

**Oliver v Trustees of Columbia Univ. in the City of
N.Y.**

2024 NY Slip Op 34446(U)

December 19, 2024

Supreme Court, New York County

Docket Number: Index No. 153750/2024

Judge: Lyle E. Frank

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

PRESENT: HON. LYLE E. FRANK **PART** **11M**

Justice

-----X

CHARLENE OLIVER,

Plaintiff,

- v -

TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF
NEW YORK, COLUMBIA UNIVERSITY IN THE CITY OF
NEW YORK, MINOUCHE SHAFIK, GERALD ROSBERG,
TROY EGGERS,

Defendant.

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INDEX NO. 153750/2024

MOTION DATE 09/03/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, and after oral argument, defendants' motion to dismiss the complaint is granted in part¹.

Background

Plaintiff brings the instant action alleging breach of contract, as well as quasi contractual claims based on the allegations that defendant terminated her employment based on an undisclosed qualification.

On or about November 28, 2023, plaintiff was contacted by Trace Wax, an employee of defendants, and asked if plaintiff would be interested in co-teaching a course. Plaintiff was ultimately offered the position, prepared a syllabus and began teaching on January 18, 2024. Plaintiff was terminated on January 31, 2024, when defendants determined that plaintiff did not meet the employment qualifications because she did not have a degree.

¹ The portion of the motion seeking dismissal of defendant Minouche Shafik is granted without opposition.

Legal Standard

It is well-settled that on a motion to dismiss for failure to state a cause of action pursuant to CPLR 3211(a)(7), the pleading is to be liberally construed, accepting all the facts as alleged in the pleading to be true and giving the plaintiff the benefit of every possible inference. *See Avgush v Town of Yorktown*, 303 AD2d 340 [2d Dept 2003]; *Bernberg v Health Mgmt. Sys.*, 303 AD.2d 348 [2d Dept 2003]. Moreover, the Court must determine whether a cognizable cause of action can be discerned from the complaint rather than properly stated. *Matlin Patterson ATA Holdings LLC v Fed. Express Corp.*, 87 AD3d 836, 839 [1st Dept 2011]. “The complaint must contain allegations concerning each of the material elements necessary to sustain recovery under a viable legal theory.” *Id.*

“In a motion to dismiss pursuant to CPLR 3211 (a) (1), the defendant has the burden of showing that the relied-upon documentary evidence resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff’s claim” (*Fortis Fin. Servs., LLC v Fimat Futures USA, Inc.*, 290 AD2d 383, 383 [1st Dept 2002] internal quotations and citations omitted). Further, dismissal pursuant to CPLR § 3211(a)(1) is warranted where documentary evidence “conclusively establishes a defense to the asserted claims as a matter of law.” *Gottesman Co. v A.E.W, Inc.*, 190 AD3d 522, 24 [1st Dept 2021].

Discussion

Defendants contend that plaintiff’s offer was conditional and in part relied on compliance with the faculty handbook. In support of its motion defendant cites to the specific section of the faculty handbook that, it contends, provides that a Lecturer at Columbia must hold a "doctorate degree or its professional equivalent," NYSCEF Doc. No. 9, at 8.

While defendants contend that this resolves the dispute because plaintiff knew she did not have a doctorate and thus her conditional offer was revoked, the Court does not agree. There are a myriad of issues, most glaringly the language of “its professional equivalent”, that this one sentence creates and prevents dismissal of the underlying action. Neither document relied upon, whether the offer of employment or the faculty handbook, conclusively resolves plaintiff’s causes of action, thus the application is denied.

Similarly, defendants’ application seeking dismissal of the quasi-contractual claims are also denied. At this juncture, the factual allegations in the complaint are sufficient to retain the breach of contract cause of action as well as the quasi-contractual causes of action. Plaintiff has pled that she was made a promise, acted on that promise, justifiably and was subsequently damaged. Moreover, plaintiff performed and was not compensated. Thus, plaintiff’s first, third, fourth and fifth causes of action survive the instant motion.

As to the portion of the motion that seeks dismissal of the second cause of action, constructive fraud, that portion is granted. “To establish fraud, a plaintiff must show ‘a misrepresentation or a material omission of fact which was false and known to be false by [the] defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury.’” *Ambac Assur. Corp. v Countrywide Home Loans, Inc.*, 151 AD3d 83 at 85 [1st Dept 2017]. Further, the Court of Appeals has held that constructive fraud only applies in the context of fiduciary relationships (*Matter of Aoki v Aoki*, 27 NY3d 32, 40 [2016]). CPLR § 3016(b) provides that when a cause of action is based upon fraud “the circumstances constituting the wrong shall be stated in detail.” In the complaint, there are no such factual allegations. Plaintiff asserts that defendants misrepresented

the requirement of a doctorate degree, however the Court finds this as insufficient to sustain the constructive fraud cause of action.

Defendants seek dismissal of plaintiff's sixth cause of action, improper handling of employee wages, pursuant to CPLR § 3211 (a)(7). Defendants contend that the allegations asserted are duplicative of the breach of contract cause of action, the Court agrees. This cause of action is duplicative of the contract and quasi-contractual claims, as such it is dismissed.

Plaintiff's seventh cause of action alleges invasion of privacy, contending that her "name, portrait, and curriculum" were posted on Columbia's website, and that plaintiff withdrew her consent to such publication when Columbia purported to terminate her employment. Defendants seek to dismiss this cause of action on the grounds that plaintiff has not adequately pled a cause of action.

To establish liability for invasion privacy pursuant to the New York Civil Rights Law, "plaintiff must demonstrate each of four elements: (i) usage of plaintiff's name, portrait, picture, or voice, (ii) within the State of New York, (iii) for purposes of advertising or trade, (iv) without plaintiff's written consent (*see* Civil Rights Law § 51)". (*Molina v Phoenix Sound, Inc.*, 297 AD2d 595, 597 [1st Dept 2002]). Here, the most liberal reading of the complaint cannot sustain this cause of action, accordingly it is dismissed.

Defendants seek to dismiss plaintiff eighth and ninth causes of action of injurious falsehood and slander, for failure to state a cause of action. Defendants have established that the complaint is deficient in that it fails to plead special damages as required. Accordingly, plaintiff's eighth and ninth causes of action are dismissed.

As to the portion of defendants' motion that seeks to strike plaintiff's request for damages as excessive, that relief is denied. The Court does not find that defendants have established that

plaintiff's damages are limited to the amount of alleged wages as a matter of law at this stage of the litigation. Accordingly, it is hereby

ORDERED that plaintiff's second, sixth, seventh, eighth and ninth causes of action are dismissed; and it is further

ORDERED that the complaint is dismissed in its entirety as against defendant MINOUCHE SHAFIK only, without opposition; and it is further

ORDERED that the remainder of the action is severed and continues; and it is further

ORDERED that the remaining defendants shall serve an answer to the remaining causes of action not more than 30 days from the date of this Order.

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12/19/2024

DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE