

At an IAS Term, Part 39 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 3<sup>rd</sup> day of October 2006.

P R E S E N T:

HON. GLORIA M. DABIRI,

Justice.

-----X  
ALTON S. GIBSON, JR.,

Plaintiff,

- against -

Index No. 4641/04

URBAN RESOURCE INSTITUTE, ADDICTION RESEARCH AND TREATMENT CORPORATION, BENY J. PRIMM, Individually and as President of URI and Executive Director of ARTC and DEBORAH WRIGHT, Individually and as an Executive Director of URI,

Defendants.  
-----X

The following papers numbered 1 to 4 read on this motion:

Notice of Motion/Order to Show Cause/  
Petition/Cross-Motion and  
Affidavits (Affirmations) Annexed \_\_\_\_\_

Papers Numbered

1-2

Opposing Affidavits (Affirmations) \_\_\_\_\_

3

Reply Affidavits (Affirmations) \_\_\_\_\_

4

\_\_\_\_\_ Affidavit (Affirmation) \_\_\_\_\_

Other Papers \_\_\_\_\_

Upon the foregoing papers, defendants Urban Resource Center (URI), Addiction Research and Treatment Corporation (ARTC), Beny J. Primm (Primm), individually and as President of URI and Executive Director of ARTC, and Deborah Wright (Wright), individually and as an Executive Director of URI, move for an order, pursuant to CPLR 3212, granting summary judgment and dismissing the complaint of plaintiff Alton S. Gibson

(Gibson) as against them. Defendants maintain that no triable issues of fact exist with respect to plaintiff's tortious interference with employment claim and that they are entitled to judgment as a matter of law. Plaintiff opposes the motion on the ground that triable issues of fact preclude granting judgment in defendants' favor.

Plaintiff commenced this action in January 2004, asserting various claims arising from the termination of his employment as a vice president of URI in April 2002. By decision and order of this court, dated September 17, 2004, all causes of action, except for plaintiff's claim for tortious interference with an employment agreement, were dismissed. In denying the prior motion to dismiss as to this claim, this court noted that "[i]n this case, plaintiff alleges that Primm issued a veiled threat to him to turn over his sister's Massachusetts property to [Primm] out of loyalty for his job and that he was fired for refusing to turn over such property. Accepting as true the facts alleged in plaintiff's complaint and giving plaintiff every favorable inference, the court cannot say that plaintiff fails to state a cause of action for tortious interference with an employment agreement." Following issuance of the September 2004 order, the parties engaged in discovery and on March 3, 2006 plaintiff filed a Note of Issue and Certificate of Readiness. Defendants now seek dismissal of this claim.

ARTC is a not-for-profit corporation that administers drug treatment programs in New York City. URI is a not-for-profit corporation retained by ARTC to manage its operations. Defendant Primm is the President of URI and the Executive Director of ARTC. Wright is employed as the Senior Vice-President of URI. Plaintiff became employed by URI and ARTC on or about September 8, 1993, as the Vice President of Corporate Management.

Plaintiff had known Primm for many years, as plaintiff's sister, Barbara Gibson, was romantically involved with Primm. In 1993, Primm approached plaintiff about joining URI and, thereafter, the position of Vice President of Corporate Management was created for plaintiff. When hired, plaintiff reported directly to Langdom Dames, the Senior Vice President of Corporate Management. When Dames retired in 1997, plaintiff was not offered his position. In March of 2001 Wright was appointed to replace Dames and, accordingly, plaintiff reported directly to her.

Plaintiff maintains that his termination did not occur as a result of any negligence on his part, but arose from a dispute with Primm over the estate of plaintiff's sister. Plaintiff's sister, Barbara Gibson (Barbara), died in an automobile accident on or about August 3, 1999. Barbara lived with Primm from 1977 until her death in 1999. Plaintiff was appointed administrator of his sister's estate and began the process of gathering and distributing his sister's assets. In his complaint plaintiff described several disputes with Primm involving property belonging to his sister's estate. In particular, he alleges that Primm became angry when plaintiff refused to turn over to him certain real property located in Massachusetts. Plaintiff states that Primm claimed partial ownership of such property, but that the deed to the property was solely in Barbara's name. Plaintiff alleges that two weeks after plaintiff refused Primm's request to convey the property to him, plaintiff was told by Primm and Wright that he was being terminated for gross negligence.

