

Browning Sch. v Jamison

2021 NY Slip Op 30701(U)

March 2, 2021

Supreme Court, New York County

Docket Number: 655460/2020

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 14

Justice

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INDEX NO. 655460/2020

THE BROWNING SCHOOL,

MOTION DATE 02/26/2021

Plaintiff,

MOTION SEQ. NO. 002

- v -

LIN JAMISON, STEPHEN JAMISON

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26

were read on this motion to/for DISMISSAL.

The motion by plaintiff to dismiss defendants' second, third, fifth and sixth causes of action is granted.

Background

This case concerns tuition payments and deposits at a private school on the Upper East Side of Manhattan. Annual tuition is \$54,150 and requires an advance deposit of \$7,500. Plaintiff (the school) claims that defendants signed enrollment agreements for each of their children and that these contracts required defendants to submit a withdrawal notification by April 30, 2020 if they wanted to avoid paying the entire tuition for the following year. Plaintiff contends that defendants did not notify plaintiff of their intention to withdraw their children by the deadline and paid the deposits for each child. In July 2020, plaintiff asserts that defendants notified plaintiff for the first time that they were going to withdraw the children from the school and have subsequently refused to pay the tuition.

Defendants counterclaimed and contend that plaintiff has not and is not able to perform under the 2019-2020 and 2020-2021 enrollment agreements because of the pandemic. They claim the offerings are limited and the remote learning provided after the school was shut down for in-person learning in March 2020 has been substandard. Defendants complain that plaintiff has not offered any reduction or discount on its tuition despite the reduced services provided to students. Defendants contend that once they realized that the school would not be able to offer the instruction that defendants expected, they told plaintiff they would not enroll their children for the 2020-2021 academic year.

Defendants bring six counterclaims against plaintiff. The first three relate to tuition paid for the 2019-2020 academic year. They claim that the services provided were not sufficient and breached the enrollment agreement for that year. The remaining three counterclaims essentially seek, at a minimum, return of the deposits (\$7,500 for each child) for the 2020-2021 academic year.

Plaintiff moves to dismiss the second, third, fifth and sixth counterclaims. The second and fifth counterclaims seek relief against plaintiff under an unjust enrichment theory while the third and sixth counterclaims allege a conversion cause of action. All relate to tuition or deposits paid. Plaintiff argues that these causes of action are duplicative and do not state a cause of action. It insists that defendants' claims are straightforward breach of contract (the enrollment agreements) claims and that defendants brought such allegations as their first and fourth counterclaims.

Plaintiff argues that a claim for unjust enrichment cannot stand where there is an enforceable contract. It also maintains that the conversion claims are duplicative of the breach of

contract counterclaims because they do not allege a duty independent of the respective contracts' obligations.

In opposition, defendants claim that they can plead counterclaims in the alternative and that plaintiff does not dispute the sufficiency of the unjust enrichment counterclaims. Defendants argue that the 2020-2021 enrollment contract is in dispute. Defendants also argue that the conversion counterclaims should remain because they have pled the elements of this cause of action.

Discussion

“It is settled that a motion for dismissal pursuant to CPLR 3211(a)(7) must be denied if from the pleadings' four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law. The pleading is to be liberally construed. The court must accept the facts alleged in the pleading as true and accord the opponent of the motion, here defendants, the benefit of every possible favorable inference to determine only whether the facts as alleged fit within any cognizable legal theory” (*Siegmund Strauss, Inc. v East 149th Street Realty Corp.*, 104 AD3d 401, 403, 960 NYS2d 404 [1st Dept 2013] [internal quotations and citations omitted]).

The Court dismisses the counterclaims for unjust enrichment (the second and fifth counterclaims). “The basis of a claim for unjust enrichment is that the defendant has obtained a benefit which in ‘equity and good conscience’ should be paid to the plaintiff. In a broad sense, this may be true in many cases, but unjust enrichment is not a catchall cause of action to be used when others fail. It is available only in unusual situations when, though the defendant has not breached a contract nor committed a recognized tort, circumstances create an equitable obligation running from the defendant to the plaintiff. Typical cases are those in which the

defendant, though guilty of no wrongdoing, has received money to which he or she is not entitled. An unjust enrichment claim is not available where it simply duplicates, or replaces, a conventional contract or tort claim” (*Corsello v Verizon New York, Inc.*, 18 NY3d 777, 790, 944 NYS2d 732 [2012]).

Here, there is no dispute that there is a contract for each year—the enrollment agreements—which govern the parties’ disagreement. While defendants attempt to claim that the 2020-2021 contract is invalid, the Court is unable to read their answer to support such a claim. Defendants’ assertion is that they should get back the \$7,500 deposits because plaintiff failed to meet its obligations under the enrollment contract. In other words, defendants claim that the instruction and extracurricular activities offered by plaintiff constitute a breach of the enrollment agreement and, therefore, they should be entitled to get back their \$7,500 deposit for each child. That is a straightforward breach of contract case and does not support an unjust enrichment counterclaim.

This analysis also applies with respect to the second counterclaim, which alleges unjust enrichment for the 2019-2020 school year. Defendants allege that the lack of in-person instruction and other offerings after March 9, 2020 constitute a breach of plaintiff’s obligations and, therefore, they are entitled to some of the tuition back. As stated above, an unjust enrichment cause of action is not permissible where there is a valid contract. Here, there are two contracts that are the focus of this case, one for each academic year. The Court declines to permit defendants to pursue a “catchall” cause of action.

The Court also dismisses the conversion counterclaims (the third and sixth counterclaims) as duplicative of the breach of contract counterclaims. These causes of action arise from the same subject matter as the breach of contract counterclaims and, therefore, must


be dismissed (*Sebastian Holdings, Inc. v Deutsche Bank, AG.*, 108 AD3d 433, 433, 969 NYS2d 46 [1st Dept 2013]). In fact, both counterclaims for conversion expressly mention the enrollment agreements.

Accordingly, it is hereby

ORDERED that the motion by plaintiff to dismiss the second, third, fifth and sixth counterclaims is granted and plaintiff shall reply to the remaining counterclaims pursuant to the CPLR.

Remote Conference: April 1, 2021 at 10:30 a.m.

3/2/2021
DATE


ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE