

Gujar v Icahn Sch. of Medicine at Mount Sinai

2023 NY Slip Op 33905(U)

November 1, 2023

Supreme Court, New York County

Docket Number: Index No. 100141/2023

Judge: Lisa S. Headley

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

<p>PRESENT: <u>HON. LISA S. HEADLEY</u></p> <p align="center"><i>Justice</i></p> <p>-----X</p> <p>HEMANT GUJAR,</p> <p align="center">Plaintiff,</p> <p align="center">- v -</p> <p>ICAHN SCHOOL OF MEDICINE AT MOUNT SINAI,</p> <p align="center">Defendant.</p> <p>-----X</p>	<p>PART 28M</p> <p>INDEX NO. <u>100141/2023</u></p> <p>MOTION DATE <u>10/24/2023,</u> <u>N/A</u></p> <p>MOTION SEQ. NO. <u>001 003</u></p> <p align="center">DECISION + ORDER ON MOTION</p>
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The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 81, 82, 83, 84, 85

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 141, 142, 143 were read on this motion to/for MISCELLANEOUS.

Defendant Icahn School of Medicine at Mount Sinai (“Defendant”) filed this motion pursuant to *CPLR § 3211(a)(7)* to dismiss this action with prejudice due to the plaintiff’s failure to state a cause of action. *Pro se* Plaintiff Hemant Gujar (“Plaintiff”) filed opposition, and Defendant filed a reply.

Defendant’s Motion to Dismiss

In support of the instant motion, Defendant argues, *inter alia*, Plaintiff’s complaint must be dismissed pursuant to *CPLR § 3211(a)(7)* because plaintiff failed to state a cause of action for the allegations contained within his complaint for retaliation, medical malpractice, racketeering, and breach of contract. Defendant argues that Plaintiff’s complaint, which alleges causes of actions for medical malpractice, breach of contract, support of illegal activities, and professional retaliation, does not properly allege any facts that support a cognizable legal cause of action. Defendant argues Plaintiff failed to state a cause of action for professional retaliation under any applicable statute because Plaintiff has failed to plead, pursuant to *NY Labor Law § 740*, including that the defendant took retaliatory action against a “whistleblower.”

Moreover, Defendant argues Plaintiff failed to state a cause of action for medical malpractice because Plaintiff has not alleged any departures from the standard of care, and Plaintiff has not alleged any injuries stemming from the alleged medical malpractice. Defendant also argues Plaintiff has failed to state a cause of action for breach of contract because Plaintiff failed to plead that he even entered into a contract with Defendant. Further, Plaintiff has only presented vague allegations that Defendant illegally terminated his employment prematurely.

Lastly, Defendant argues Plaintiff failed to state a cause of action for support of illegal activities by not stating how such support of illegal activities caused Plaintiff a legally redressable injury to his business or property. Defendant alleges that Plaintiff merely suspects and does not provide with specificity supporting facts for the alleged cause of actions. Therefore, Defendant requests this Court grant the motion to dismiss for failure to state a cause of action.

Plaintiff's Opposition to the Motion

In opposition, Plaintiff argues, *inter alia*, that his complaint states his causes of action. Plaintiff asserts his work retaliation claim is based upon defendant not providing adequate resources to allow Plaintiff to work, and the medical malpractice fraud claim is based upon the unnecessary tests performed by a receptionist, who is not a doctor, however a patient had to pay for such tests. Additionally, Plaintiff acknowledges that he failed to state a cause of action for professional retaliation because Plaintiff is self-represented, and is unfamiliar with statutes. Lastly, Plaintiff argues Defendant has committed a tortious act and continues to commit the act, therefore, the motion to dismiss should not be granted.

Defendant's Reply

In reply, Defendant argues, *inter alia*, the “allegations in Plaintiff’s Complaint and Amended Complaint are nothing if not conclusory or otherwise inherently incredible.” Defendant highlights that the Plaintiff even alleges that the New York Police Department colluded with defendant to stall a New York City subway train to make him late to attend an event, which is also an incredible and conclusory allegation. Therefore, the motion to dismiss the Plaintiff’s complaint should be granted.

Discussion

On a motion brought under *CPLR* §3211(a)(7), the court must “accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and

determine only whether the complaint as alleged fit within any cognizable legal theory.” *Leon v. Martinez*, 84 N.Y.2d 83, 87-88(1994). Dismissal is warranted where “the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery.” *Connaughton v. Chipotle Mexican Grill, Inc.*, 29 N.Y.3d 137, 142 (2017).

After oral arguments held on October 24, 2023, and a thorough review of all documents filed in this motion, this Court finds that Plaintiff has failed to state a cause of action. The *pro se* plaintiff during oral arguments acknowledged that he may have used the wrong words in his complaint and that does not support the medical malpractice claim, however, Plaintiff contends that the Defendant is at fault. Here, this Court accepts as true Plaintiff’s allegations of medical malpractice, breach of contract, support of illegal activities, and professional retaliation, but this Court also finds plaintiff has failed to properly plead the elements of the alleged causes of actions in the Complaint.

The Court also finds Plaintiff failed to properly plead medical malpractice because Plaintiff failed to state any departures from the standard of care by defendant, or the harm Plaintiff suffered. Plaintiff failed to properly plead breach of contract because plaintiff never submitted a contract, the date the contract was entered into, the material terms of the contract, and the elements to support a breach of contract claim. Lastly, Plaintiff failed to properly plead the elements to the claims of support of illegal activities and professional retaliation, and Plaintiff affords no specificity to his allegations. Therefore, this Court grants Defendant’s motion to dismiss the Plaintiff’s Complaint in its entirety.

Accordingly, it is hereby

ORDERED that Defendant Icahn School of Medicine at Mount Sinai’s motion, pursuant to *CPLR §3211(a)(7)*, to dismiss this Complaint is **GRANTED**, and it is further

ORDERED that the Plaintiff’s Complaint is hereby **DISMISSED** and this matter is hereby disposed; and it is further

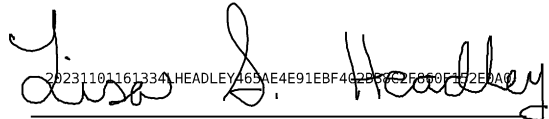
ORDERED that the Plaintiff’s Order to Show Cause, sequence 003, is hereby denied as moot as the plaintiff’s complaint is dismissed; and it is further

ORDERED that within 30 days of entry, the Defendant shall serve a copy of this Decision and Order upon Plaintiff with notice of entry; and it is further

ORDERED that any requested relief sought not expressly addressed herein has nonetheless been considered; and it is further

This constitutes the Decision and Order of the Court.

11/1/2023
DATE


LISA S. HEADLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: