

Jeffers v American Univ. of Antigua

2016 NY Slip Op 31692(U)

August 3, 2016

Supreme Court, New York County

Docket Number: 153386/12

Judge: Joan A. Madden

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

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RAHMAN ISHMAEL JEFFERS, ROSALENA
VELAZQUEZ, CARLA BENJAMIN, GEORGE MAFWIL,
LYNDA BEDEAU, OLUWABUSAYO ALAKE,
OPHALYN GARIANDO, TRICIA GUARIN, ANGELA
PUGLIESI, TODD PEREZ, SHALINI TIWARI,
BELEENA KOSHY, TODD PEREZ, SHALINI TIWARI,
DWAYNA MORRIS, STEPHANIE VEILLARD,
RODLANDE CENAFILS, ABRAHAM VARGHESE
and RUSLAN BERDICHEVSKY,

INDEX NO. 153386/12

Plaintiffs,

-against-

AMERICAN UNIVERSITY OF ANTIGUA, AMERICAN
UNION OF ANTIGUA and GCLR, LLC,

Defendants.

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JOAN A. MADDEN, J.:

Defendants move pursuant to CPLR 3126 for discovery sanctions against plaintiffs precluding them from offering any further evidence in support of their remaining cause of action for breach of contract. Defendants also move for an order permitting them file a second motion for summary judgment. Plaintiffs oppose the motion and assert that they have complied with defendants' discovery requests, discovery is not completed, defendants have not been prejudiced and triable issues of fact make summary judgment "an exercise in futility."

This is an action by 17 former nursing students seeking to recover their tuition, costs and damages from defendant American University of Antigua, which is located in the Caribbean island nation of Antigua. The complaint originally included causes of action for fraud, negligent misrepresentation, unjust enrichment and breach of contract, based on defendants' alleged

misrepresentations that graduates of the University would be educationally qualified to take the National Council License Examination for Registered Nurses in the United States, and upon passing that examination, enroll for one additional year in the Registered Nurse Completion Program at Lehman College of the City University of New York, and graduate with a Bachelor of Sciences Degree in Nursing. In January 2013, defendants moved to dismiss the complaint on the ground of forum non conveniens, and for summary judgment. On March 12, 2014, this Court issued a decision and order denying dismissal based on forum non conveniens, and denying summary judgment as premature. Defendants appealed and on February 5, 2015, the Appellate Division First Department modified to the extent of granting summary judgment dismissing all causes of action with the exception of the breach of contract claim.

In the meanwhile, on May 30, 2014, defendants moved by order to show cause to stay all discovery pending the determination of their appeal (motion seq. no. 002). On July 11, 2014, this Court issued an interim order staying depositions but ordering document discovery to proceed. On September 18, 2014, this Court issued a final order denying defendants' motion to stay discovery, noting that the appeal was expected to be argued in the near future" and since "the status of the appeal will be considered prior to ordering depositions, this motion is denied without prejudice to renewal if circumstances warrant."

After the February 5, 2015 decision on the appeal, the court held a preliminary conference on February 26, 2015, and issued an order directing that demands for discovery and inspection be served by April 10, 2015 with responses served by June 10, 2015, and that additional interrogatories or other written discovery demands be served by August 3, 2015 with responses by October 31, 2015. On April 15, 2015, while defendants served interrogatories and document

requests on plaintiffs, plaintiffs did not serve any discovery demands on defendants. On November 5, 2015, the court issued a compliance conference order directing plaintiffs to respond to defendants' April 2015 discovery demands within 30 days or face preclusion.

On January 21, 2016, the parties appeared for a status conference and defendants made an oral request for permission to file a second summary judgment motion. Defendants argued that no further discovery was needed for the determination of summary judgment, basing their request in part on plaintiffs' alleged failure to comply with their demands for document discovery. Defendants' request was granted only to "the extent of permitting defendants to make a motion for sanctions including preclusion with respect to discovery issues," which "may also include the basis for defendants' request to make a summary judgment motion notwithstanding that discovery."

As noted above, defendants are now moving for an order of preclusion based on plaintiffs' alleged discovery violations and for authorization to file a second summary judgment motion. At oral argument, defendants requested that in the event the court permitted their summary judgment motion to proceed and the motion was ultimately denied, they would reserve their right to depose plaintiffs. Also at oral argument, plaintiffs requested permission to serve interrogatories on defendants and agreed not to request depositions.

In support of the instant motion to preclude, defendants object that the responses from some plaintiffs were untimely and that all responses, including the timely responses, were "incomplete and deficient." As to the timeliness issue, defendants acknowledge that in early December 2015, plaintiffs Jeffers, Bedeau, Tiwari, Perez, Velaquez, Guarin, Benjamin, Gariando and Veillard responded to defendants' 2015 discovery demands. Defendants also acknowledge

that on December 14 and 21, 2015, plaintiffs Pugliese, Vanghese and Cenafils served responses to defendants' document requests and interrogatories. Defendants assert that five plaintiffs, Mafwil, Alaka, Koshy, Morris and Berdichevsky, have not provided any responses, and as a result, the claims of those five plaintiffs should be "stricken."

Defendants concede that the discovery responses served in early December 2015 in connection with the claims of plaintiffs Jeffers, Bedeau, Tiwari, Perez, Velaquez, Guarin, Benjamin, Gariando and Veillard, were served within the time frame directed in the Court's November 5, 2015 order. Although the responses served by Pugliese, Vanghese and Cenafils in mid to late December 2015, were untimely and the court does not condone the delay, since the delay was minimal and defendants have failed to establish any prejudice from the delay, preclusion based on untimeliness is not warranted. Plaintiffs Mafwil, Morris and Kosky assert that they provided documents to defendants sometime in December 2015 and copies of those documents are annexed to plaintiffs' opposition papers. Although defendants deny receiving those documents, given the responses by Mafwil, Morris and Kosky, and defendants' failure to establish prejudice from the delay, preclusion on the grounds of untimeliness is denied. However, since it is undisputed that neither Alake nor Berdichevsky has responded to defendants' interrogatory and document demands, defendants' motion to preclude is granted as to those plaintiffs and Alake and Berdichevsky are precluded from offering any evidence.

Turning to defendants' objections to the substance of plaintiffs' discovery responses, since plaintiffs Jeffers, Bedeau, Tiwari, Perez, Velaquez, Guarin, Benjamin, Gariando, Veillard, Pugliese, Vanghese, Cenafils, Mafwil, Morris and Kosky, have taken the position that they complied with defendants' discovery demands, and in light of defendants' objections and upon

review of plaintiffs' responses, defendants' motion to preclude is granted to the extent that those plaintiffs are precluded from introducing any documentation not provided to date or asserting additional claims for damages not detailed in their responses to defendants' interrogatories.

As to plaintiffs' request to serve interrogatory demands, defendants object that plaintiffs are responsible for the delays in conducting discovery. Part of the delay, however, is attributable to defendants' first motion for summary judgment, defendants' appeal and defendants' motion to stay discovery pending the determination of the appeal. Moreover, defendants have not established any prejudice if plaintiffs' request is granted. Thus, plaintiffs's request is granted and plaintiffs shall be permitted to serve interrogatory demands within 30 days from the date of this decision and order, and defendants shall respond within 30 days of receipt of the interrogatories.

Finally, the branch of defendants' motion for permission to serve a second summary judgment motion is granted on the condition that such motion is made only after defendants serve legally sufficient responses to plaintiffs' interrogatories and on condition that defendants shall not be permitted to make an additional motion for summary judgment. In the event defendants move for summary judgment and such motion is denied, they shall be permitted to take plaintiffs' depositions, provided defendants have complied with the foregoing conditions.

Accordingly, it is

ORDERED that defendants' motion to preclude is granted to the extent that plaintiffs Jeffers, Bedeau, Tiwari, Perez, Velaquez, Guarin, Benjamin, Gariando, Veillard, Pugliese, Vanghese, Cenafils, Mafwil, Morris and Kosky are precluded from introducing any documentation not provided to date or asserting additional claims for damages not detailed in their responses to defendants' interrogatories; and it is further.

ORDERED that plaintiffs Alake and Berdichevsky are precluded from offering any evidence; and it is further

ORDERED that plaintiffs shall serve interrogatory demands within 30 days from the date of this decision and order, and defendants shall respond within 30 days of receipt of the interrogatories; and it is further

ORDERED that defendants shall be permitted to serve a second summary judgment motion on the condition that such motion is made only after defendants have served legally sufficient responses to plaintiffs' interrogatories and on condition that defendants shall not be permitted to make an additional motion for summary judgment; and it is further

ORDERED that in the event defendants move for summary judgment and such motion is denied, they shall be permitted to take plaintiffs' depositions, provided defendants comply with the conditions in the immediately preceding paragraph; and it is further

ORDERED that the parties are directed to appear for a status conference on October 13, 2016 at 9:30 a.m., in Part 11, Room 351, 60 Centre Street.

DATED: August 3, 2016

ENTER:



HON. JOANA A. MADDEN
J.S.C.