Plaintiff testified at his deposition that his sister informed him that she was buying the house on her own. Plaintiff testified that the issue of ownership of the Massachusetts

property first arose in 2000 when Primm stated to plaintiff that they had to talk about the Massachusetts property. He also believed that Primm would claim title to the property since “he is one to want to say [to plaintiff’s sister] I’m with you, I’ve sacrificed a lot for you, I’ve given you this, I hired you for that, blah, blah and he’s told [my sister] that so often he would want to have some kind of involvement with or in her real estate transaction.” Plaintiff did not discuss the property with Primm at that time because plaintiff “wasn’t sure of all the particulars regarding the property.” Plaintiff further testified that a couple of months later, in 2001, Primm reminded him that “[w]e have to discuss this property here. I buy you out or you buy me out. . . . We’ll talk about it later.” In or about September or October of 2001, plaintiff asked Primm for proof of his ownership interest in the property to which Primm allegedly stated “I don’t have any.” Plaintiff also stated that sometime in January 2002, Primm called his office and told him “you know you and your family have done quite well by working here.” Plaintiff responded that he hoped that most people in the corporation were doing quite well and he didn’t “wish to hear it again.” Plaintiff testified that he felt threatened by the phone call because “if he’s gone that far to remind me that my family and I are doing quite well working in the corporation and he hired me, something else had to be coming behind that shortly.” Plaintiff testified that in March 2002 he received another phone call from Primm during which Primm asked him when they were going to sit down and discuss the property Primm indicated that they would have to resolve the issue. Plaintiff stated that he found this conversation threatening as well because Primm “could be . . . the sweetest guy on the earth, but if you in effect cross him or don’t do what he wants you to do,

retribution is coming in some kind of way.” Plaintiff testified, however, that Dr. Primm never threatened plaintiff’s job directly during any of their discussions concerning the property. Subsequent to plaintiff’s termination, Primm commenced an action in the Superior Court of Massachusetts relating to ownership of the property and that action is pending.

With respect to Wright, plaintiff stated that his relationship with her was good, until February 2002 when she “became distant” and stopped holding weekly meetings with him. According to plaintiff, Wright also told him that she was “praying for [him].” Plaintiff testified that he initially assumed that she was saying this because they were “fellow Christians,” but finally understood, after he was terminated, that she meant “[Primm] . . . is pressuring me to get rid of you.”

Plaintiff testified that he was terminated in April 2002 during a meeting with Wright and Primm. At this meeting Wright stated “you know I’ve been talking to you about some of the projects that I had asked you to do, and we’ve had many conversations about this . . . some of the things are still not done and I’m asking you to step down from your position.” When plaintiff responded angrily, Primm said “Why are you angry at me? She’s firing you. I’m not firing you.” Plaintiff testified that Wright had authority to terminate the employment of her subordinates without the approval of either Primm or the Board of Directors.

Primm testified at his deposition that he discussed the Massachusetts property with plaintiff “maybe twice.” During those discussions, he told plaintiff that he and Barbara each had a 50 percent interest in the property and that “we needed to take care of that.” Primm states that plaintiff responded that his lawyers would handle it. Primm indicated that he

recalled that plaintiff asked him for proof of his interest in the property because the lawyers would need it. He denied ever telling plaintiff, in sum and substance, that plaintiff owed Primm his job and was indebted to Primm for that reason.

Primm testified that he received complaints regarding plaintiff's work performance prior to his decision to appoint Wright to the senior vice president position. He testified that it was Wright who terminated plaintiff and that she was the only one responsible for this termination. He stated that he never told Wright to fire plaintiff. He further stated that Wright told him that she could not work with plaintiff anymore due to his poor work performance, and that Primm suggested that plaintiff be asked to step down and that another position be found for him in the corporation. Prior to this, Wright had reported to Primm that she was having problems getting plaintiff to complete his work. According to Primm, the morning of plaintiff's termination, Wright specifically told Primm that she had made the decision to tell plaintiff that he would not be "under her command" anymore. Primm testified that plaintiff was not actually terminated until after he reacted badly to the request that he step down from his position.

When deposed, Wright testified that she alone made the decision to terminate plaintiff. She stated that "[a]s a senior vice president, I took a year to look at his competency base. At the point where I had enough data, understanding [and was] just fed up, I terminated [plaintiff]." She also stated that she "didn't make the determination to terminate him until the day he went off. . . . When we sat down [at the meeting], I was getting him out of my division, but I was not on that day ready to terminate him until the outburst and the threats."

She also testified that, after becoming senior vice president, she terminated three employees from her division.

Wright testified that she was not aware of the Massachusetts property or of Primm's alleged interest in it, until after plaintiff's employment was terminated. She testified that Primm had always been supportive of plaintiff in discussing plaintiff's performance.

Wright testified to at least five instances in which plaintiff's work was unsatisfactory. Specifically, Wright testified that plaintiff: (1) provided her with an unsatisfactory draft of an operations manual for ARTC's security and thereafter failed to complete such manual as of the time of his termination; (2) allowed the certificate of occupancy for an ARTC facility to lapse, which exposed the corporation to penalties by the regulatory agency; (3) scheduled the installation of window bars at URI's headquarters on the day of an important conference, resulting in disruption of the conference and additional expenses when the contractor responsible for the installation had to come back and complete the project on another day; (4) failed to insure that the Hospi-Gard units located in ARTC facilities, which reduce the risk of tuberculosis exposure, were cleaned by the "beginning of [2002]," as a result of which a facility was cited for failing to have the Hospi-Gard machines on site cleaned by authorized personnel and (5) proposed an inadequate evacuation plan for an ARTC treatment center which had been the subject of a previous bomb threats. Wright further testified that she received complaints about plaintiff, particularly with respect to his ability to complete projects, both before and after her promotion to senior vice president. She also stated that

she had discussions with Primm on a number of occasions with respect to plaintiff's unsatisfactory work performance.

Concerning her statement to plaintiff that she would pray for him, Wright testified that she recalled telling plaintiff that she would pray for him on only one occasion, when he was having difficulty completing a project. She stated, "[i]n [her] frustration, knowing [plaintiff] also prayed, [they] needed some intervention for him to get this particular project done." She intended the comment to show support and noted that plaintiff "prayed for [her] too."

Summary judgment should only be granted where there are no triable issues of fact (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). In order to prevail on a motion for summary judgment, the movant must present a prima facie case demonstrating entitlement to judgment as a matter of law (*Prince v Di Benedetto*, 189 AD2d 757, 759 [1993]; *Zarr v Piccio*, 180 AD2d 734, 735 [1992]). Once the movant has established his or her prima facie case, the party opposing a motion for summary judgment bears the burden of "produc[ing] evidentiary proof in admissible form sufficient to require a trial of material questions of fact . . . mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient" (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; see also *Romano v St. Vincent's Medical Center of Richmond*, 178 AD2d 467, 470 [1991]; *Tessier v New York City Health & Hospitals Corp.*, 177 AD2d 626 [1991]). Stated differently, "the plaintiff must establish the existence of material facts of sufficient import to create a triable issue" (*Shaw v Time-Life Records*, 38 NY2d 201, 207

[1975]). In addition, the evidence presented on summary judgment must be scrutinized in the light most favorable to the party opposing the motion (*Goldstein v Monroe County*, 77 AD2d 232, 236 [1980]). Since summary judgment deprives a party of his or her day in court (*Henderson v City of New York*, 178 AD2d 129 [1991]), it is a drastic remedy that will only be awarded when there is no triable issue of fact and the court can render a decision as a matter of law (*Barclay v Denckla*, 182 AD2d 658 [1992]). Nonetheless, where a party has established his or her prima facie case, a motion for summary judgment based thereupon “may not be defeated merely by surmise, conjecture or suspicion” (*Shaw*, 28 NY2d at 207).

