

Thomson v Watchtower Bible and Tract Socy. of N.Y., Inc.
2018 NY Slip Op 33317(U)
December 18, 2018
Supreme Court, Kings County
Docket Number: 523758/17
Judge: Wayne P. Saitta
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At an IAS Term, Part 29 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 18th day of December, 2018.

P R E S E N T:

HON. WAYNE P. SAITTA,

Justice.

-----X

ANDREW THOMSON,

Plaintiff,

- against -

Index No. 523758/17

WATCHTOWER BIBLE AND TRACT SOCIETY
OF NEW YORK, INC.,

Defendant.

-----X

The following e-filed papers read herein:

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and
Affidavits (Affirmations) Annexed _____

Opposing Affidavits (Affirmations) _____

Reply Affidavits (Affirmations) _____

Memorandum of Law _____

Papers Numbered

21 35

24 37

39

22

Upon the foregoing papers, in this action by plaintiff Andrew Thomson (plaintiff) against defendant Watchtower Bible and Tract Society of New York, Inc. (Watchtower), Watchtower moves, under motion sequence number one, for an order, pursuant to CPLR 3211 (a) (2), (5), and (7), dismissing plaintiff's amended verified complaint based upon the grounds of lack of subject matter jurisdiction, lack of capacity to sue, collateral estoppel, and failure to state of cause of action. Plaintiff moves, under motion sequence number two, for

an order, pursuant to CPLR 3025 (b), granting him leave to further amend his amended complaint in the form annexed to his motion.

Factual and Procedural Background

Watchtower is a non-profit corporation organized under the laws of the State of New York with offices in Patterson, New York. Watchtower's primary corporate purpose is religious and includes supporting the faith of Jehovah's witnesses. Watchtower is the top organizational body of Jehovah's Witnesses.

In the late 1940s, the Governing Body of Jehovah's Witnesses, which is the highest ecclesiastic body of Jehovah's Witnesses, appointed the New World Bible Translation Committee to prepare a translation of the Holy Scriptures from the original Hebrew, Aramaic, and Greek languages into English. The entire work of the New World Bible Translation Committee was released in six volumes between the years 1950 to 1960 under the title "New World Translation of the Holy Scriptures." Under the Governing Body of Jehovah's Witnesses' direction, revised editions of the New World Translation of the Holy Scriptures were released in 1984 and 2013.

Non-party Watch Tower Bible and Tract Society of Pennsylvania (WTBTSPA) owns the copyright to the New World Translation of the Holy Scriptures. Watchtower prints, publishes, and distributes the New World Translation of the Holy Scriptures for use by the general public and the congregations of Jehovah's Witnesses worldwide. The New World

Translation of the Holy Scriptures is currently available, in whole or in part, in more than 160 languages.

Plaintiff is an Australian citizen, who is a descendant of Australia's Aborigines of Tasmania. Plaintiff personally researches linguistics, history, and anthropology. For many years, plaintiff was involved in an Australian legal proceeding known as the Native Title Act proceeding.

Plaintiff has repeatedly contacted branch offices of Jehovah's Witnesses in Australia and the United States, requesting permission to communicate directly with the translators of the New World Translation of the Holy Scriptures. Plaintiff first had discussions with Watchtower staff in Australia and then began writing letters to Watchtower's New York office. Plaintiff requested that the New World Bible Translation Committee members be made available to give expert testimony and evidence before the Australian Tribunal of Aborigines in the Native Title Act proceeding and to hear his complaints about cross-references provided for Isaiah 46:11. The New World Bible Translation Committee is no longer in existence.

On March 12, 2012, plaintiff brought an action for breach of contract, tortious interference with contract, and fraud against Watchtower, WBTBSPA, the New World Bible Translation Committee, and Don Adams, who was then the president of WBTBSPA (*Thomson v New World Bible Translation Comm.*, Sup Ct, Kings County, index No. 5656/12) (the first action). Plaintiff's fraud claim in the first action alleged that there was fraud based

on the fact that the back page of each copy of the New World Translation of the Holy Scriptures contained the text, "Would you welcome more information? Write Jehovah's Witnesses at the appropriate address below," followed by addresses for offices in more than 100 countries. Plaintiff claimed that when he wrote seeking information about the process of translating the New World Translation of the Holy Scriptures, he was not given the information sought by him.

By a decision and order dated April 3, 2013, the court dismissed the first action based upon the ground that plaintiff's complaint failed to state any viable cause of action. The court, in dismissing plaintiff's fraud claim in the first action, determined that there was no material fact that plaintiff justifiably relied upon, and no damages sustained by plaintiff. On April 25, 2013, plaintiff filed a notice of appeal with respect to the April 3, 2013 order, but did not perfect his appeal in a timely manner.

On October 18, 2013, plaintiff filed a second action against Watchtower, the New World Bible Translation Committee, and Don Adams for breach of contract and fraud. The second action stemmed from the same purported offer on the back page of each copy of the New World Translation of the Holy Scriptures inviting readers to contact their local branch office if they wanted additional information and the failure by Watchtower, the New World Bible Translation Committee, and Don Adams to provide him with information about the process of translating the New World Translation of the Holy Scriptures (*Thomson v New World Bible Translation Comm.*, Sup Ct, Kings County, index No. 18571/13) (the second

action). By an order dated March 6, 2014, the court granted a motion by Watchtower, the New World Bible Translation Committee, and Don Adams to dismiss plaintiff's complaint against them in the second action based upon the grounds that it failed to state a cause of action upon which relief could be granted and that the same legal issues were already fully adjudicated between the parties and determined in the first action. The dismissal of the second action was affirmed by the Appellate Division, Second Department (*Thomson v New World Bible Translation Comm.*, 127 AD3d 731 [2d Dept 2015], *lv denied* 26 NY3d 902 [2015]).

On December 11, 2017, plaintiff, pro se,¹ filed this action, purporting to allege a sole cause of action for fraud as against Watchtower. Plaintiff amended his original complaint by an amended complaint filed on December 15, 2017. Plaintiff alleges that there was a fraud committed upon him by Watchtower on the basis that the 1984 revision of the New World Translation of the Holy Scriptures removed the signed New World Bible Translation Committee name from the foreword of its online version, and that the New World Bible Translation Committee's name was made to reappear on the foreword to the 2013 revision of the New World Translation of the Holy Scriptures.

Plaintiff requests an order that directs Watchtower to restore the signed New World Bible Translation Committee name to the foreword of its 1984 New World Translation of the

¹By a Consent to Change Attorneys dated July 21, 2018, plaintiff, pro se, has substituted the Law Offices of Andrew J. Spinell, LLC, as his attorney. All papers relevant to this motion, however, were prepared by plaintiff, pro se.

Holy Scriptures online. Plaintiff also requests an order requiring Watchtower to rename the committee that worked on the 2013 revision of the New World Translation of the Holy Scriptures to clarify that it is not the same translation committee that was responsible for the 1984 edition of the New World Translation of the Holy Scriptures. In addition, plaintiff seeks damages because an article that he submitted to the Journal of Law, Religion and State was not published for the alleged reason that Watchtower's website did not refer to the New World Bible Translation Committee's work in the electronic version of the 1984 edition of the New World Translation of the Holy Scriptures.

Plaintiff claims that Watchtower continues to falsely represent that the 2013 revision of the New World Translation of the Holy Scriptures was authored by the New World Bible Translation Committee, and that this constitutes a fraud. Plaintiff asserts that Watchtower fraudulently misappropriated the name of the New World Bible Translation Committee in the 2013 revision of the New World Translation of the Holy Scriptures, negatively impacting the 217 million genuine print versions of the 1984 edition of the New World Translation of the Holy Scriptures distributed in 100 nations.

On December 29, 2017, Watchtower filed its instant motion. On March 12, 2018, plaintiff filed his instant motion.

Discussion

"In considering a motion to dismiss pursuant to CPLR 3211 (a) (7), the court is required to accept the facts as alleged in the complaint as true, accord the plaintiff the benefit

of every favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*Cruciata v O'Donnell & Mclaughlin, Esqs.*, 149 AD3d 1034, 1034-1035 [2d Dept 2017]; *see also* CPLR 3026; *Leon v Martinez*, 84 NY2d 83, 87-88 [1994]; *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]; *Rovello v Orofino Realty Co.*, 40 NY2d 633, 634 [1976]). However, “bare legal conclusions as well as factual claims flatly contradicted by the record are not entitled to any such consideration” (*Cruciata*, 149 AD3d at 1035, quoting *Everett v Eastchester Police Dept.*, 127 AD3d 1131, 1132 [2d Dept 2015], *lv denied* 26 NY3d 911 [2015]; *see also Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 141 [2017]; *Simkin v Blank*, 19 NY3d 46, 52 [2012]; *Gillings v New York Post*, __ AD3d __, 2018 NY Slip Op 07413, *2 [2d Dept Nov. 7, 2018]; *Goel v Ramachandran*, 111 AD3d 783, 791 [2d Dept 2013]; *Khan v MMCA Lease, Ltd.*, 100 AD3d 833, 833 [2d Dept 2012]). “Dismissal of the complaint is warranted if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery” (*Connaughton*, 29 NY3d at 142; *see also Mid-Hudson Val. Fed. Credit Union v Quartararo & Lois, PLLC*, 155 AD3d 1218, 1219 [3d Dept 2017], *affd* 31 NY3d 1090 [2018]).

“To allege a cause of action based on fraud, [a] plaintiff must assert ‘a misrepresentation or a material omission of fact which was false and known to be false by defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury’”

(*Connaughton*, 29 NY3d at 142, quoting *Lama Holding Co. v Smith Barney*, 88 NY2d 413, 421 [1996]; see also *Carlson v American Intl. Group, Inc.*, 30 NY3d 288, 310 [2017]; *Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 178 [2011]; *Eurycleia Partners, LP v Seward & Kissel, LLP*, 12 NY3d 553, 559 [2009]; *Ross v Louise Wise Servs., Inc.*, 8 NY3d 478, 488 [2007]; *Channel Master Corp. v Aluminium Ltd. Sales*, 4 NY2d 403, 406-407 [1958]; *Summit Dev. Corp. v Interstate Masonry Corp.*, 140 AD3d 1152, 1153 [2d Dept 2016]; *Lebovits v Bassman*, 120 AD3d 1198, 1198-1199 [2d Dept 2014]). “Each of the foregoing elements must be supported by factual allegations containing the details constituting the wrong sufficient to satisfy CPLR 3016 (b)” (*Cruciata*, 149 AD3d at 1035, quoting *Stortini v Pollis*, 138 AD3d 977, 978 [2d Dept 2016]). Furthermore, with respect to a claim of fraudulent omission, the complaint must allege that the defendant owed a fiduciary duty to the plaintiff to disclose material information and that it failed to do so (see *Mandarin Trading Ltd.*, 16 NY3d at 179; *P.T. Bank Cent. Asia, N.Y. Branch v ABN AMRO Bank N.V.*, 301 AD2d 373, 376 [1st Dept 2003]).

Moreover, “[a] claim rooted in fraud must be pleaded with the requisite particularity under CPLR 3016 (b)” (*Eurycleia Partners, LP*, 12 NY3d at 559). Pursuant to CPLR 3016 (b), “[w]here a cause of action . . . is based upon . . . fraud . . . , the circumstances constituting the wrong [must] be stated in detail” (see *Mandarin Trading Ltd.*, 16 NY3d at 178). Where a cause of action alleging fraud merely recites the elements of fraud and provides “only bare and conclusory allegations, without any supporting detail,” it fails to

satisfy the requirements of CPLR 3016 (b) and must be dismissed (*Stein v Doukas*, 98 AD3d 1024, 1026 [2d Dept 2012]).

Plaintiff claims that Watchtower made a material misrepresentation with respect to the identity of the translation committee of the 2013 revision of the New World Translation of the Holy Scriptures. Plaintiff contends that “professional acumen” required a disclaimer by Watchtower stating that the translation committee for the 2013 revision had no connection to those responsible for the 1984 revision of the New World Translation of the Holy Scriptures. However, there is no fiduciary relationship between Watchtower and plaintiff, nor was there any legal duty running from Watchtower to plaintiff requiring Watchtower to provide information to him about the identity of the translation committee (*see Mandarin Trading Ltd.*, 16 NY3d at 179). Watchtower owed no duty to plaintiff, a member of the general public, with respect to any statement in its foreword as to who translated the Holy Scriptures.

Moreover, “[a] fraud claim is not actionable without evidence that the misrepresentations were made with the intent to deceive” (*Friedman v Anderson*, 23 AD3d 163, 167 [1st Dept 2005]). It cannot be concluded that Watchtower’s statements in its foreword as to who translated the Holy Scriptures were made with the intent to deceive plaintiff or for the purpose of inducing plaintiff to rely upon it (*see Ozelkan v Tyree Bros. Envtl. Services, Inc.*, 29 AD3d 877, 878-879 [2d Dept 2006]).

Plaintiff has also failed to adequately allege any justifiable reliance by him upon a misrepresentation by Watchtower. Plaintiff's reliance upon any statement in the foreword regarding the identity of the translation committee could not be reasonable since the foreword did not name the individual members of the New World Bible Translation Committee in either the 1984 revision or the 2013 revision of the New World Translation of the Holy Scriptures.

Furthermore, a translation or interpretation of the Holy Scriptures and how a religious organization describes its translation of the Holy Scriptures is a matter of religious doctrine. Plaintiff, in comparing the 1984 revision and the 2013 revision of the New World Translation of the Holy Scriptures, criticizes the translation and interpretation of Isaiah 46:11. "The First Amendment forbids civil courts from interfering in or determining religious disputes, because there is substantial danger that the state will become entangled in essentially religious controversies" (*Matter of Congregation Yetev Lev D'Satmar, Inc. v Kahana*, 9 NY3d 282, 286 [2007]). Here, plaintiff's allegations and the relief sought by him involve an impermissible inquiry into religious doctrine² (see *Russian Orthodox Convent Novo-Diveevo, Inc. v Sukharevskaya*, __ AD3d __, 2018 NY Slip Op 08167, *2 [2d Dept Nov. 28, 2018]; *Matter of Congregation Yetev Lev D'Satmar, Inc.*, 9 NY3d at 286; *Matter*

²Watchtower, in its motion, points out that where a complaint seeks determination of a religious dispute, this can serve as a basis for dismissal, pursuant to CPLR 3211 (a) (2), for lack of subject matter jurisdiction.

of *Ming Tung v China Buddhist Assn.*, 124 AD3d 13, 20 [1st Dept 2014], *affd* 26 NY3d 1152 [2016], *rearg denied* 27 NY3d 1029 [2016], *cert denied* __ US __, 137 S Ct 628 [2017]).

Moreover, “reliance on the false representation must result in injury” (*Ambac Assur. Corp. v Countrywide Home Loans, Inc.*, 31 NY3d 569, 580 [2018] [internal quotation marks omitted]; *see also Connaughton*, 29 NY3d at 142). Plaintiff states that he seeks \$1.00 in damages relative to the \$40.00 that he paid to Watchtower for the 1984 version of the New World Translation of the Holy Scriptures. However, “[n]ominal damages are not available when actual harm is an element of the tort,” such as here where injury is a requisite element to sustain a claim for fraud (*Connaughton*, 29 NY3d at 143).

While plaintiff argues that an article written by him was not accepted for publication by the Journal of Law, Religion and State because the New World Translation of the Holy Scriptures was found by the Journal of Law, Religion and State not to be a reliable source, Watchtower is not responsible for any damages regarding plaintiff’s own actions in attempting to use the New World Translation of the Holy Scriptures in his article. “To establish a fraud claim, a plaintiff must demonstrate that a defendant’s misrepresentations were the direct and proximate cause of the claimed losses” (*Friedman*, 23 AD3d at 167). The decision of the editor-in-chief of the Journal of Law, Religion and State not to publish plaintiff’s own work was based upon that journal’s standards and were unrelated to Watchtower. Any damages due to the lack of publication of plaintiff’s article were not proximately caused by any fraud on the part of Watchtower. In addition, “[d]amages are to

be calculated to compensate [a] plaintiff[] for what [he or she] lost because of the [alleged] fraud, not to compensate [him or her] for what [he or she] might have gained” as profits (*Lama Holding*, 88 NY2d at 421; *see also Connaughton*, 29 NY3d at 142).

Plaintiff’s amended complaint contains bare allegations of fraud. Thus, plaintiff has failed to plead fraud with any particularity as required under CPLR 3016 (b). Accepting the facts as alleged in plaintiff’s amended complaint as true and according plaintiff the benefit of every possible favorable inference, the facts as alleged do not allege a cognizable cause of action for fraud (*see Cruciata*, 149 AD3d at 1035; *Wilson v Neighborhood Restore Hous.*, 129 AD3d 948, 949 [2d Dept 2015]). Furthermore, plaintiff’s vague and conclusory allegations fail to state any other cognizable cause of action (*see Cruciata*, 149 AD3d 1034, 1035 [2d Dept 2017]). Thus, plaintiff’s amended complaint must be dismissed (*see CPLR* 3211 [a] [7]).³

³Watchtower also contends that collateral estoppel bars plaintiff’s instant complaint. “Collateral estoppel, or issue preclusion, ‘precludes a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party . . .’” (*Parker v Blauvelt Volunteer Fire Co.*, 93 NY2d 343, 349 [1999], quoting *Ryan v New York Tel. Co.*, 62 NY2d 494, 500 [1984]). The court notes that this is the third lawsuit by plaintiff against Watchtower and that plaintiff raised a claim of fraud in the previous two actions. Plaintiff is precluded from relitigating those issues raised and decided against him in the prior two actions. However, plaintiff has now varied his claims from the prior two actions since, in the prior two actions, plaintiff alleged fraud on the basis that he was not given the information sought by him from the New World Bible Translation Committee, whereas plaintiff now claims that the authors of the 2013 revision of the New World Translation of the Holy Scriptures have no association with the New World Bible Translation Committee and that Watchtower should cease and desist from representing that such 2013 revision was translated by the New World Bible Translation Committee.

Plaintiff, however, in his motion, seeks leave to amend his already amended complaint to assert additional allegations in an effort to state a cognizable cause of action for fraud and avoid dismissal of the instant action. Plaintiff has submitted a proposed amended complaint in order to provide further detail to support his alleged fraud claim.

Plaintiff, in his proposed amended complaint, specifies that he is seeking nominal damages of \$1.00, relative to the \$40.00 that he exchanged to Watchtower for the 1984 book version of the New World Translation of the Holy Scriptures. The proposed amended complaint includes disputes of religious doctrine. In addition, plaintiff refers to Watchtower and the Jehovah's Witnesses interchangeably in his proposed amended complaint. Plaintiff also attempts to clarify his request for relief.

Plaintiff's proposed amended complaint seeks the following relief: (1) that Watchtower restore the 1984 New World Bible Translation Committee's signature to its 1984 online New World Translation of the Holy Scriptures at the conclusion of its foreword; (2) that Watchtower change its 2013 book title from the New World Translation of the Holy Scriptures to the New World English Revision of the Holy Scriptures; (3) that Watchtower/Jehovah's Witnesses change the title of the authors of its 2013 book from the New World Bible Translation Committee to the New World Bible English Revision Committee; and (4) that he be awarded nominal damages of \$1.00 relative to the \$40.00 that he paid to Watchtower for the 1984 book.

“Although leave to amend should be freely given in the absence of prejudice or surprise to the opposing party (*see* CPLR 3025 [b]), the motion should be denied where the proposed amendment is palpably insufficient or patently devoid of merit” (*Vorobeichik v Greenpoint Goldman SM, LLC*, 164 AD3d 866, 866 [2d Dept 2018], quoting *J.W. Mays, Inc. v Liberty Mut. Ins. Co.*, 153 AD3d 1386, 1387 [2d Dept 2017], *lv denied* 30 NY3d 910 [2018]; *see also Santostefano v Middle Country Cent. Sch. Dist.*, 156 AD3d 926, 928 [2d Dept 2017]; *Darby Group Cos., Inc. v Wulforst Acquisition, LLC*, 130 AD3d 866, 867 [2d Dept 2015]; *Marcum, LLP v Silva*, 117 AD3d 917, 917 [2d Dept 2014]; *Longo v Long Is. R.R.*, 116 AD3d 676, 677 [2d Dept 2014]). The additional allegations in the proposed amended complaint fail to cure the deficiencies in plaintiff’s first amended complaint.

Plaintiff has not adequately alleged the requisite elements of a claim for fraud in his proposed amended complaint. The proposed amended complaint fails to sufficiently plead allegations which would support a cause of action for fraud or any other claim (*see* CPLR 3016 [b]; *Connaughton*, 29 NY3d at 142; *Mandarin Trading Ltd.*, 16 NY3d at 178). Thus, the proposed amendment is palpably insufficient and patently devoid of merit. Consequently, plaintiff’s motion for leave to amend his amended complaint must be denied (*see Markowits v Friedman*, 144 AD3d 993, 995 [2d Dept 2016]).

Conclusion

Accordingly, Watchtower's motion to dismiss plaintiff's amended complaint is granted and it is hereby ORDERED that the complaint is dismissed; and it is further,

ORDERED that Plaintiff's motion for leave to further amend his amended complaint is denied.

This constitutes the decision, order, and judgment of the court.

E N T E R,



J. S. C.

HON. WAYNE P. SAITTA
J.S.C.

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