

**Transport Workers Union of Greater NY v Singla**

2023 NY Slip Op 30364(U)

February 3, 2023

Supreme Court, Kings County

Docket Number: Index No. 509546/2020

Judge: Robin S. Garson

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS: PART 75

PRESENT: Hon. Robin S. Garson, Justice

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TRANSPORT WORKERS UNION OF GREATER NY : Index No. 509546/2020  
by EARL PHILLIPS, FINANCIAL SECRETARY- :  
TREASURER, : Motion Sequence 5

Decision and Order

-against-

RETU SINGLA,  
Defendant.

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RETU SINGLA, :  
Counterclaim Plaintiff, :

-against-

TRANSPORT WORKERS UNION OF GREATER NY :  
by EARL PHILLIPS, FINANCIAL SECRETARY- :  
TREASURER, :  
Counterclaim Defendant. :

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

Notice of Motion and affidavits (Affirmations) Annexed | NYSCEF #72-89 (Ex. 1-15)

Plaintiff Transport Workers Union of Greater NY (“TWU”) commenced this action against Retu Singla, its former employee and legal director, alleging a breach of a separation agreement. Ms. Singla moves for summary judgment as to liability on her Second and Third Counterclaims, alleging breach of the separation Agreement and violation of the Anti-SLAPP statute. Ms. Singla also moves to strike Plaintiff-Counterclaim Defendant’s Second and Third Affirmative Defenses—that the counterclaim is barred by *Martin v. Curran*, 303 N.Y. 276 (1953) and that the statements alleged in the counterclaim are privileged. Ms. Singla’s motion is granted on default.

When Ms. Singla left TWU, she and the union negotiated a separation agreement. Ex. 2 ¶ 6. The Agreement called for payment of a sum of money and the provision of health benefits to Ms. Singla. *Id.* The parties to the separation agreement undertook not to disparage each other in the future and to keep the existence and terms of the Agreement confidential. Ex. 7 ¶¶ 37, 40.

TWU alleges that Ms. Singla violated the non-disparagement provision of that Agreement by representing a former TWU employee in a federal race and disability discrimination suit. Ex. 2 ¶¶ 8-10. TWU sought restitution of the monies paid to Ms. Singla incident to the Agreement. *Id.* ¶ 11. A copy of the Agreement was annexed to TWU's complaint. *Id.* ¶ 6. The discrimination suit was subsequently settled. Ex. 11. TWU's attorney then admitted that its lawsuit became "valueless" upon settlement of the discrimination suit. *Id.* TWU's complaint was discontinued on motion of TWU. Ex. 8.

1. Breach of confidentiality agreement

Ms. Singla's Second Counterclaim is for breach of the confidentiality provision of the Separation Agreement.

Ms. Singla pleaded that no provision of the Separation Agreement permits TWU to disclose the existence and terms thereof to this Court. Ex. 7 ¶ 41. TWU denies the allegation. Ex. 9 ¶ 2. TWU accordingly bears the burden of coming forward with admissible evidence that some provision of the Agreement permits it to annex the Agreement to a public filing. (*Zuckerman v. City of N.Y.*, 49 NY2d 557, 562, 427 N.Y.S.2d 595, 404 N.E.2d 718 [1980]).

Ms. Singla pleaded that no provision of the Agreement permits TWU to annex it to a public filing but that TWU nevertheless did so. Ex. 7 ¶¶ 42-43. TWU has not pleaded in

response to that allegation. Ex. 9 ¶¶ 1-2. The allegation is thus deemed admitted. CPLR 3018(a).

It is well settled that summary judgment may only be granted when it is clear that no triable issues of fact exist (*see Alvarez v Prospect Hospital*, 68 NY2d 320, 501 N.E.2d 572, 508 N.Y.S.2d 923 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 476 N.E.2d 642, 487 N.Y.S.2d 316 [1985]; *Zuckerman*, 49 NY2d 557, 404 N.E.2d 718, 427 N.Y.S.2d 595 [1980]). The movant has the burden to make a prima facie showing of entitlement to summary judgment as a matter of law, by submitting admissible evidence demonstrating that there are no material facts that require a trial (*see Giuffrida v Citibank*, 100 NY2d 72, 790 N.E.2d 772, 760 N.Y.S.2d 397 [2003]). If a prima facie showing is made, the burden shifts to the opposing party to produce admissible evidence demonstrating the existence of a triable issue of fact (*see Alvarez*, 68 NY2d at 324).

A written agreement that is clear and unambiguous on its face must be enforced according to the plain meaning of its terms (*Greenfield v. Philles Records*, 98 N.Y.2d 562, 569, 750 N.Y.S.2d 565, 780 N.E.2d 166 [2002]; *Riverside S. Planning Corp. v. CRP/Extell Riverside, L.P.*, 60 A.D.3d 61, 66 [1st Dep't 2008], *aff'd*, 13 N.Y.3d 398 [2009]). "A court may not, in the guise of interpreting a contract, add or excise terms or distort the meaning of those used to make a new contract for the parties (*Id.*, 60 A.D.3d at 66).

Defendant-Counterclaimant has made a prima facie showing of entitlement to relief, and Plaintiff-Counterclaim Defendant has failed to rebut that showing.