“It is well settled that, absent an agreement establishing a fixed duration, an employment relationship is presumed to be a hiring at will, terminable at any time by either party” (*Backus v Planned Parenthood of the Finger Lakes, Inc.*, 161 AD2d 1116, 1117 [1990] and “for any reason or even for no reason” (*Furibondo v Eastman Kodak Co.*, \_\_\_ AD3d \_\_\_, 2006 WL 2714835, at \*1 [2006]). “Agreements that are terminable at will are classified as only prospective contractual relations, and thus cannot support a claim for tortious interference with existing contracts” (*Guard-Life v S. Parker Hardware*, 50 NY2d 183, 191-192 [1980]).

“[W]here there is an existing, enforceable contract and a defendant’s deliberate interference results in a breach of that contract, a plaintiff may recover damages for tortious interference with contractual relations even if the defendant was engaged in lawful behavior” (*NBT Bancorp, Inc. v Fleet/Norstar Financial Group, Inc.*, 87 NY2d 614, 621 [1996]).

However, “[w]here there has been no breach of an existing contract, but only interference with prospective contract rights . . . plaintiff must show more culpable conduct on the part of the defendant” (*id.*, citing *Guard-Life*, 50 NY2d at 193-194). Thus, where contracts terminable at will have been involved, courts have upheld actions for interference when the means employed by the one interfering are “wrongful” (*Guard-Life Corp.*, 50 NY2d at 194), or when the “defendant acted for the sole purpose of harming the plaintiff” (*Snyder v Sony Music Entertainment, Inc.*, 252 AD2d 294, 300 [1999]; *Scalise v Adler*, 267 AD2d 295, 296 [1999]; *Waste Service, Inc. v Jamaica Ash & Rubbish Removal Co., Inc.*, 262 AD2d 401, 402 [1999]). “‘Wrongful means’ include physical violence, fraud, misrepresentations, civil suits, criminal prosecutions and some degree of economic pressure, but more than simple persuasion is required” (*Snyder v Sony Music Entertainment, Inc.*, 252 AD2d 294, 200 [1999]; *see also Guard-Life Corp. v S. Parker Hardware Mfg. Corp.*, 50 NY2d at 194; *Murray*, 273 AD2d at 761; *Jabbour v Albany Medical Center*, 237 AD2d 787, 790 [1997]).

“A corporate officer acting within the scope of his or her duties cannot be held personally liable for inducing the corporation to terminate an employment agreement absent evidence that the corporate officer performed individual separate tortious acts” (*Culverhouse v Cooke Center for Learning and Development, Inc.*, 177 Misc 2d 365, 369 [1998], citing *Murtha v Yonkers Child Care Assn., Inc.*, 45 NY2d 913, 915 [1978]). “[T]he tort of interference with an employment contract cannot lie against [a] . . . party to the alleged employment contract, or the individual defendants, as agents of the [corporate employer], absent a showing that they acted outside the scope of their authority” (*Kosson v Algaze*, 203

AD2d 112, 113 [1994], *aff'd* 84 NY2d 1019 [1995] and acted solely to harm plaintiff or used wrongful means to achieve the interference (*Joan Hansen & Co., Inc. v Everlast World's Boxing Headquarters Corp.*, 296 AD2d 103 [2002]; *see also Guard-Life, supra; Snyder v Sony Music Entertainment, Inc., supra, Hoesten v Best, supra*).

Here, defendants have established, *prima facie*, that they did not utilize wrongful means, such as threats or misrepresentations, to effect plaintiff's termination or terminated plaintiff either for personal gain or solely to harm plaintiff, and plaintiff has failed to raise a triable issue of fact in response thereto. Plaintiff, Wright and Primm all testified that Wright had the authority to terminate plaintiff's employment without approval of either Primm or the Board of Directors. Wright testified that she decided to remove plaintiff from her department after observing his performance for approximately one year and also stated a number of areas in which she perceived his work performance to be deficient. She further testified that she was solely responsible for the decision to remove plaintiff. Moreover, she stated that she had received complaints about plaintiff's work performance both before and after she assumed the role of senior vice president. She testified that she was unaware of the property dispute between plaintiff and Primm until after plaintiff was terminated. She further testified that she had initially only sought to move plaintiff out of her department but decided to terminate him after he allegedly responded to her request that he "step down" from his position with threats and otherwise inappropriate behavior.

Primm testified that he did not ask Wright to terminate plaintiff. He also stated that although he requested, on at least two occasions, that he and plaintiff discuss the issues

concerning ownership of the Massachusetts property while plaintiff was employed at URI and ARTC, he never stated that he had given plaintiff his job and that plaintiff was therefore indebted to him.

The gravamen of plaintiff's complaint is that defendants tortiously interfered with his employment by firing him after he refused to recognize Primm's alleged ownership interest in the Massachusetts property. He claims that the wrongful means utilized by defendants consisted of veiled threats made to him by Primm with respect to his continued employment. However, the only such threats identified by plaintiff were alleged statements by Primm to plaintiff that plaintiff and his family had done quite well as a result of plaintiff's employment with URI and ARTC. Plaintiff does not proffer any evidence that Wright, who was concededly the individual with authority to terminate him, was threatened by Primm or otherwise pressured by him to terminate plaintiff, nor is there any evidence that Primm made any misrepresentations to her which led to plaintiff's termination. Moreover, given Wright's testimony as to complaints she had received from others with respect to plaintiff's performance, as well as her own perceptions of plaintiff's deficiencies, plaintiff has not presented any evidence that Wright acted in her own self-interest or with the sole purpose of harming plaintiff when she asked him to step down from his position. Rather, plaintiff relies entirely on surmise and conjecture in speculating that Primm must have pressured Wright to fire plaintiff after plaintiff refused to acknowledge Primm's alleged interest in the Massachusetts property or to settle the matter to his satisfaction. The only evidence he identifies in this regard is Wright's statement that she would "pray for him," which he claims

is indicative of Wright's acknowledgment that she was being pressured by Primm to terminate plaintiff. However, given the ambiguity of the statement and testimony from both plaintiff and Wright that the statement was made with reference to their religious affinity, the interpretation urged by plaintiff is speculation and conjecture. Such statement, therefore, is insufficient to raise a triable issue of fact as to defendant's wrongful termination of plaintiff's employment.

Likewise, plaintiff does not identify any specific threat to his employment made by Primm. Primm's statement that plaintiff and his family had done well due to plaintiff's employment with URI and ARTC is also ambiguous. Instead, plaintiff states that Primm repeatedly sought to resolve the issue of the property with him, but did not make any specific demands with regard to same or delineate the consequences to plaintiff's continued employment if such demands were not met. Moreover, plaintiff testified that on prior occasions he was aware that Primm was one "to say to [plaintiff's sister] I'm with you, I've sacrificed a lot for you, I've given you this, I hired you for that, blah blah and he's told her that so often." Accordingly, the similar statements allegedly made by Primm to plaintiff, which are in and of themselves bereft of any direct threat, are insufficient, absent resort to speculation and surmise, to raise a triable issue of fact as to wrongful means or independent tortious acts. At worse, they constitute evidence of general cajoling or persuasion.

Therefore, given the dearth of evidence that Wright knew about the underlying property issue or was wrongfully pressured in any way by Primm to terminate plaintiff, plaintiff's invocation of statements made by Primm which, in and of themselves lack any indicia of a

specific threat, is insufficient to defeat the instant motion for summary judgment. As a result, defendants are entitled to summary judgment dismissing plaintiff's complaint.

Accordingly, the defendants' motion for summary judgment is granted and plaintiffs' cause of action for tortious interference with an employment agreement is dismissed.

The foregoing constitutes the decision, order and judgment of the court.

E N T E R,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

. S. C.