

Goldin v Alphawit LLC
2021 NY Slip Op 31096(U)
April 5, 2021
Supreme Court, New York County
Docket Number: 653046/2018
Judge: Shawn T. Kelly
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART IAS MOTION 57

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DMITRIY GOLDIN,

Plaintiff,

- v -

ALPHAWIT LLC, DBA BRIGHT MINDS CENTER, ANNA
VOLKOVA, MARINA KOROSTYSHEVSKAYA,

Defendant.

INDEX NO. 653046/2018

MOTION DATE 12/14/2020

MOTION SEQ. NO. 001, 002

**DECISION + ORDER ON
MOTION**

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HON. SHAWN TIMOTHY KELLY:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 152, 153, 154, 156, 157, 158

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, it is

In motion sequence 001, Defendants Alphawit LLC, d/b/a Bright Minds Center, Anna Volkova and Marina Korostyshevskaya (collectively "defendants") move for summary judgment, pursuant to CPLR § 3212, to dismiss the Plaintiff's Complaint in its entirety and with prejudice, as the Defendants have no culpability in this case as a matter of law. In motion sequence 002, pro se Plaintiff moves for summary judgment. Motion sequence numbers 001 and 002 are hereby consolidated for decision.

Background

The individual defendants are the principals of the Bright Minds Center, a daycare operated in New York, New York. Plaintiff's two minor children attended the daycare until they graduated out of the program. Specifically, Plaintiff's daughter VG attended from 2012-2014 and his son attended from 2014-2017. Plaintiff alleges six causes of action: breach of contract,

religious persecution, child assault and endangerment, limiting access to his child, and two causes of action for improper handling of personal information.

Summary Judgment

“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” (*Santiago v Filstein*, 35 AD3d 184, 185-186 [1st Dept 2006], quoting *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). The burden then shifts to the motion’s opponent to “present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact” (*Mazurek v Metropolitan Museum of Art*, 27 AD3d 227, 228 [1st Dept 2006], citing *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; see also *DeRosa v City of New York*, 30 AD3d 323, 325 [1st Dept 2006]). The evidence presented in a summary judgment motion must be examined in the “light most favorable to the party opposing the motion” (*Udoh v Inwood Gardens, Inc.*, 70 AD3d 563 1st Dept 2010]) and bare allegations or conclusory assertions are insufficient to create genuine issues of fact (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]).

Standing

As threshold matter, Defendants contend that Plaintiff has not demonstrated the existence of an injury upon which relief can be granted. Specifically, Defendants allege that there is no cognizable relief that Plaintiff is seeking and further, as Plaintiff’s children have already graduated from Defendants’ program, and in fact had graduated before the lawsuit was filed, that

Plaintiff cannot bring the present lawsuit. In opposition¹, Plaintiff states, that he and Defendants' counsel

exchanged well over a hundred emails related to discovery and essence of this case, which should have demonstrated harm suffered by me and my minor child, IG. The last year of my children's attendance of Defendant's school has been possibly the hardest year of my life in the US, and I have gone through burying my mother at the age of 18; 2 near-death medical situations; and a divorce. What makes Defendant's actions worse, than anything else I've experienced is that they used my own children to manipulate me, ripping the very fabric of what makes me who I am apart, and all with no greater purpose than manifesting their still undefined grievance against me. (NYSCEF Doc. No. 152)

Plaintiff further states,

I am not looking to change how Defendant's business operates, despite my personal belief that they should. My children are no longer enrolled in Defendant's school. However, during attendance, Defendant caused a great deal of harm to my parental rights, my religious liberties, and while eventually providing limited service to my children, chose to take a discriminatory path toward dealing with me. (NYSCEF Doc. No. 152).

In Plaintiff's motion for summary judgment he identifies his injuries as, "ranging from nuisance/substantial interference with parental rights to emotional harm/mental distress; interference with parental standing and co-parenting arrangement" (NYSCEF Doc. No. 155). He further states, "I in fact do NOT claim money I lost on replacing Stars of David or even direct time lost from work dealing with Defendant."

Finally, while the plaintiff claims emotional damages and restitution, he has not provided any evidence of treatment for emotional distress or monetary loss.

¹ Pro Se Plaintiff filed a cross motion (NYSCEF Doc. 152), which seeks an "Order granting Plaintiff's Cross-Motion relief to dismiss Defendant's Motion for Summary Judgment pursuant to C.P.L.R. § 3212", which will be treated as opposition papers.

Religious Persecution

Defendant argues that Plaintiff's religious persecution claims, which are predicated on Defendant's policy prohibiting children ages two to five from wearing jewelry, fail to state a cause of action and must be dismissed. Here, the plaintiff's discrimination claim fails as a matter of law. To prevail on a summary judgment motion, Defendants must demonstrate either the Plaintiff's failure to establish every element of intentional discrimination, or—having offered legitimate, nondiscriminatory reasons for the challenged action—the absence of a material issue of fact as to whether its explanations were pretextual (*see Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 305, 786 NYS2d 382 [2004]; *Messinger v Girl Scouts of the U.S.A.*, 16 AD3d 314, 314, 792 NYS2d 56, 57 [2005]; *Ferrante v American Lung Assn.*, 90 NY2d 623, 629–630, 665 NYS2d 25 [1997]).

Defendants have a blanket policy of no jewelry. Though Plaintiff argues that the initial policy discouraged jewelry and was subsequently changed to prohibit jewelry, the fact remains that Defendants' policy does not distinguish between religious jewelry and purely aesthetic jewelry. Further, Defendants have provided a sufficient non-discriminatory reason for such policy as it is dangerous for children ages two to five to wear jewelry which can become a choking hazard. Defendants have demonstrated nondiscriminatory reasons for their policy and further no material issue of fact as to this contention. Accordingly, Plaintiff's religious discrimination cause of action is dismissed.

Breach of contract

Plaintiff's second cause of action is for breach of contract. The agreements at issue are a Parent/Guardian Enrollment Agreement and a Dispute Settlement Agreement. The elements of a breach of contract claim are "the existence of a contract, the plaintiff's performance thereunder,

the defendant's breach thereof, and resulting damages" (*Harris v Seward Park Hous. Corp.*, 79 AD3d 425, 426 [1st Dept 2010]). If a contract term is ambiguous, prior dealings between the parties are admissible to determine the intent in interpreting the contract (*Kenneth D. Laub & Co., Inc. v 101 ParkAve. Associates*, 162 AD2d 294, 556 NYS2d 881, 882 [1st Dept 1990]).

Plaintiff has not alleged how Defendants have breached either agreement. Further, Plaintiff has failed to demonstrate any resulting injuries stemming from such breach. Accordingly, Defendants' motion for summary judgement is granted and the breach of contract action is dismissed.

Child Assault and Endangerment

The plaintiff's third cause of action is for child assault and endangerment. In support of this cause of action, the factual allegations in the complaint state that Defendants "failed to provide a safe and nurturing environment" in violation of New York City Health Code Article 47, and that Defendants "purposefully and forcefully removed religious garb" from Plaintiff's child against Plaintiff's wishes. New York City Health Code Article 47 is not intended to allow an individual to enforce the regulations contained therein. Therefore, Plaintiff's allegations, to the extent that they seek relief under Article 47, are unpersuasive.

Limiting Access to Child and Improper Handling of Personal Information

Plaintiff fails to provide sufficient factual allegations to support causes of action based on limiting access to his child and improper handling of personal information. Accordingly, these causes of action are dismissed.

Conclusion

Accordingly, it is hereby

ORDERED that Defendants' motion for summary judgment (motion sequence 001) is granted, Plaintiff's cross motion and motion for summary judgment (motion sequence 002) is denied, and the complaint is dismissed with costs and disbursements to defendants as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

4/5/2021

DATE

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SHAWN TIMOTHY KELLY, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED		
<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED

<input type="checkbox"/>	NON-FINAL DISPOSITION		
<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN

<input type="checkbox"/>	SUBMIT ORDER
<input type="checkbox"/>	FIDUCIARY APPOINTMENT
<input type="checkbox"/>	REFERENCE

CHECK IF APPROPRIATE: