

Torres v Paul J. Curran Fund
2013 NY Slip Op 33012(U)
October 4, 2013
Sup Ct, Queens County
Docket Number: 16096/12
Judge: Augustus C. Agate
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SHORT FORM ORDER

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE AUGUSTUS C. AGATE IAS PART 24
Justice

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SABATO TORRES,

Plaintiff,

-against-

Index No: 16096/12

Motion

Dated: March 13, 2013

THE PAUL J. CURRAN FUND A/K/A THE
PRINCIPAL ACADEMY A/K/A THE CURRAN
PRINCIPAL ACADEMY A/K/A THE CATHOLIC
PRINCIPAL ACADEMY,

m# 1

Defendant.

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The following papers numbered 1 to 7 read on this motion by defendant for an order dismissing the complaint pursuant to CPLR 3211(a)(1), (a)(5) and (a)(7).

Papers
Numbered

Notice of Motion - Affidavits - Exhibits.....	1 - 3
Affirmation in Opposition - Exhibits.....	4 - 5
Replying Affirmation.....	6 - 7
Defendant's Memorandum of Law	
Plaintiff's Memorandum of Law	
Defendant's Reply Memorandum of Law	

Upon the foregoing papers it is ordered that this motion by the defendant to dismiss the complaint is decided as follows:

In this action to recover damages for breach of contract and fraud, plaintiff alleges that defendant breached a letter agreement by failing to provide him with an administrative position in the Archdiocese of New York or the Diocese of Brooklyn as promised.

In October 2009, plaintiff, who was employed as a teacher at Mount Saint Michael Academy in the Bronx, submitted an application to become a Fellow at the Principal Academy, a rigorous training program aimed at preparing teachers to serve as principals of Catholic elementary schools in the Archdiocese of New York or the Diocese of Brooklyn. Pursuant to a letter dated

January 28, 2010, plaintiff was accepted into the program. Defendant is a not-for-profit charitable organization that created the training program. The program required plaintiff to enroll in an 18-month Master Degree program in Educational Leadership at St. John's University, and the tuition would be paid by the Principal Academy.

The January 28, 2010 letter further advised the plaintiff that commencing in July 2010, he would be assigned to serve as an Assistant Principal in the Archdiocese of New York or the Diocese of Brooklyn for a one-year period. He would receive a salary of up to \$50,000.00. The letter also informed plaintiff that his acceptance was conditional upon successful completion of the St. John's University application and receipt of all official transcripts from his undergraduate and graduate schools, or any other requirements to complete the application process. Plaintiff would also be expected to sustain a grade point average that is necessary to maintain matriculation.

The letter further provided that:

"[I]n connection with your acceptance to The Principal Academy, you agree that after completion of the year of service as an Assistant Principal, you would serve for an additional three-year period as a principal or administrator in a school in the Archdiocese of New York or the Diocese of Brooklyn. In the event you are not immediately employed as a principal or administrator, teaching in a Catholic School may be considered acceptable service, upon approval of The Principal Academy and the Archdiocese of New York or the Diocese of Brooklyn.

It is understood by you that your undertaking to serve such additional period is not only legally binding but a serious moral obligation. You recognized that it is through such service that The Principal Academy, the Archdiocese of New York and the Diocese of Brooklyn are carrying out their mission to educate the urban poor."

On April 15, 2010, plaintiff signed the letter agreement, indicating that he accepted the appointment as a Fellow and returned the letter to The Principal Academy.

In July 2010, plaintiff commenced work as an Assistant Principal at the Academy of Saint Dorothy in Staten Island, New York, receiving a salary of \$50,000.00. In June 2011 plaintiff

completed all of the requirements of the training program and received a diploma from St. John's University in September 2011. Plaintiff asserts that he applied for administrative positions with the Archdiocese of New York and the Diocese of Brooklyn but did not receive any offer of employment. Plaintiff also states that based upon the promises of employment from the defendant, he resigned from his teaching position at Mount Saint Michael Academy.

Plaintiff subsequently commenced the instant action on August 2, 2012. The first cause of action of the complaint asserts that the January 28, 2010 letter agreement constituted a binding contract, which defendants breached by failing to provide the plaintiff with an administrative position within the Archdiocese of New York and the Diocese of Brooklyn. The complaint also contains a second cause of action sounding in fraud.

Defendant now moves to dismiss the complaint pursuant to CPLR 3211(a)(1), (a)(5) and (a)(7). In support of the motion, defendant contends, *inter alia*, that the January 28, 2010 letter does not constitute a valid contract. Defendant argues that the letter agreement does not contain essential and material terms, which are necessary to have an enforceable contract. In opposition, plaintiff argues that a enforceable agreement was created when plaintiff countersigned the letter on April 15, 2010. Plaintiff asserts that the requirement in the January 28, 2010 letter that plaintiff work for three years as an administrator within the Archdiocese of New York and the Diocese of Brooklyn was legally binding on both parties.

A motion to dismiss pursuant to CPLR 3211(a)(1) will be granted only if the documentary evidence resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff's claim. (*Cives Corp. v George A. Fuller Co., Inc.*, 97 AD3d 713, 714 [2d Dept 2012]; *Fontanetta v John Doe 1*, 73 AD3d 78, 83 [2d Dept 2010].) In order for evidence submitted under a CPLR 3211(a)(1) motion to qualify as "documentary evidence," it must be "unambiguous, authentic, and undeniable." (*Granada Condominium III Assn. v Palomino*, 78 AD3d 996, 996-997 [2d Dept 2010].)

To maintain an action for breach of contract, a party must establish (i) the existence of a contract, (ii) the plaintiff's performance, (iii) the defendant's breach of that contract and (iii) damages sustained by the plaintiff as a result of the defendant's breach. (see *Kuzma v Protective Ins. Co.*, 104 AD3d 820, 821 [2d Dept 2013]; *Harris v Seward Park Hous. Corp.*, 79

AD3d 425, 426 [1st Dept 2010]; *JP Morgan Chase v J.H. Elec. of N.Y., Inc.*, 69 AD3d 802, 803 [2d Dept 2010].) Moreover, a party seeking to prove breach of an employment contract must establish the identity of the parties and the terms of employment, which include the commencement date, the duration of the contract and the salary. (*Elite Tech. N.Y. Inc. v Thomas*, 70 AD3d 506, 508 [1st Dept 2010]; *Durso v Baisch*, 37 AD3d 646, 647 [2d Dept 2007].) Further, where "an agreement is not reasonably certain in its material terms, there can be no legally enforceable contract." (*Cobble Hill Nursing Home, Inc. v Henry & Warren Corp.*, 74 NY2d 475, 482 [1989]; *Edelman v Poster*, 72 AD3d 182, 184 [1st Dept 2010]; *Matter of Orange and Rockland Util., Inc. v Assessor of Town of Haverstraw*, 304 AD2d 668, 670 [2d Dept 2003].)

In the case at bar, the Letter Agreement clearly constitutes documentary evidence sufficient to support a motion to dismiss pursuant to CPLR 3211(a)(1). (see *Sands Point Partners Private Client Group v Fidelity Natl. Tit. Ins. Co.*, 99 AD3d 982, 984 [2d Dept 2012]; *Kopelwitz & Co., Inc., v Mann*, 83 AD3d 793, 797 [2d Dept 2011].) A review of the January 28, 2010 Letter Agreement establishes that there was no enforceable contract between plaintiff and defendant. Indeed, according to the letter, after plaintiff completes his one-year as an Assistant Principal, he agrees to serve for an additional three-year period as a principal or administrator in the Archdiocese of New York or the Diocese of Brooklyn. There is nothing in the Letter Agreement that requires defendant to place the plaintiff in such a position or to find a position for him. This clearly differs from that portion of the Letter Agreement which states that "[c]ommencing in July 2010, you will be assigned to serve for a one-year period as an as an Assistant Principal in the Archdiocese of New York or the Diocese of Brooklyn." (emphasis added.) The wording regarding the additional three-year period clearly puts the obligation on the plaintiff, not the defendant.

Additionally, the Letter Agreement cannot be considered a valid employment contract since it is lacking material and essential terms of employment as discussed above.

Thus, a plain reading of the Letter Agreement demonstrates conclusively that defendant did not agree to find plaintiff a position as a principal or administrator for a three-year period, and, therefore, defendant's motion pursuant to CPLR 3211(a)(1) to dismiss the first cause of action for breach of contract is granted.

Inasmuch as the second cause of action for fraud arises out

of the facts and circumstances identical to the cause of action for breach of contract, it must be dismissed as well. (see *Kleinerman v 245 E. 87 Tenants Corp.*, 74 AD3d 448, 449 [1st Dept 2010].) In any event, a party may not establish fraudulent intent solely from the non-performance of a future event. (*Abelman v Shoratlantic Dev. Co.*, 153 AD2d 821, 822 [2d Dept 1989]; *Brown v Lockwood*, 76 AD2d 721, 731 [2d Dept 1980].)

Accordingly, this motion by defendant to dismiss the complaint pursuant to CPLR 3211 is granted, and the action is dismissed.

Dated: October 4, 2013

AUGUSTUS C. AGATE, J.S.C.