaint is also dismissed.


Based upon this determination, the parties’ remaining contentions, including the issues raised in the plaintiff’s cross motion, need not be reached.

Accordingly, in light of the decision by the Appellate Division in *Golia v Vieira*.

dismissing all nine causes of action against LICH, the Court, finds that the same relief must be granted in favor of the three remaining physicians in this case. Thus, for this reason and for reasons set forth in this decision and order, the complaint against defendants Dr. Jeffrey Vieira, Dr. Lawrence Wolf, and Dr. Robert Levey, is dismissed in its entirety.

The foregoing constitutes the decision, order, and opinion of the Court.

Dated: Jamaica, New York
October 1, 2019



Honorable Salvatore J. Modica
J.S.C.

FILED
OCT - 2 2019
COUNTY CLERK
QUEENS COUNTY