

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

833

CA 09-02506

PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, AND PINE, JJ.

STEPHEN HALE, INDIVIDUALLY AND DOING BUSINESS
AS HALE'S BUS GARAGE, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

PAUL SCOPAC, IN HIS INDIVIDUAL AND OFFICIAL
CAPACITY AS VICE-PRESIDENT OF CLINTON CENTRAL
SCHOOL DISTRICT BOARD OF EDUCATION, AND GUY
VAN BAALEN, IN HIS INDIVIDUAL AND OFFICIAL
CAPACITY AS MEMBER OF CLINTON CENTRAL SCHOOL
DISTRICT BOARD OF EDUCATION,
DEFENDANTS-RESPONDENTS.

NORMAN P. DEEP, ROME, FOR PLAINTIFF-APPELLANT.

THE LAW FIRM OF FRANK W. MILLER, EAST SYRACUSE (FRANK W. MILLER OF
COUNSEL), FOR DEFENDANTS-RESPONDENTS.

Appeal from an order of the Supreme Court, Oneida County (Samuel D. Hester, J.), entered February 10, 2009. The order granted defendants' motion to dismiss the amended complaint.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Plaintiff commenced this action seeking damages for, inter alia, slander arising out of statements made by defendant Paul Scopac, vice-president of the Clinton Central School District Board of Education (School Board), and defendant Guy Van Baalen, a member thereof, concerning plaintiff's bid to provide bus maintenance and storage services to the school district. Supreme Court properly granted defendants' pre-answer motion to dismiss the amended complaint for failure to file a timely notice of claim. We reject the contentions of plaintiff that he was not required to file a notice of claim because the complaint alleges intentional wrongdoing on the part of defendants, and because he was suing defendants both individually and in their official capacities. The record establishes that the alleged statements were made by defendants in the context of addressing official business at a School Board meeting and not in their individual capacities. A notice of claim is required where, as here, "the conduct complained of [by plaintiff, e.g., slander,] occurred during the discharge of the defendant[s'] duties within the scope of [their] employment" (*DeRise v Kreinik*, 10 AD3d 381, 382). Furthermore, although plaintiff sued defendants in their individual

capacities, plaintiff was nevertheless required to file a notice of claim prior to commencing this action in view of the context in which the alleged statements were made (see Education Law § 3813 [1]; see generally *Ruggiero v Phillips*, 292 AD2d 41, 44-45), and it is undisputed that plaintiff failed to do so.

Entered: June 18, 2010

Patricia L. Morgan
Clerk of the Court