## 2. The Anti-SLAPP Counterclaim

Ms. Singla's Third Counterclaim is for violation of the prohibition on Strategic Lawsuits Against Public Participation, N.Y. Civ. Rts. L. §§ 70, 76. She pleads that TWU's

claims against her (1) involve her communications in a public forum (2) in connection with the right of petition or an issue of public interest and that (3) this action was commenced against her for the sole purpose of harassing, intimidating, punishing and otherwise maliciously inhibiting her free exercise of speech, petition or association rights. Ex. 7 ¶¶ 50-51.

TWU alleges in its pleading that the purported basis of its lawsuit against Ms. Singla was that she had filed and prosecuted a lawsuit in federal district court on behalf of Tawana Segar, a client, and that TWU had repeatedly warned Ms. Singla that it regarded such representation as a breach of the contractual non-disparagement clause. Ex. 2 ¶¶ 8-9. However, the amended anti-SLAPP statute leaves no doubt that filing a lawsuit in federal court is protected by the statute. The amended statute defines “an action involving public petition and participation” as any claim based on, *inter alia*, “any [] lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public interest, or in furtherance of the exercise of the constitutional right of petition.” Civ. Rts. L. § 76-a(1)(a)(2). The gravamen of the Segar lawsuit was that TWU had engaged in race and disability discrimination as well as unlawful payroll practices. Ex. 12. Ms. Segar exercised her constitutional right of petition by filing a lawsuit in federal court. Ms. Singla, by acting as Ms. Segar’s attorney, acted in furtherance of that right.

Facts admitted by a party’s pleadings constitute formal judicial admissions (*Zegarowicz v. Ripatti*, 77 A.D.3d 650, 653 [2d Dep’t 2010]) [*citing* Prince, Richardson on Evidence § 8-215, at 523-524 [Farrell 11th ed]]. Formal judicial admissions are conclusive of the facts admitted in the action in which they are made (*Zegarowicz*, 77 A.D.3d at 653 [*citing Coffin v. Grand Rapids Hydraulic Co.*, 136 N.Y. 655, 32 N.E. 1076 [1893]]).

Moreover, TWU's claim against Ms. Singla for breach of the non-disparagement clause is contrary to public policy and accordingly baseless. Post-employment restrictions on an attorney's right to practice law following termination are prohibited under Disciplinary Rule 5.6(a)(1) (22 NYCRR 1200) (*Cohen v. Lord, Day & Lord*, 75 N.Y.2d 95, 551 N.Y.S.2d 157, 550 N.E.2d 410 [1989], *Denburg v. Parker Chapin Flattau & Klimpl*, 82 N.Y.2d 375, 624 N.E.2d 995, 604 N.Y.S.2d 900 [1993], *BDO Seidman v. Hirshberg*, 93 N.Y.2d 382, 712 N.E.2d 1220, 690 N.Y.S.2d 854 [1999], *Geron v. Seyfarth Shaw LP (In re Thelen LLP)*, 24 N.Y.3d 16, 995 N.Y.S.2d 534, 20 N.E.3d 264 [2014]).

3. The Second Affirmative Defense

TWU alleges that "[t]he Counterclaims are barred by the principles enumerated in *Martin v. Curran*, 303 N.Y. 276 (1953). Ex. 9 ¶ 4. However, *Martin* stands for the proposition that unions (and other voluntary unincorporated associations) cannot be sued in tort absent ratification by all of their members. In this case, the wrongs complained of (breach of contract and violation of the anti-SLAPP statute) were ratified by the union in judicial admissions. TWU's attorneys, acting on the authority conferred by the union, commenced this litigation for an improper purpose and in so doing breached the union's confidentiality agreement with Ms. Singla. In the absence of a representation by TWU's attorneys that they did not have authority to file this lawsuit, *Martin v. Curran* does not apply.

4. The Third Affirmative Defense

TWU alleges in its pleading that "[a]ll statements alleged by Defendant in her [sic] Counterclaim are privileged." Ex. 9 ¶ 5.

The Third Counterclaim seeks relief for what TWU did, not for what TWU said.

TWU admits filing a lawsuit against Ms. Singla because she made statements regarding a matter of public concern in a public forum. Ex. 2 ¶¶ 50-53. The *act* of filing a lawsuit in retaliation for a person's communication regarding a matter of public concern is outlawed by Civil Rights Law §§ 70, 76-a. It would be absurd for the Legislature to enact a statute prohibiting strategic lawsuits against public participation and simultaneously privilege the act of filing such lawsuits.

Common-law privileges may be circumscribed or abrogated by statute (*In re New York City Health & Hosps. Corp. v. New York State Comm'n of Correction*, 19 N.Y.3d 239, 245, 946 N.Y.S.2d 547, 551, 965 N.E.2d 765 [2012]).

### Conclusion

Accordingly, it is hereby:

ORDERED that Defendant-Counterclaimant Retu Singla's motion seeking partial summary judgment on liability as to the Second and Third Counterclaims is granted; further it is

ORDERED that Defendant-Counterclaimant Retu Singla's motion seeking partial summary judgment dismissing Plaintiff-Counterclaim Defendant's Second and Third Affirmative Defenses is granted, and Plaintiff-Counterclaim Defendant's Second and Third Affirmative Defenses are hereby dismissed.

Defendant shall serve a copy of this Order along with notice of entry on plaintiff within 20 days of the date of this Order.

The above is the Decision and Order of the Court.

Dated: 2-3-23

ENTER:



Robin S. Garson, A.J.S.C.

**HON. ROBIN S. GARSON  
A.J.S.C.**