

Mooradian v St. Francis Preparatory Sch.

2015 NY Slip Op 30598(U)

March 20, 2015

Sup Ct, Queens County

Docket Number: 702109/2014

Judge: Orin R. Kitzes

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY
COMMERCIAL DIVISION

Present: HONORABLE ORIN R. KITZES IA Part 17
Justice

-----x
FELICIA MOORADIAN, Index
Number 702109/ 2014
Plaintiff(s),
-against- Motion
Date September 15, 2014
ST. FRANCIS PREPARATORY SCHOOL, BROTHER
LEONARD CONWAY and PATRICK MCLAUGHLIN, Motion Seq. No. 2
Defendants.
-----x

The following papers numbered 1 to 8 read on this motion by defendants to dismiss the amended complaint pursuant to CPLR 3211(a)(7).

	Papers Numbered
Notice of Motion - Affidavits - Exhibits.....	1-4
Answering Affidavits - Exhibits.....	5-6
Reply Affidavits.....	7-8

Upon the foregoing papers it is ordered that the motion is determined as follows:

This is an action to recover damages arising from the alleged sexual harassment of plaintiff by her teachers Christopher Mendolia (Mendolia) and Fernando Sicilia (Sicilia) while attending St. Francis Preparatory School (St. Francis Prep) from 2005 through 2009. Defendants Brother Leonard Conway and Patrick McLaughlin were the principal and assistant principal, respectively, of St. Francis Prep during the relevant period of time. On March 28, 2014, plaintiff commenced the within action against defendants alleging a cause of action for fraudulent inducement. On May 30, 2014, defendants made a pre-answer motion to dismiss the complaint for failure to state a cause of action pursuant to CPLR 3211(a)(7), which was granted without opposition in an order of this court.

FILED
MAR 24 2015
COUNTY CLERK
QUEENS COUNTY

dated June 26, 2014. Meanwhile, on June 20, 2014, plaintiff amended the complaint wherein she added a cause of action for breach of contract against St. Francis Prep.

On a motion to dismiss pursuant to CPLR 3211(a)(7), the court must accept the facts alleged by the plaintiff as true and liberally construe the complaint, according it the benefit of every possible favorable inference (see *Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 406, 414 [2001]). The role of the court is to "determine only whether the facts as alleged fit within any cognizable legal theory" (*id.*).

Applying these principles to the case at bar, the court finds that the branch of defendants' motion to dismiss the first cause of action for fraudulent inducement against them is granted. To state a cause of action for fraud, a plaintiff must allege that a person knowingly misrepresented a material fact, upon which the plaintiff justifiably relied, resulting in damages (see *Fromowitz v W. Park Assoc., Inc.*, 106 AD3d 950 [2013]). A fraud cause of action, where as here, may be predicated on acts of concealment where the defendant had a duty to disclose material information (see *Swersky v Dreyer & Traub*, 219 AD2d 321, 326 [1996]). Thus, an omission does not constitute fraud unless there is a fiduciary relationship between the parties (see *SNS Bank v Citibank*, 7 AD3d 352 [2004]). Here, plaintiff's fraudulent inducement cause of action is based on defendants' alleged failure to disclose their knowledge about prior incidents of sexual harassment of students by Mendolia and Sicilia to plaintiff, parents, former students, alumni, prospective students and their parents, or law enforcement officials. The amended complaint further alleges that plaintiff justifiably relied on defendants' misrepresentations of campus safety, faculty fitness and trustworthiness, and a nurturing school environment when she decided to enroll and continue her education at St. Francis Prep, resulting in pecuniary losses such as expenses for psychological treatment and counseling and fees for the driver's education program. Even assuming plaintiff has pleaded fraud with the requisite particularity and that sufficient pecuniary losses are alleged, her fraudulent inducement claim must fail because there is no allegation of the existence of a fiduciary relationship between plaintiff and defendants.

Next, the court will address that branch of the motion to dismiss the second cause of action for breach of contract against St. Francis Prep. The elements of a breach of contract cause of action are the existence of a contract, the plaintiff's performance pursuant to the contract, the defendant's breach of his or her contractual obligations, and damages resulting from the breach (see *Dee v Rakower*, 112 AD3d 204, 208-209 [2013]). In this case, the

amended complaint alleges that an implied contract existed between plaintiff and St. Francis Prep. An implied contract exists between a school and its students such that if a student complies with the terms prescribed by the school, he or she will obtain the degree which he or she sought (see *Clogher v New York Med. Coll.*, 112 AD3d 574 [2013]; *Vought v Teachers Coll., Columbia Univ.*, 127 AD2d 654 [1987]). The essence of the implied contract is that an academic institution must act in good faith in its dealings with its students (*id.*). The rights and obligations of the parties as contained in the school's bulletins, circulars, and regulations made available to the student become a part of this contract (*id.*). A student must identify specific language in the school's bulletins, circulars, catalogues, and handbooks which establishes the particular contractual right or obligation alleged by the student in order to make out an implied contract claim (see *Keefe v New York Law School*, 25 Misc 3d 1228[A] [Sup Ct, New York County 2009]). Here, plaintiff's breach of implied contract cause of action is predicated on St. Francis Prep's alleged failure to comply with its obligations as set forth in the school's mission statement and faculty handbook. Specifically, the amended complaint alleges that St. Francis Prep breached its implied contract with plaintiff in which St. Francis Prep, its officials, and faculty were obligated by the terms of the St. Francis Prep mission statement and faculty handbook to:

"(1) treat students (including Plaintiff) with respect, integrity and dignity, (2) create a school environment filled with, inter alia, respect and integrity, (3) not intentionally expose students (including Plaintiff) to embarrassment, disparagement, or abusive language, (4) not use professional relationships with students (such as Plaintiff) for private advantage, and (5) not create, foster, or exacerbate conditions harmful to students' (including Plaintiff's) ability to learn, or to their health and safety."

Accepting the allegations of the amended complaint as true, the court finds that plaintiff has sufficiently pleaded a cause of action for breach of contract against St. Francis Prep.

Even if an implied contract exists between plaintiff and St. Francis Prep, defendants argue, however, that the damages sought by plaintiff are not recoverable. Generally, to recover damages on a breach of contract claim, the plaintiff must plead those damages which are the direct and proximate consequence of the breach (see *Rose Lee Mfg. v Chemical Bank*, 186 AD2d 548 [1992]). In other words, "the damages may not be merely speculative, possible or imaginary, but must be reasonably certain and directly traceable to

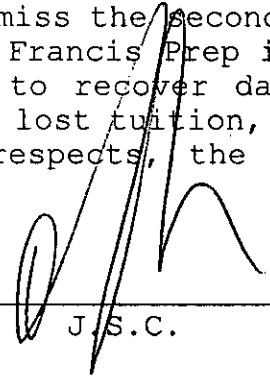
the breach, not remote or the result of other intervening causes" (see *Kenford Co. v County of Erie*, 67 NY2d 257, 261 [1986]). Here, the amended complaint alleges that plaintiff seeks damages for "lost tuition and other school-related expenses, severe emotional distress and pain and suffering, medical care costs, and costs incurred for necessary counseling." Plaintiff may not recover damages for her alleged emotional distress and pain and suffering because "absent a duty upon which liability can be based, there is no right of recovery for mental distress resulting from the breach of a contract-related duty" (see *Rakylar v Washington Mut. Bank*, 51 AD3d 995 [2008]). As previously discussed, there is no allegation of a fiduciary relationship between plaintiff and St. Francis Prep. In addition, plaintiff's contention that St. Francis Prep, a school, owed a special duty to plaintiff, a student, because it stood in loco parentis to her is unavailing because there is no basis for establishing such a duty in the contractual relationship between plaintiff and St. Francis Prep and, in any event, plaintiff did not allege in the amended complaint that St. Francis Prep stood in loco parentis to her (see e.g. *Johnson v Jamaica Hosp.*, 62 NY2d 523 [1984]). Furthermore, the only consequential damages flowing from the alleged failure of St. Francis Prep to comply with its contractual obligations as a result of the alleged sexual harassment of plaintiff by Mendolia and Sicilia would be medical care and counseling costs. It cannot be said that lost tuition and other school-related expenses were a natural and probable result of the claimed breach, particularly given that plaintiff did not allege in the amended complaint that she paid tuition and other school-related expenses but did not receive an education and obtain a degree from St. Francis Prep as a result of the alleged sexual harassment by Mendolia and Sicilia. Therefore, this court finds that the branch of the motion to dismiss so much of the breach of contract cause of action seeking to recover damages for emotional distress and pain and suffering and for lost tuition and other school-related expenses is granted.

Finally, that branch of the motion seeking costs and fees against plaintiff for engaging in frivolous conduct by amending the complaint after defendants made a motion to dismiss, thereby causing defendants to make a second motion to dismiss, pursuant to 22 NYCRR 130-1.1(c)(2) is denied. The court, in its discretion, may award reasonable costs or financial sanctions against an attorney or party resulting from frivolous conduct (22 NYCRR 130-1.1[a]). Frivolous conduct is defined as conduct that is (1) completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law, (2) undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another, or (3) asserts material factual statements that are false

(*id.*). To determine whether conduct is frivolous, the court must consider, among other issues, the circumstances under which the conduct took place, including the time available for investigating the legal or factual basis of the conduct, and whether the conduct was continued when its lack of legal or factual basis was apparent, or should have been apparent, or was brought to the attention of counsel or the party (*id.*). Here, there is no evidence in the record indicating that plaintiff's conduct was done in bad faith primarily to delay or prolong the resolution of the litigation or to harass or maliciously injure defendants or that plaintiff's conduct was otherwise frivolous within the meaning of 22 NYCRR 130-1.1(c)(2). Therefore, under the circumstances of this case, the court finds that the imposition of costs and fees against plaintiff for frivolous conduct pursuant to 22 NYCRR 130-1.1(c)(2) is unwarranted.

Accordingly, the branch of the motion to dismiss the first cause of action for fraudulent inducement against defendants is granted. That branch of the motion to dismiss the second cause of action for breach of contract against St. Francis Prep is granted only to the extent that plaintiff seeks to recover damages for emotional distress and pain and suffering, lost tuition, and other school-related expenses. In all other respects, the motion is denied.

Dated: March 20, 2015



J.S.C.

FILED
 MAR 24 2015
 COUNTY CLERK
 QUEENS COUNTY