

Garofalo v City of New York
2022 NY Slip Op 30972(U)
March 24, 2022
Supreme Court, New York County
Docket Number: Index No. 153275/2021
Judge: Laurence Love
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LAURENCE LOVE **PART** **63M**

Justice

-----X

JULIANA GAROFALO,

Plaintiff,

- v -

THE CITY OF NEW YORK, THE NEW YORK CITY
DEPARTMENT OF EDUCATION, PETER KARP

Defendant.

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INDEX NO. 153275/2021

MOTION DATE 12/06/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, the decision on defendants’ motion to dismiss is resolved as follows:

Plaintiff commenced the instant action by filing a summons and complaint on April 5, 2021. Said complaint alleges as follows: On September 2, 2014, Plaintiff, Juliana Garofalo (“Garofalo”) began working for the New York City Department of Education (“DOE”), employed as a teacher at the Institute for Collaborative Education (“ICE”). On October 10, 2018, Plaintiff was notified that the City of New York Special Commissioner on Investigations (the "Special Commissioner on Investigations") opened an investigation into. Plaintiff (the "Investigation"). Plaintiff later learned, from the attorney assigned to her by the United Federation of Teachers, that the Investigation concerned allegations that Plaintiff engaged in an improper relationship with a seventeen (17) year-old student while employed as a teacher at ICE. Plaintiff was administratively reassigned by the Department of Education to Affinity Schools Group Headquarters, under the supervision of Vannell Jones ("Ms. Jones"), beginning her reassignment position on October 12,

2018. On March 15, 2019, Plaintiff was transferred to work for the office of the Director for IT Systems within the Division of Human Capital at the Department of Education, where she was supervised by Melissa Lee. On July 31, 2019, Plaintiff applied for an open position as the "Special Education ELA Teacher" at The Pinnacle School, a certified private school for children with learning differences operated by Greenwich Education Group ("GEG"), located in Stamford, Connecticut. On August 8, 2019, GEG offered Plaintiff a full-time position as a "Special Education ELA Teacher" at the Pinnacle School, with a scheduled start date of August 21, 2019, pending the successful completion of a background screening. In connection with GEG's employment offer to Plaintiff, all of Plaintiff's current and former employers were provided with an "State of Connecticut Educational Employer Verification Form," ("Employer Verification Form") requesting information about Plaintiff's employment history, which required her prior and current employers to disclose whether she had "Been the subject of an allegation of abuse or neglect or sexual misconduct for which there is an investigation currently pending with any current or prior employer, state agency or municipal police department or which has been substantiated." (For reasons unknown to this Court, Ms. Jones incorrectly answered said question "No.") On August 23, 2019, following the acceptance of her position with GEG and the successful completion of her background check, Plaintiff provided a signed letter of resignation, effective August 23, 2019 (the "Letter of Resignation") to the DOE. On or about November 25, 2019, Peter Karp ("Karp"), the Principal of ICE, telephoned Kelly Leatherwood ("Ms. Leatherwood"), the then-Vice President of Human Resources at GEG and allegedly "erroneously informed Ms. Leatherwood of the investigation, and told Ms. Leatherwood that Plaintiff had been terminated from her position at the Department of Education as a result of the allegations examined in the year-long investigation, which he claimed were "substantiated" in late September or October of 2019." (The Court notes

that it is undisputed that plaintiff resigned from the DOE prior to the conclusion of the Investigation, but further notes that the allegations against plaintiff were substantiated thereafter, and her termination was recommended in a report of the Special Commissioner of Investigation for the New York City School District in a report dated September 26, 2019, and that plaintiff admits that she did engage in an improper relationship with a seventeen year old student.) Thereafter, Ms. Leatherwood contacted plaintiff, who authorized a further background check, resulting in plaintiff's termination from Pinnacle. Plaintiff contends that Karp had been tracking her employment after her resignation and that his call to GEG was against DOE policy. Arising from said allegations, plaintiff pled causes of action for 1. Tortious interference with employment relationship; and further seeks 2. A Permanent Injunction requiring defendants to refrain from contacting any employers or potential future employers of plaintiff, refrain from disclosure of any information regarding plaintiff's employment with the DOE, and striking from all Department of Education and City of New York controlled records, if such records in fact exist, indicating that Plaintiff was terminated from her position with Department of Education; and further seeks 3. A Declaratory Judgment declaring the Department of Education's alleged termination of Plaintiffs employment to be a nullity, as Plaintiff had previously voluntarily resigned.

