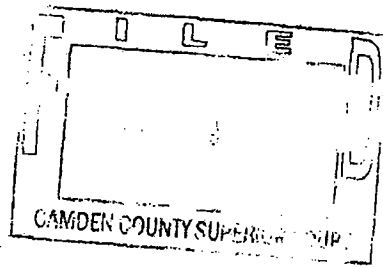


Guido Babore
44 West Cedar Ave.
Merchantville, New Jersey, 08109
(856) 723-1618
Attorney ID No. 018531998



RYAN KINCAID
:
:
Plaintiff,
:
:
vs.
:
:
BROOKLAWN PUBLIC SCHOOL DISTRICT,
:
BROOKLAWN BOARD OF EDUCATION,
:
JOHN KELLMAYER, BRUCE DARROW
:
AND JOHN DOES 1-10
:
:
Defendants.
:

SUPERIOR COURT OF NEW JERSEY
CIVIL DIVISION
CAMDEN COUNTY

DOCKET NO. L 531-15

CIVIL ACTION

COMPLAINT

Plaintiff, Ryan Kincaid, by way of Complaint against the Defendants, Brooklawn Public School District, Brooklawn Board of Education, John Kellmayer and Bruce Darrow, states:

PARTIES

1. Plaintiff, Ryan Kincaid (hereinafter "Plaintiff" or "Kincaid") resides at 234 Christiana Street, Brooklawn, New Jersey 08030.
2. It is alleged and therefore averred that the Defendant, the Brooklawn Public School District (hereinafter, "School District") is a school district duly organized under the laws of the State of New Jersey, with offices located at 301 Haakon Road, Brooklawn, New Jersey 08030.
3. It is alleged and averred that Defendant, the Brooklawn Board of Education (hereinafter the "Board") is a school board and/or agency of the School District duly organized and existing under the laws of the state of New Jersey, and created to supervise and administer the school system and funds provided for its support, with offices located at 301 Haakon Road, Brooklawn, New Jersey 08030.

4. Defendant, Dr. John Kellmayer (hereinafter "Kellmayer") is the Board's superintendent with an address of 153 Windsor Avenue, Haddonfield, New Jersey 08033.

5. Defendant, Bruce Darrow, (hereinafter "Darrow") is the Board's president with an address of 100 Horton Avenue, Brooklawn, New Jersey 08030.

6. Defendants, John Does 1-10 are individuals that were either employed by the School District, the Board or are members of the School District or the Board that contributed to the wrongful discharge of Ryan Kincaid, their identity at this time are unknown to the plaintiff despite diligent effort, who may be later identified as a defendant in this matter.

FACTS

1. In August 2007, the Board entered into a contract (hereinafter, "Contract") with Kincaid pursuant to which Kincaid was contracted to act as a maintenance man at the Alice Costello School.

2. In accordance with the terms and conditions of the Contract, Mr. Kincaid properly performed his duties and responsibilities at the Alice Costello School from August 2007 to June 25, 2014.

3. On or around June 12, 2014, without asking for permission or without having probable cause, defendant Kellmayer illegally searched Plaintiff's backpack without Plaintiff being present.

4. On the same date, June 12, 2014, Plaintiff was called to defendant Kellmayer's office where Plaintiff was asked in the presence of Plaintiff's union representative Kathy Quatrocchi if he could search Plaintiff's backpack.

5. Plaintiff agreed to the search.

6. The result of the search confirmed Plaintiff's innocence.

7. When the illegal search proved Plaintiff's innocence, defendant Kellmayer and defendant Darrow orchestrated a plan to wrongfully terminate Plaintiff for reasons that were willful, wanton and in bad faith.

8. For almost seven (7) years, Mr. Kincaid was a competent employee and was never disciplined, written, verbal or otherwise, for failing to perform the tasks that were required of him.

9. Since defendant Kellmayer and defendant Darrow could not use theft as a reason to terminate Plaintiff, they devised the scheme of Plaintiff's alleged excessive use of the internet as the reason for the termination.

10. The internet use notwithstanding, defendant Kellmayer could not identify one task duty that Plaintiff failed to perform as result of his internet usage.

11. In fact, there is no written documentation that indicates that Plaintiff failed to perform his duties at all.

12. Plaintiff was provided with a Rice Notice after the illegal search.

13. Since Plaintiff did nothing wrong or in violation of the Contract, Plaintiff opted to conduct the hearing in public.

14. On June 25, 2014, a public hearing was held.

15. At the public hearing Plaintiff was permitted to provide a statement.

16. After hearing the statement, the Board, in violation of the Open Public Meetings Act, N.J.S.A. 10:4-6 *et seq.*, convened a closed door, executive session wherein the board members discussed Plaintiff's employment.

17. On June 25, 2014, the School District and the Board wrongfully terminated Plaintiff's Contract, for reasons set forth in the executive session.

18. On Friday, December 19, 2014 Plaintiff's daughter was approached by two girls on the playground and informed that a girl was telling all the other children at her school that her father was fired for stealing laptops and notebook computers; a statement that is patently false.

19. On the following Monday, December 22, 2014, during Plaintiff's daughter's art class, the same girl was telling Plaintiff's daughter's friend about Plaintiff's termination due to theft; a statement that is patently false.

20. As a result of the two (2) incidents regarding the false accusations of theft lodged against Plaintiff, a Harassment, Intimidation and Bullying ("HIB") complaint was filed with the Alice Costello School.

21. After the investigation was conducted, the source of the false statement was attributed to the Board's president, Bruce Darrow.

**COUNT I
BREACH OF CONTRACT**

(Kincaid v. Brooklawn School District & Brooklawn Board of Education)

22. Plaintiff hereby restates the previous allegations as if set at length herein.

23. The School District and the Board entered into a valid and enforceable Contract with Plaintiff; the terms and conditions were met by Plaintiff.

24. On June 25, 2014, the School District and the Board materially breached the Contract by terminating Plaintiff for reasons other than performing his duties as contracted.

25. As a result of the material breach, Plaintiff has been damaged financially.

26. The damages incurred by Plaintiff include, but are not limited to, unpaid monies remaining on the Contract, overtime payment, attorneys' fees and interest.

WHEREFORE, Plaintiff, Ryan Kincaid, respectfully requests that the Court enter a judgment in his favor and against the Defendant, the Brooklawn School District and the Brooklawn

Board of Education for breach of contract and award damages in the amount in excess of \$200,000.00 plus attorney's fees, costs of suit and such other relief as the court may deem just, proper and equitable.

COUNT II
WRONGFUL TERMINATION
(Kincaid v. Brooklawn School District and Brooklawn Board of Education)

27. Plaintiff hereby restates the previous allegations as if set at length herein.

28. The School District and the Board entered into a valid and enforceable Contract with Plaintiff; the terms and conditions were met by Plaintiff.

29. On June 25, 2014, the School District and the Board materially breached the Contract by terminating Plaintiff for reasons other than performing his duties as contracted.

30. As a result of the material breach, Plaintiff has been damaged financially.

31. The School District's and the Board's actions were malicious, willful and wanton.

32. The School District's and the Board's termination of Plaintiff were without a reasonable basis under the Contract and therefore it is averred done in bad faith.

33. The damages incurred by Plaintiff include, but are not limited to, unpaid monies remaining on the Contract, overtime payment, treble damages, attorneys' fees and interest.

WHEREFORE, Plaintiff, Ryan Kincaid, respectfully requests that the Court enter a judgment in his favor and against the Defendant, the Brooklawn School District and the Brooklawn Board of Education for breach of contract and award damages in the amount in excess of \$200,000.00 plus attorney's fees, costs of suit and such other relief as the court may deem just, proper and equitable.

COUNT III
DEFAMATION OF CHARACTER
(Kincaid v. Brooklawn School District, Brooklawn Board of Education,
Kellmayer, Darrow and John Does 1-10)

34. Plaintiff hereby restates the previous allegations as if set at length herein.

35. On June 12, 2014, defendant Kellmayer and defendant Darrow with malice aforethought falsely accused Plaintiff of theft.

36. After it was proven that Plaintiff did not steal, the statements and claims that Plaintiff stole from the School District and in particular the Alice Costello School, continued to be broadcast throughout the community by both defendant Kellmayer and defendant Darrow.

37. In particular, Plaintiff's daughter was told by several classmates that her father was terminated as a result of stealing from the school.

38. The statements were made by defendant Kellmayer and defendant Darrow and permitted to be broadcast by the School District and the Board, despite the fact that all parties knew the statements to be false.

39. The statements were knowingly and maliciously broadcast despite the fact that they were false.

40. As a result of the false and defamatory statements, Plaintiff's reputation and/or standing in the community has been irreparably damaged.

WHEREFORE, Plaintiff, Ryan Kincaid, respectfully requests that the Court enter a judgment in his favor and against the Defendant, the Brooklawn School District and the Brooklawn Board of Education for breach of contract and award damages in the amount in excess of \$200,000.00 plus attorney's fees, costs of suit and such other relief as the court may deem just, proper and equitable.

Respectfully submitted,



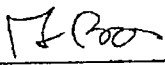
Guido Babore
Attorney for Ryan Kincaid

Dated: 2/3/2015

CERTIFICATE OF OTHER ACTION

I certify that the dispute about which I am suing is not the subject of any other action pending in any other court or pending arbitration proceeding to the best of my knowledge and belief. Also, to the best of my knowledge and belief no other action or arbitration proceeding is contemplated. Further, other than the parties set forth herein, I know of no other parties that should be made a part of this lawsuit. In addition, I recognize my continuing obligation to file and serve on parties and the court an amended certification if there is a change in the facts stated in this original certification.


Dated: 2/3/2015

Signature: 

JURY DEMAND

The plaintiff demands trial by jury on all of the triable issues of this complaint, pursuant to New Jersey Court Rules 1:8-2(b) and 4:35-1(a).

Dated: 2/3/2015

Signature: 

#40310-00137-MJB

"Jib" page

MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN

Attorney of Record/Filing Attorney: Matthew J. Behr, Esq. – NJ Attorney I.D. #025841998

Woodland Falls Corporate Park
200 Lake Drive East • Suite 300
Cherry Hill, NJ 08002

☎ 856-414-6048 • ☎ 856-414-6077 • ✉ mjbahr@mdwgc.com

Attorney for Defendants, Brooklawn Public School District and Brooklawn Board of Education

RYAN KINCAID

Plaintiff,

vs.

BROOKLAWN PUBLIC SCHOOL
DISTRICT, BROOKLAWN BOARD OF
EDUCATION, JOHN KELLMAYER, BRUCE
DARROW AND JOHN DOES 1-10,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
CAMDEN COUNTY

DOCKET NO.: CAM-L-531-15

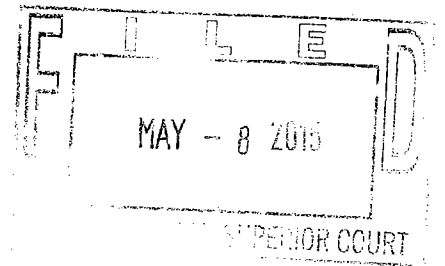
CIVIL ACTION

***ANSWER TO PLAINTIFF'S COMPLAINT
WITH SEPARATE DEFENSES,
DESIGNATION OF TRIAL COUNSEL AND
JURY DEMAND***

Defendants, Brooklawn Public School District and Brooklawn Board of Education, by
way of Answer to Plaintiff's Complaint, say:

PARTIES:

1. Answering Defendants can neither admit nor deny the allegations contained in paragraph 1 and leave Plaintiff to his proofs.
2. The allegations contained in paragraph 2 are admitted.
3. The allegations contained in paragraph 3 are admitted.
4. The allegations contained in paragraph 4 are admitted.
5. The allegations contained in paragraph 5 are denied.
6. Answering Defendants can neither admit nor deny the allegations contained in paragraph 6 and leave Plaintiff to his proofs.



FACTS

1. The allegations contained in paragraph 1 are admitted.
2. The allegations contained in paragraph 2 are denied.
3. The allegations contained in paragraph 3 are denied.
4. The allegations contained in paragraph 4 are denied.
5. The allegations contained in paragraph 5 are admitted to the extent that Plaintiff

agreed to a search.

6. The allegations contained in paragraph 6 are denied.
7. The allegations contained in paragraph 7 are denied.
8. The allegations contained in paragraph 8 are denied.
9. The allegations contained in paragraph 9 are denied.
10. The allegations contained in paragraph 10 are denied.
11. The allegations contained in paragraph 11 are denied.
12. The allegations contained in paragraph 12 are admitted.
13. The allegations contained in paragraph 13 are admitted in part and denied in part.

It is admitted that Plaintiff opted to conduct the hearing in public. It is denied that Plaintiff did not do anything wrong and did not violate his contract.

14. The allegations contained in paragraph 14 are admitted.
15. The allegations contained in paragraph 15 are admitted.
16. The allegations contained in paragraph 16 are denied.
17. The allegations contained in paragraph 17 are denied.

18. Answering Defendants can neither admit nor deny the allegations contained in paragraph 18 and leave Plaintiff to his proofs.

19. Answering Defendants can neither admit nor deny the allegations contained in paragraph 19 and leave Plaintiff to his proofs.

20. The allegations contained in paragraph 20 are admitted in part and denied in part. It is admitted that a HIB Complaint was filed. It is denied that it was the result of two incidents regarding an accusation of theft lodged against the Plaintiff.

21. The allegations contained in paragraph 21 pertain to a co-Defendant to which these Defendants need not respond.

COUNT I
Breach of Contract

22. Answering Defendants incorporate by reference their responses to all allegations of the prior paragraphs of Plaintiff's Complaint as if same were set forth fully herein.

23. The allegations contained in paragraph 23 call for a legal conclusion to which no response is necessary.

24. The allegations contained in paragraph 24 call for a legal conclusion to which no response is necessary.

25. The allegations contained in paragraph 25 are denied.

26. The allegations contained in paragraph 26 are denied.

WHEREFORE, Defendants, Brooklawn Public School District and Brooklawn Board of Education, demand judgment in their favor and against Plaintiff, together with interest, costs, attorney's fees and such other relief as this Court deems proper.

COUNT II
Wrongful Termination

27. Answering Defendants incorporate by reference their responses to all allegations of the prior paragraphs of Plaintiff's Complaint as if same were set forth fully herein.

28. The allegations contained in paragraph 28 call for a legal conclusion to which no response is necessary.

29. The allegations contained in paragraph 29 call for a legal conclusion to which no response is necessary.

30. The allegations contained in paragraph 30 are denied.

31. The allegations contained in paragraph 31 are denied.

32. The allegations contained in paragraph 32 are denied.

33. The allegations contained in paragraph 33 are denied.

WHEREFORE, Defendants, Brooklawn Public School District and Brooklawn Board of Education, demand judgment in their favor and against Plaintiff, together with interest, costs, attorney's fees and such other relief as this Court deems proper.

COUNT III
Defamation of Character

34. Answering Defendants incorporate by reference their responses to all allegations of the prior paragraphs of Plaintiff's Complaint as if same were set forth fully herein.

35. The allegations contained in paragraph 35 pertain to co-Defendants to which no response is necessary.

36. The allegations contained in paragraph 36 pertain to co-Defendants to which no response is necessary.

37. Answering Defendants can neither admit nor deny the allegations contained in paragraph 37 and leave Plaintiff to his proofs.

38. The allegations contained in paragraph 38 pertain to co-Defendants to which no response is necessary.

39. The allegations contained in paragraph 39 pertain to co-Defendants to which no response is necessary.

40. The allegations contained in paragraph 40 are denied.

WHEREFORE, Defendants, Brooklawn Public School District and Brooklawn Board of Education, demand judgment in their favor and against Plaintiff, together with interest, costs, attorney's fees and such other relief as this Court deems proper.

SEPARATE DEFENSES

1. Plaintiff's Complaint fails to state a cause of action upon which relief can be granted.

2. Plaintiff's actions are barred in whole or in part by the applicable Statute of Limitations.

3. The practices of the answering Defendants are now, and have been during the period of time referred to in the Complaint, conducted in all respects in accordance with State and Federal Laws, regulations and constitutions.

4. Plaintiff has and continues to have the opportunity to mitigate the damages alleged, but has failed and refused to do so.

5. Plaintiff's claims are barred by the Doctrine of Laches, Estoppel and Waiver.

6. Plaintiff's claims are barred, in whole or in part, by the Doctrine of Election of Remedies.

7. Defendants acted, at all relevant times, with good faith and fair dealing, without fraud or malice.

8. Plaintiff was not deprived of any right, privilege or immunity secured by the United States Constitution or any act of Congress.

9. Defendants did not engage in any discriminatory practices against Plaintiff during the time period in question.

10. This Court lacks jurisdiction over the subject matter of this lawsuit.

11. If Plaintiff suffered injuries and damages as described in Plaintiff's Complaint, which is denied, said injuries were caused or contributed to by conditions of which answering Defendants had no control, and for which answering Defendants are not responsible.

12. The Complaint is barred, in whole or in part, by the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, *et seq.*

13. The answering Defendants are immune from liability pursuant to the provisions of N.J.S.A. 59:2-1, *et seq.*

14. Answering Defendants assert the applicability of the provisions of N.J.S.A. 59:2-1 and N.J.S.A. §59:2-2, as to the immunities available to the public entity and/or public employee.

15. The answering Defendants are not liable to the Plaintiff in that there is no liability upon any public employees pursuant to the provisions of N.J.S.A. 59:2-2(b).

16. Any action or failure to act on the part of the answering Defendants was in the nature of discretionary activity within the meaning of N.J.S.A. 59:2-3.

17. This answering Defendants assert the applicability of the provisions of N.J.S.A. 59:2-4 and N.J.S.A. 59:3-3 as to the non-liability for any injury caused by adopting or failing to adopt a law or by failing to enforce a law.

18. The answering Defendants are immune from suit pursuant to the provisions of N.J.S.A. §59:2-10.

19. The answering Defendants assert the applicability of the provisions of N.J.S.A. 59:2-3 and N.J.S.A. §59:3-2, as to the absence of liability from the exercise of judgment or discretion.

20. The answering Defendants assert the applicability of the provisions of N.J.S.A. §59:3-5 as to the non-liability of a public employee for an injury allegedly caused by his adoption or failure to adopt any law or by his failure to enforce any law.

21. The answering Defendants assert the applicability of the provisions of N.J.S.A. §59:8-3 through N.J.S.A. §59:8-7 regarding failure to provide adequate and timely notice of a claim.

22. The answering Defendants assert the applicability of the provisions of N.J.S.A. §59:8-8 through N.J.S.A. 59:8-11 regarding the failure to timely file notice of claim and/or failure to file notice of claim as set forth therein.

23. Any recovery to which the Plaintiff might otherwise be entitled is subject to reduction in accordance with the limitations on judgments, damages and interest provided by N.J.S.A. §59:9-2.

24. The answering Defendants, by pleading the aforementioned defenses, do not intend to limit their defenses and/or rights under the Act and hereby affirmatively plead the procedural and substantive provisions of the New Jersey Tort Claims Act, N.J.S.A. §2A:53A-7, *et seq.*, which are applicable and have not been previously listed in this Answer.

25. Plaintiff's Complaint should be dismissed as a result of the Doctrines of Collateral Estoppel and Res Judicata.

26. Plaintiff's Complaint should be dismissed as a result of the Entire Controversy Doctrine.

27. Answering Defendants did not violate any State statute or regulation.

28. Plaintiff's Complaint is barred by Plaintiff's failure to fully exhaust all administrative remedies.

29. Plaintiff's Complaint should be dismissed because of the Doctrine of Laches.

30. Answering Defendants did not violate any State or Federal statute.

31. The Plaintiff has failed to mitigate his damages.

32. Answering Defendants acted in good faith at all times.

33. Answering Defendants assert the privilege of absolute immunity for all allegations raised in Plaintiff's Complaint.

34. Plaintiff's claims are barred and/or limited as a result of Plaintiff's failure to fulfill the conditions precedent enough, and failure to comply with, the terms and conditions of the contract under which Plaintiff asserts her cause of action.

35. Answering Defendants cannot be liable for a defamation claim.

REQUEST FOR STATEMENT OF DAMAGES CLAIMED

Pursuant to the provisions of R. 4:5-2, it is hereby requested that within five (5) days of service of a copy hereof, the Plaintiff furnish to answering Defendants a written statement specifying the amount of damages claimed herein.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that answering Defendants demand a trial by jury as to all issues.

DESIGNATION OF TRIAL COUNSEL

PLEASE TAKE NOTICE that the undersigned, Matthew J. Behr, Esq., is hereby designated trial counsel pursuant to R. 4:25-4.

CERTIFICATION PURSUANT TO RULE 4:5-1 AND 4:6-1

I hereby certify that the matter in controversy is not the subject of any other action pending in any other court and is likewise not the subject of any pending arbitration proceeding. I further certify that I have no knowledge of any contemplated action or arbitration proceeding which is contemplated regarding the subject matter of this action and that I am not aware of any other parties who should be joined in this action.

I further certify that a copy of the within Answer was served within the time prescribed by Rule 4:6, and that a true and correct copy thereof has been served on all counsel.

***MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN***

By: _____
MATTHEW J. BEHR, ESQ.
Attorney for Defendants,
Brooklawn Public School District and
Brooklawn Board of Education

DATED: May 7, 2015

LEGAL/19132510.v1

FEB 11 2016

Filed Copy

#40310-00137-MJB

MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN

Attorney of Record/Filing Attorney: Matthew J. Behr, Esq. – NJ Attorney I.D. #025841998

Woodland Falls Corporate Park

200 Lake Drive East • Suite 300

Cherry Hill, NJ 08002

☎ 856-414-6048 • 📠 856-414-6077 • ✉ mjbahr@mdwecg.com

Attorney for Defendants, Brooklawn Public School District and Brooklawn Board of Education

RYAN KINCAID

Plaintiff,

vs.

BROOKLAWN PUBLIC SCHOOL
DISTRICT, BROOKLAWN BOARD OF
EDUCATION, JOHN KELLMAYER, BRUCE
DARROW AND JOHN DOES 1-10,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
CAMDEN COUNTY

DOCKET NO.: CAM-L-531-15

CIVIL ACTION

***STIPULATION OF DISMISSAL, WITH
PREJUDICE, AS TO DEFENDANTS,
BROOKLAWN PUBLIC SCHOOL
DISTRICT AND BROOKLAWN BOARD OF
EDUCATION, ONLY***

The matter in difference in the above-entitled action having been amicably adjusted by and between the parties, Guido Babore, Esq., on behalf of Plaintiff, and Matthew J. Behr, Esq., on behalf of Defendants, Brooklawn Public School District and Brooklawn Board of Education, it is hereby stipulated and agreed that the same be and it is hereby dismissed as to all claims, without costs against either party, with prejudice.

LAW OFFICES OF GUIDO BABORE
Attorneys for Plaintiff

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**
Attorneys for Defendants,
Brooklawn Public School District and Brooklawn
Board of Education

By: *[Signature]*
GUIDO BABORE, ESQ.

By: *[Signature]*
MATTHEW J. BEHR, ESQ.

DATED: 1/5/2016