

Edison Schools Inc. v New Covenant Charter School
2008 NY Slip Op 31561(U)
June 5, 2008
Supreme Court, New York County
Docket Number: 0600891/2007
Judge: Walter Tolub
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: _____

PART _____

Index Number : 600891/2007

EDISON SCHOOLS

vs

NEW COVENANT CHARTER SCHOOL

Sequence Number : 001

DISMISS ACTION

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

FILED

JUN 06 2008

COUNTY CLERK'S OFFICE
NEW YORK

IS DECIDED

IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 6/5/08

WALTER B. TOLUB S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check If appropriate: DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 15

-----x
EDISON SCHOOLS INC.,

Plaintiff,

-against-

NEW COVENANT CHARTER SCHOOL, ALVANIA HILL,
VICTORY SCHOOLS AND JAMES K. STOVALL,

Defendants.

Index No.
00891/07

FILED

JUN 06 2008

COUNTY CLERK'S OFFICE
NEW YORK

Tolub, J.:

By motion sequence 001, defendant New Covenant Charter School (NCCS) and the chairperson of NCCS's Board of Trustees, defendant Alvania Hill (Hill) (collectively, the NCCS Defendants) move, pursuant to CPLR 3211 (a) (1) and (a) (7), for an order dismissing the third cause of action against them. In motion sequence 002, defendant Victory Schools (Victory) and its vice-president and general counsel, defendant James K. Stovall (Stovall) (collectively, the Victory Defendants), move, pursuant to CPLR 3211, for an order dismissing the third and fourth causes of action against them.

Facts

NCCS is a charter school located in Albany, New York. According to the complaint, plaintiff Edison Schools Inc. (Edison) is "an education service provider whose mission is to improve public education in partnership with selected public school districts and charter schools throughout the nation by

providing educational programs that offer educational excellence and innovation based on Edison's unique school design, comprehensive educational programs and management principles." (Amended complaint, ¶ 7). The complaint describes Victory as a competitor of Edison's that provides similar services to charter schools as those that Edison provides.

On July 1, 2005, Edison and NCCS entered into an agreement pursuant to which Edison would manage the operations of NCCS (the "Agreement"). On August 7, 2006, NCCS terminated the Agreement. According to Edison, NCCS did so without regard to the Agreement's requirement of 90 days' written notice of its intent to terminate. On August 21, 2006, Edison received a letter from NCCS's attorneys, on which Hill and Stovall were copied, that confirmed that Victory was NCCS's new agent. According to the complaint, NCCS and Victory entered into a management agreement under which Victory would provide services to NCCS similar to those that Edison had previously provided.

Edison alleges that, at the time that NCCS terminated the Agreement, it owed Edison more than \$2,938,047. According to Edison, this action arises from the refusal of NCCS, through its own actions and those of the other defendants, who are NCCS's agents, to pay Edison the money it is owed. Edison contends that approximately \$2.5 million of this amount represents payments Edison made on behalf of NCCS to fund NCCS's operations, for

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which Edison was supposed to be reimbursed pursuant to the Agreement. (Amended complaint, ¶ 2). Edison explains that NCCS was to repay Edison for its disbursements and its management fee from state education funds that NCCS received during the course of the school year.

Edison states that, after NCCS terminated the Agreement, NCCS and Victory, through their representatives Hill and Stovall, intentionally misled Edison as to who controlled NCCS's finances. Edison contends that Hill's and Stovall's conduct frustrated Edison in its attempts to regain the monies that NCCS owed it. Edison states that NCCS has not yet paid Edison, or even made clear who is holding Edison's money. Edison asserts that defendants "have engaged in a concerted campaign of stonewalling against Edison, to prevent Edison's receipt of monies NCCS owes it and to enable NCCS's and Victory's wrongful use of those monies in connection with ongoing operations of NCCS and otherwise." (Amended complaint, ¶ 5).

The amended complaint contains seven causes of action, the third and fourth of which are at issue in the instant motions. The third cause of action, which sounds in misrepresentation, is brought as against all four defendants, and is the only claim in the complaint brought against Hill and Stovall. The fourth cause of action alleges conversion by NCCS and Victory. In the third cause of action, the complaint alleges that, on August 21, 2006,

Hill represented in writing that Victory "now served as NCCS's agent for purposes of repayment of NCCS's financial obligations" and that this representation was fraudulent. (Complaint ¶¶ 81 and 83).

Despite the allegations in the complaint, the only August 21, 2006 letter submitted by Edison was not written by Hill, but rather was written by NCCS's attorneys, with Hill and Stovall copied on the letter. The letter confirmed that Victory was NCCS's agent in management of the school.

Edison argues that Hill and Stovall materially misrepresented who controlled NCCS's finances. Edison states that its claim as against Hill is based on a telephone call with Edison, during which she stated that Victory controlled NCCS's finances and that Edison should reach out to Victory for repayment and for its management fee. The complaint alleges that Stovall also informed Edison via e-mail that Victory controlled NCCS's finances. Edison maintains that Stovall subsequently represented that Victory had no control over NCCS's finances. According to Edison, these representations all took place between December 13, 2006 and February 2007.

Edison argues that it has adequately alleged facts to support its misrepresentation claims. It asserts that each defendant misrepresented to Edison who controlled NCCS's finances after NCCS wrongfully terminated the Agreement. Edison states

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that it relied on these contradictory representations, which caused it to expend significant time and resources to attempt to learn from whom it could seek the return of its money. Edison contends that the allegations in the complaint set forth the misrepresentations, Edison's reasonable reliance on them, and the resulting loss suffered by Edison, such that they support a valid claim for misrepresentation.

The NCCS Defendants argue that the third cause of action must be dismissed as against them because Edison's allegations are refuted by documentary evidence, and because Edison has failed to plead sufficient facts to establish a claim for misrepresentation against them.

The Victory Defendants also move to dismiss the third cause of action, arguing that the misrepresentation claim is not pled with the specificity required by CPLR 3016 (b), and that, furthermore, it is invalid because the alleged false statements were made, if at all, after the period of alleged damages, and thus could not have caused them. They argue that the alleged misrepresentations occurred after NCCS terminated the Agreement and after Edison had stopped making any expenditures pursuant thereto. Thus, the Victory Defendants contend that Edison cannot establish that any of its alleged losses resulted from Hill's and Stovall's purported statements. The Victory Defendants contend that, if NCCS owes Edison any repayment, such obligation was

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created by the Agreement and relates solely to that contractual duty.

Discussion

On a motion to dismiss, the facts in the complaint are deemed to be true. (Leon v Martinez, 84 NY2d 83, 87-88 [1994]). Allegations that consist of bare legal conclusions, and claims that are contradicted by documentary evidence, however, are not entitled to such a presumption. (Caniglia v Chicago Tribune-N.Y. News Syndicate, 204 AD2d 233, 233-34 [1st Dept 1994]).

A claim sounding in misrepresentation must allege facts that indicate (1) a false representation; (2) made by defendant with intent to defraud; (3) upon which plaintiff reasonably relied; (4) to plaintiff's detriment. (Lama Holding Co. v Smith Barney, 88 NY2d 413, 421 [1996]). Pursuant to CPLR 3016 (b), "[a]llegations of fraud should be dismissed as insufficient where the claim is unsupported by specific and detailed allegations of fact in the pleadings." (Callas v Eisenberg, 192 AD2d 349, 350 [1st Dept 1993]).

The allegations in the complaint regarding alleged injury caused by the misrepresentations are set forth in paragraphs 83 and 84, stating that the defendants misrepresented Victory's status "so that Edison would expend time and energy attempting to obtain repayment of the monies NCCS owes Edison from improper parties, so that NCCS could continue its stonewalling tactics to

permit NCCS and Victory to continue their wrongful use of Edison's monies," and that "Edison is entitled to damages for Defendants' misrepresentations that caused Edison to act to its detriment and delay legal action to collect the monies owed to Edison."

This court finds that the third cause of action does not allege facts sufficient to support a misrepresentation claim. Edison does not identify any actual losses resulting from the misrepresentations, nor how such losses were causally related to the alleged misrepresentations. The failure to do so is a ground for dismissal under CPLR 3016 (b). (See Glickman v Alper, 236 AD2d 230, 231 [1st Dept 1997]).

Furthermore, the alleged misrepresentations took place between December 2006 and February 2007, and Edison commenced the instant action in March 2007. Thus, Edison also fails to explain how defendants' statements caused it to "delay legal action" and how any such delay injured Edison.

Edison's fourth cause of action sounds in conversion. Edison alleges that Victory has appropriated for its own use those monies earmarked for return to Edison. According to Edison, NCCS's annual audit confirms and specifies the state education funds received, and the particular use NCCS made of those funds. Edison maintains that NCCS was supposed to hold those funds for return and payment to Edison. Edison alleges

that Victory has taken money from NCCS for Victory's own purposes, and not for return to Edison. According to Edison, allegations concerning the redirection of funds from NCCS to Victory, rather than to Edison, state a claim for conversion.

The Victory Defendants argue that the instant action is essentially a collection matter. They assert that, although NCCS may acknowledge that it owes Edison some amount in repayment, the total amount owed is in dispute because Edison breached the Agreement and mismanaged the school, and because the audit upon which Edison relies does not reflect the actual amounts NCCS owes Edison. According to the Victory Defendants, Edison seeks repayment for its expenditures, but not the return of specifically identifiable funds, and thus has no claim for conversion against NCCS or Victory. The Victory Defendants state that the money NCCS received in education funds is a large pool of general revenues from which all of its expenses are paid, and that there were and are no specifically identifiable portions of these funds earmarked for "return" to Edison.

According to Edison, NCCS's completed audit confirmed not only the amounts Edison had disbursed on NCCS's behalf, but also the amounts of the state education funds NCCS received for reimbursement to Edison. Edison states that NCCS was contractually obligated to provide those funds to Edison and that, when Victory replaced Edison as NCCS's manager, Victory

misappropriated the money designated for return to Edison, perhaps for Victory's own use in operating NCCS. According to Edison, these funds are sufficiently identifiable to be the subject of a claim for conversion.

"The tort of conversion is established when one who owns and has a right to possession of personal property proves that the property is in the unauthorized possession of another who has acted to exclude the rights of the owner. Where the property is money, it must be specifically identifiable and be subject to an obligation to be returned or to be otherwise treated in a particular manner." (Republic of Haiti v Duvalier, 211 AD2d 379, 384 [1st Dept 1995] [citations omitted]).

The conversion claim is dismissed as against Victory. The instant case is similar to Peters Griffin Woodward, Inc. v WCSC, Inc. 88 AD2d 883 [1st Dept 1982]. In that case, the plaintiff sued two defendants for conversion. One of the defendants had previously had a contract with the plaintiff, and the other defendant had subsequently entered into a contract with the first defendant to provide similar services to those the plaintiff had previously provided to the first defendant. The court noted that, although money can be the subject of a conversion action if it is specifically identifiable, "an action for conversion cannot be validly maintained where damages are merely being sought for breach of contract." (Id. at 883-84).

The First Department held that, although a conversion claim could not be brought against either defendant because the plaintiff "never had ownership, possession or control of the money" at issue, plaintiff could seek to recover the money at issue from the first defendant, who had allegedly breached a contract with the plaintiff. (Id. at 884). The same principle applies to the instant action. Edison never owned, possessed or controlled the money at issue, such that the conversion claim should be dismissed as against Victory, yet Edison can seek recovery of the sums in question via the breach of contract claim brought against NCCS, which is not at issue in the instant motions.

Accordingly, it is

ORDERED that the motion to dismiss, motion sequence 003, is granted, and the third cause of action of the complaint is dismissed as against defendants New Covenant Charter School and Alvania Hill; and it is further

ORDERED that the motion to dismiss, motion sequence 004, is granted, and the third cause of action of the complaint is dismissed as against defendants Victory Schools and James K. Stovall, and the fourth cause of action is dismissed as against defendant Victory Schools; and it is further

ORDERED that the complaint is severed and dismissed as against defendants Alvania Hill and James K. Stovall, and the