When considering a motion to dismiss under CPLR 3211(a)(7), a court must accept the factual allegations of the pleadings as true, affording the non-moving party the benefit of every possible favorable inference and determining "only whether the facts as alleged fit within any cognizable legal theory" (see *D.K. Prop., Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh*, 168 A.D.3d 505; *Weil Gotshal & Manges. LLP v. Fashion Boutique of Short Hills, Inc.*, 10 A.D.3d 267 [1st Dept. 2004]). "While factual allegations set forth in a complaint should be accorded every favorable inference, bare legal conclusions and inherently incredible facts are not entitled to

preferential consideration.” *M & E 73-75, LLC v. 57 Fusion LLC*, 189 A.D.3d 1, 5, 128 N.Y.S.3d 200, 204 (1st Dept. 2020) citing *Matter of Sud v. Sud*, 211 A.D.2d 423, 424, 621 N.Y.S.2d 37 (1st Dept. 1995).

To plead a claim for tortious interference with employment, plaintiff must allege (1) the existence of a relationship between the plaintiff and a third party; (2) the defendants’ interference with that relationship; (3) that the defendants acted with the sole purpose of harming plaintiff or used dishonest, unfair, improper or illegal means that amounted to a crime or an independent tort; and (4) that such acts resulted in the injury to the plaintiff’s relationship with the third party, *See, McHenry v. Lawrence*, 66 A.D.3d 650, 651 (2d Dep’t 2009), citing *Schorr v. Guardian Life Ins. Co. of Am.*, 44 A.D.3d 319, 323 (1st Dep’t 2007). “The claim requires a showing that the interference was accomplished by wrongful means or with malicious intent.” *Guard-Life Corp. v. S. Parker Hardware Mfg. Corp.*, 50 N.Y.2d 183, 191 (1980); *Arnon Ltd (IOM) v. Beierwaltes*, 125 A.D.3d 453, 453 (1st Dep’t 2015) citing *Carvel Corp. v. Noonan*, 3 N.Y.3d 182, 191 (2004). “‘Wrongful means’ include[s] physical violence, fraud or misrepresentation, civil suits and criminal prosecutions, and some degrees of economic pressure.” *Arnon*, 125 A.D.3d at 453.

There is no dispute that plaintiff has sufficiently pled elements 1 and 2 of the tort and it is undisputed that Karp’s call to Leatherwood set in motion a series of events which led to plaintiff’s dismissal from her employment although it is debatable whether said act alone resulted in an injury to plaintiff’s relationship with GEG. Plaintiff argues that she has sufficiently pled the third element of the tort by alleging in the complaint that “Defendants used wrongful means and acted with the sole intention of harming Plaintiff when Karp, unprompted, contacted Ms. Leatherwood and falsely stated that Plaintiff had been “terminated” from her position with the Department of Education, despite that she had willingly resigned prior the conclusion of the Investigation.”

Plaintiff's bare legal conclusion that Karp acted with the sole intention of harming plaintiff is insufficient to establish malicious intent, especially where, as here, the termination of plaintiff was recommended based upon her undisputedly inappropriate relationship with a student and plaintiff had in the interim secured employment in a role where she would be working with students. Further, the alleged falsity of Karp's alleged statement that plaintiff was terminated from her employment with the DOE rather than that she resigned from the DOE while under investigation and that thereafter said Investigation substantiated the allegations against plaintiff and recommended her dismissal is a distinction without a difference as either is utterly disqualifying. Plaintiff further fails to plead any of the "wrongful means" enumerated above as while it is possible that the offending phone call violates a DOE policy, it certainly does not rise to the level of an independent tort.

Pursuant to CPLR 6301, an injunction may be granted only "where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of plaintiff's rights respecting the subject of the action . . ." "As discussed in *Merkos L'Inyonei Chinuch, Inc. v. Sharf*, 59 A.D.3d 403, 408 (2d Dept. 2009), "A permanent injunction is a drastic remedy which may be granted only where the plaintiff demonstrates that it will suffer irreparable harm absent the injunction" (*Icy Splash Food & Beverage, Inc. v Henckel*, 14 AD3d 595, 596 [2005]; see *Kane v Walsh*, 295 NY 198, 205-206 [1946]; *Forest Close Assn., Inc. v Richards*, 45 AD3d 527, 529 [2007]). Injunctive relief is "to be invoked only to give protection for the future . . . [t]o prevent repeated violations, threatened or probable, of the [plaintiffs'] property rights" (*Exchange Bakery & Rest. v Rifkin*, 245 NY 260, 264-265 [1927]).

As the cause of action underpinning plaintiff's complaint must be dismissed, she cannot establish a right to a permanent injunction. Further as the conduct complained of in the complaint

was not wrongful, there can be no violation of plaintiff’s rights that is “is presently occurring or imminent.” Further, the Court notes that Plaintiff seeks an injunction against DOE which would keep it from providing accurate information about the circumstances surrounding plaintiff’s separation from DOE and seeks a declaratory judgment to the same effect.

ORDERED that defendants’ motion is hereby GRANTED in its entirety; and it is further ORDERED that the action is DISMISSED.

3/24/2022
DATE


LAURENCE LOVE, J.S.C.

CHECK ONE:

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

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

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE