

Thomson v Watchtower Bible & Tract Socy. of N.Y., Inc.
2023 NY Slip Op 30090(U)
January 10, 2023
Supreme Court, Kings County
Docket Number: Index No. 523464/2021
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 360 Adams Street, Brooklyn, New York, on the 10th day of January, 2023.

P R E S E N T:

HON. WAYNE P. SAITTA,

Justice.

-----X

ANDREW THOMSON,

Plaintiff,

-against-

Index No.: 523464/2021

Mot. Seq. No. 5

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

Defendant.

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The following e-filed papers read herein:

NYSCEF Doc Nos.:

Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed _____	82, 84-85 _____
Opposing Affidavits (Affirmations) _____	87 _____
Affidavits/ Affirmations in Reply _____	89-91 _____
Defendant’s Memorandum of Law _____	83 _____
Plaintiff’s Surreply _____	94 _____
1984 Edition of the New World Translation of the Holy Scriptures ¹	_____
2013 Edition of the New World Translation of the Holy Scriptures	_____

Upon the foregoing papers, in this action by plaintiff Andrew Thomson (plaintiff), pro se, against defendant Watchtower Bible and Tract Society of New York, Inc. (defendant), defendant moves, under motion sequence number five, for an order, pursuant to CPLR 3211 (a) (2), (3), (4), (5) and (7), dismissing plaintiff’s second amended verified

¹ Plaintiff submitted the 1984 and 2013 editions of these books to the court.

complaint (NYSCEF Doc Nos. 75, 77 and/or 81) on the grounds that plaintiff lacks standing, the second amended complaint fails to state a viable cause of action, the court lacks subject matter jurisdiction, and plaintiff's second amended complaint involves the same parties and issues as plaintiff's 2012, 2013, and 2017 complaints in earlier actions which were dismissed.

Facts and Procedural Background

Defendant is a nonprofit corporation organized under the laws of the State of New York with offices in Patterson, New York. Defendant's primary corporate purpose is the promotion of religion and includes supporting the faith of Jehovah's Witnesses. Defendant 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, a committee without legal form, 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.

Defendant 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 commonly used by the

congregations of Jehovah's Witnesses and is currently available to the general public, in whole or in part, in more than 180 languages.

Plaintiff is an Australian citizen. 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. After contacting staff at the branch office of Jehovah's Witnesses in Australia, plaintiff began a letter writing campaign with the branch office in New York. In 2012, plaintiff wrote to defendant and requested that the New World Bible Translation Committee "consider [his] research with respect to [the] interpretation of certain Biblical passages which differs from that of the . . . New World [Bible] Translation Committee." In 2013, plaintiff requested that defendant forward to the New World Bible Translation Committee an invitation that it appear as an expert witness 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.

This is the fourth action filed by plaintiff against defendant. The first action was filed by plaintiff on March 12, 2012, alleging breach of contract, tortious interference with contract, and fraud against defendant, Watchtower Bible and Tract Society of Pennsylvania (WTBTSPA) (which owns the copyright to the New World Translation of the Holy Scriptures), the New World Bible Translation Committee, and Don Adams (who was then the president of WTBTSPA) (*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 that plaintiff did not sustain any damages. 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.

Plaintiff filed a second action against defendant, the New World Bible Translation Committee, and Don Adams, for breach of contract and fraud on October 18, 2013 (*Thomson v New World Bible Translation Comm.*, Sup Ct, Kings County, index No. 18571/13) (the second action). 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 defendant, 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. By an order dated March 6, 2014, the court granted a motion by defendant, 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]).

Plaintiff's third action was filed by him on December 11, 2017 (*Thomson v Watchtower Bible & Tract Socy. of N.Y., Inc.*, Sup Ct, Kings County, index No. 523758/17) (the third action). It alleged a sole cause of action for fraud as against defendant on the basis that the 1984 revision of the New World Translation of the Holy Scriptures removed the signed name of the New World Bible Translation Committee 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 claimed that defendant's online publication of the 1984 version of the New World Translation of the Holy Scriptures failed to specify that the New World Bible Translation Committee was responsible for the translated text.

Plaintiff requested an order directing defendant to restore the signed the New World Bible Translation Committee name to the foreword of its 1984 New World Translation of the Holy Scriptures online. Plaintiff also requested an order requiring defendant 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 sought damages because an article that he submitted to the Journal of Law, Religion and

State was not published for the alleged reason that defendant'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.

By a decision and order dated February 7, 2019, the court dismissed plaintiff's amended complaint in the third action (*Thomson v Watchtower Bible & Tract Socy. of N.Y., Inc.*, 2018 NY Slip Op 33317[U] [Sup Ct, Kings County 2018]). The court found that there was no allegation that the parties were in a fiduciary relationship or that there otherwise existed a duty to disclose, and there was no allegation that reliance on the alleged misrepresentation was justifiable under the circumstances or that defendant's conduct resulted in damages. That decision and order was affirmed by the Appellate Division, Second Department on October 27, 2021 (*Thomson v Watchtower Bible & Tract Socy. of N.Y., Inc.*, 198 AD3d 996 [2d Dept 2021]).

On September 15, 2021, plaintiff filed the instant action against defendant (NYSCEF Doc No. 1). Plaintiff filed an amended complaint on September 21, 2021 (NYSCEF Doc No. 3).

On October 5, 2021, defendant moved, under motion sequence number one, to dismiss plaintiff's amended complaint (NYSCEF Doc No. 4). On May 5, 2022, defendant, by an amended notice of motion, moved to supplement the record in connection with its motion to dismiss to include the supplemental affirmation of its attorney (NYSCEF Doc No. 64).

On May 8, 2022, plaintiff moved, pursuant to CPLR 3025 (b), for leave to amend his first amended complaint (NYSCEF Doc No. 74). Plaintiff submitted NYSCEF Doc No. 75 in support of his motion.

By a stipulation dated May 13, 2022 (NYSCEF Doc No. 84), plaintiff set forth that NYSCEF Doc No. 75, which was entitled “affidavit in support of motion for leave to amend complaint” contained the allegations that he intended to constitute his operative pleading or the second amended complaint, and defendant accepted plaintiff’s second amended complaint (NYSCEF Doc. No. 75) as the operative pleading. The stipulation, under section 7 (a), states “Doc. No. 75 by the Clerk was returned to [p]laintiff for a correction. Plaintiff corrected/refiled was ‘Received: 05/11/2022,’ is the filing [d]efendant will answer and moreover similarly regards, Doc. 77, exhibit Un., ‘Received: 05/12/2022,’ is what [d]efendant will answer.” Plaintiff then filed another “affirmation in support of motion for leave to amend complaint” (NYSCEF No. 81) and considered it the operative pleading. NYSCEF Doc No. 81 states that it is “corrected,” but it is also dated May 9, 2022 and appears to be the same document as NYSCEF Doc No. 75. Multiple exhibits are included in NYSCEF Doc No. 75 and NYSCEF Doc No. 81, and NYSCEF Doc No. 77 consists of one exhibit.

On May 26, 2022, defendant filed its instant motion under motion sequence number five (NYSCEF Doc No. 82). Defendant addresses its motion to dismiss to plaintiff’s second amended complaint, stating that it does not object to the court accepting any one of the aforementioned three documents as the operative pleading because the arguments in its motion apply equally to all three documents, i.e., NYSCEF Nos. 75, 77 and 81.

Plaintiff, in his second amended complaint, asserts that defendant improperly removed the New World Bible Translation Committee authorship name from the foreword of the online version of the 1984 edition of the New World Translation of the Holy Scriptures. Plaintiff further asserts that defendant had no right to publish the 2013 edition of the New World Translation of the Holy Scriptures and that it is an improper translation which undermines the credibility of the 1984 edition. Plaintiff takes issue with the fact that the 2013 edition states that it was produced by the New World Bible Translation Committee. 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.

Plaintiff's second amended complaint (NYSCEF Doc No. 75 and 81) sets forth a first cause of action for breach of production and publication contract, of which he claims to be a third-party beneficiary, a second cause of action for fraud, and a third cause of action for breach of fiduciary duty. Plaintiff, in his prayer for relief, seeks a judgment requiring defendant to "cease/desist from titling [the 2013 edition] a translation" of Scriptures and to cease/desist from attributing the New World Bible Translation Committee authorship to the 2013 edition. Plaintiff further seeks a judgment directing defendant to restore the signed New World Bible Translation Committee name to the foreword of its 1984 New World Translation of the Holy Scriptures online. Plaintiff also seeks a judgment requiring defendant to rename the committee that worked on the 2013 revision to clarify that it is not the same translation committee responsible for the 1984 edition of the New World Translation of the Holy Scriptures.

Discussion

Defendant, in its instant motion, contends that none of plaintiff's claims state a cognizable cause of action. Defendant also contends that plaintiff lacks standing to bring a breach of contract claim, and that the court lacks subject matter jurisdiction because a translation or interpretation of the Holy Scriptures is a matter of religious doctrine.

Plaintiff, in his opposition papers, states that his second amended complaint is NYSCEF Doc No. 81, filed on May 24, 2022 (NYSCEF Doc No. 87). Plaintiff opposes defendant's motion on the ground that defendant did not annex or file his second amended complaint with NYSCEF. Plaintiff contends that this requires the denial of defendant's motion.

In support of this contention, plaintiff relies upon *Alizio v Perpignano* (225 AD2d 723, 724 [2d Dept 1996]), wherein the Appellate Division, Second Department, denied a motion of the defendants therein because they had failed to attach a copy of the complaint to their motion papers. The Appellate Division, Second Department, observed that there was "no indication that the Supreme Court had otherwise been provided with a copy [of the complaint] prior to its making its determination" and that no copy of the complaint had been included in the record on appeal (*id.*). It, therefore, held that "[u]nder the particular facts of th[at] case, a copy of the complaint was necessary in order to determine the motion" since [w]ithout a copy of the complaint it [wa]s impossible to discern the plaintiff's theories of recovery against the numerous defendants against whom he had] assert[ed] claims" (*id.* at 724-725). It found that the Supreme Court had improperly granted the defendants' motion "[s]ince the defendants failed to provide the Supreme Court with the very pleading

necessary to establish the validity of their defenses” (*id.* at 725). It cited to CPLR 2214 (c), which at the time of that decision and order, dated March 25, 1996, had not yet been amended (*id.*).

CPLR 2214 (c), as amended in July 2014 (L 2014, ch 109, § 1, eff July 22, 2014), currently expressly provides as follows:

“Furnishing papers to the court. Each party shall furnish to the court all papers served by that party. The moving party shall furnish all other papers not already in the possession of the court necessary to the consideration of the questions involved. Except when the rules of the court provide otherwise, *in an e-filed action, a party that files papers in connection with a motion need not include copies of papers that were filed previously electronically with the court, but may make reference to them, giving the docket numbers on the e-filing system.* Where such papers are in the possession of an adverse party, they shall be produced by that party at the hearing on notice served with the motion papers. Only papers served in accordance with the provisions of this rule shall be read in support of, or in opposition to, the motion, unless the court for good cause shall otherwise direct” (emphasis added).

Here, this is an e-filed action and there is no court rule which provides differently from CPLR 2214 (c). Plaintiff’s second amended complaint was previously electronically filed with the court as NYSCEF Doc Nos. 75, 77, and 81, and defendant made reference to these papers in its motion papers by giving the document numbers on the e-filing system (*see* CPLR 2214 [c]; *Keech v 30 E. 85th St. Co., LLC*, 154 AD3d 504, 504 [1st Dept 2017]). The second amended complaint was thus available to the parties and the court. Thus, contrary to plaintiff’s argument, defendant’s papers may properly be read in support of its instant motion (*see* CPLR 2214 [c]).

The court, therefore, must address the merits of defendant’s motion. “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*, 166 AD3d 584, 585 [2d Dept 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]).

Plaintiff’s first cause of action is entitled a “breach of production & publishing contract that plaintiff was 3rd party beneficiary to.” The purported contract to which plaintiff refers was the one between defendant, as the publisher, and the New World Bible Translation Committee. Plaintiff alleges an agreement by defendant to produce or print the New World Bible Translation Committee’s work in multiple languages. Plaintiff does

not claim to be a party to this contract but claims to be a third-party beneficiary to it. Plaintiff contends that as a third-party beneficiary, he may sue on a contract made for his benefit.

Plaintiff alleges that he purchased a copy of the 1984 edition and used it in his literary works. Plaintiff claims that the benefit of genuine legally published reference material was denied to him. Plaintiff refers to a January 7, 2018 letter to him, in which the editor-in-chief of the Journal of Law, Religion, and State rejected the final draft of an article that he had authored, which relied upon the online version of the 1984 edition of the New World Translation of the Holy Scriptures. This letter stated that the basis for this rejection was that the authorship of the New World Translation of the Holy Scriptures was suspect because plaintiff had not shown that there was any committee of leading and well-known biblical scholars responsible for this translation. Plaintiff points to the fact that defendant'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.

““A non-party [to a contract] may sue for breach of contract only if it is an intended, and not a mere incidental, beneficiary”” (*Board of Educ. of Northport-E. Northport Union Free Sch. Dist. v Long Is. Power Auth.*, 130 AD3d 953, 954 [2d Dept 2015], quoting *East Coast Athletic Club, Inc. v Chicago Tit. Ins. Co.*, 39 AD3d 461, 463 [2d Dept 2007], quoting *LaSalle Natl. Bank v Ernst & Young*, 285 AD2d 101, 108 [1st Dept 2001]). “A party asserting rights as a third-party beneficiary must establish (1) the existence of a valid and binding contract between other parties, (2) that the contract was intended for [its] benefit, and (3) that the benefit to [it] is sufficiently immediate, rather than incidental, to

indicate the assumption by the contracting parties of a duty to compensate [it] if the benefit is lost” (*Old Crompond Rd., LLC v County of Westchester*, 201 AD3d 806, 808 [2d Dept 2022], quoting *State of Cal. Pub. Employees' Retirement Sys. v Shearman & Sterling*, 95 NY2d 427, 434-435 [2000]; see also *Board of Educ. of Northport-E. Northport Union Free Sch. Dist.*, 130 AD3d at 954-955; *Nanomedicon, LLC v Research Found. of State Univ. of N.Y.*, 112 AD3d 594, 596 [2d Dept 2013], *lv dismissed* 23 NY3d 1030 [2014]).

“[T]he identity of a third-party beneficiary need not be set forth in the contract or, for that matter, even be known as of the time of its execution” (*Encore Lake Grove Homeowners Assn., Inc. v Cashin Assoc., P.C.*, 111 AD3d 881, 883 [2d Dept 2013] [internal quotation marks omitted]; see also *Desernio v Ardelean*, 188 AD3d 992, 993 [2d Dept 2020]). “However, an intent to benefit the third party must be shown, and, absent such intent, the third party is merely an incidental beneficiary with no right to enforce the particular contract[]” (*Old Crompond Rd., LLC*, 201 AD3d at 808, quoting *Port Chester Elec. Constr. Corp. v Atlas*, 40 NY2d 652, 655 [1976]; see also *Dormitory Auth. of the State of N.Y. v Samson Constr. Co.*, 30 NY3d 704, 710 [2018]). “Courts generally have recognized “a third party’s right to enforce a contract in two situations: when the third party is the only one who could recover for the breach of contract or when it is otherwise clear from the language of the contract that there was ‘an intent to permit enforcement by the third party’”” (*Old Crompond Rd., LLC*, 201 AD3d 806, 808-809, quoting *Dormitory Auth. of the State of N.Y.*, 30 NY3d at 710, quoting *Fourth Ocean Putnam Corp. v Interstate Wrecking Co.*, 66 NY2d 38, 45 [1985]).

There was no intent to specifically benefit plaintiff by the purported contract. Plaintiff does not point to any contract language that would put him in a different position than every other person, of which there are millions, who obtained a copy of the New World Translation of the Holy Scriptures. There also is no indication of any assumption by the contracting parties of a duty to compensate plaintiff if any benefit was lost. Plaintiff fails to demonstrate that the parties which he alleges entered into a contract, i.e., defendant and the New World Bible Translation Committee, expressly evidenced any intent to permit him to enforce the purported contract.

The only contract terms referred to by plaintiff is an agreement by defendant to produce or print the New World Bible Translation Committee's work in multiple languages. Defendant did, in fact, publish the 1984 edition in many languages, fully performing the alleged contract. Plaintiff admits he purchased a copy and used it in his literary works. Thus, plaintiff received the full benefit of the purported contract. Plaintiff, however, does not question the performance of the production or printing of the 1984 edition, but alleges that he relied on the quality of the translation for 28 years in his writings and takes issue with the subsequent publishing of the 2013 edition with respect to the translation of Isaiah 46:11. Plaintiff also claims that under the contract which applied to the 1984 edition that he obtained, defendant lacked the authority to publish the 2013 revision. Plaintiff alleges that the 2013 edition contained "thousands of whimsical rewrites for fake literary acclaim & fake author attribution." However, plaintiff, as previously mentioned, is merely an incidental beneficiary with no right to enforce any purported contract between defendant and the New World Bible Translation Committee (*see Port*

Chester Elec. Constr. Co., 40 NY2d at 655; *Breen v Law Off. of Bruce A. Barket, P.C.*, 52 AD3d 635, 637 [2d Dept 2008]).

Plaintiff also claims to have a right of recovery on the basis that “New World Bible Translation Committee is no longer in existence,” leaving only him, as a reader, to sue for breach of contract. Plaintiff contends that he has the right to enforce the contract because he is the only one who could recover for an alleged breach of contract. This contention is devoid of merit. There is no showing of a contract intended to benefit no one other than plaintiff. Thus, since plaintiff would again, at best, be an incidental beneficiary to any contract between defendant and the New World Bible Translation Committee, plaintiff fails to state a viable claim for breach of contract, and his first cause of action must be dismissed pursuant to CPLR 3211 (a) (7). Dismissal of plaintiff’s first cause of action is also mandated on the basis that plaintiff lacked standing to assert this claim since he was not a third-party beneficiary to any agreement between defendant and the New World Bible Translation Committee (*see* CPLR 3211 [a] [3]; *New York Commercial Bank v Jacobs*, 200 AD3d 991, 992 [2d Dept 2021]; *CWCapital Investments LLC v CWCapital Cobalt VR Ltd.*, 182 AD3d 448, 452 [1st Dept 2020]).

Plaintiff’s second cause of action is for fraud. “The elements of a cause of action for fraud require a material misrepresentation of a fact, knowledge of its falsity, an intent to induce reliance, justifiable reliance by the plaintiff and damages” (*Eurycleia Partners, LP v Seward & Kissel, LLP*, 12 NY3d 553, 559 [2009]; *see also 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]). “A claim rooted in fraud must be pleaded with the requisite particularity under CPLR 3016 (b)” (*Eurycleia Partners, LP*, 12 NY3d at 559; *see also Shahid v Ridgewood Bushwick Senior Citizens Council, Inc.*, 181 AD3d 744, 745 [2d Dept 2020]).

Plaintiff alleges that defendant improperly eliminated the “penname/signature” that had attributed the pre-2013 revisions to the New World Translation Committee when it published the New World Translation of the Holy Scriptures online. Specifically, plaintiff asserts that by eliminating the signed New World Bible Translation Committee name to the foreword of its 1984 New World Translation of the Holy Scriptures online, defendant’s online publication of the 1984 version of the New World Translation of the Holy Scriptures failed to specify that the New World Bible Translation Committee was responsible for the translated text. Plaintiff alleges that defendant 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 alleges that defendant induced him and the public “to use it[s] 2013 edition & deceived [him] as to the benefit of his genuine 1984, New World Translation of the Holy Scriptures’ reference material, [discredited], -by-Defendant's false publishing.” Plaintiff claims that he was damaged because he used the World Translation of the Holy Scriptures as his reference material when writing.

These same allegations were previously raised by plaintiff in the third action and were rejected. The Appellate Division, Second Department, in affirming the court’s decision and order in the third action, found that while plaintiff claimed a misrepresentation based on defendant’s failure to specify in its online publication of a 1984 version of the

New World Translation of the Holy Scriptures that the New World Bible Translation Committee was responsible for the translated text, this omission could, at best, only be considered a concealment, which requires an allegation that a defendant had a duty to disclose material information to be actionable, which did not exist here (*Thomson* 198 AD3d at 997). The court, in the third action, specifically found that defendant 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.

The court, in the third action, further noted that “[a] fraud claim is not actionable without evidence that the misrepresentations were made with the intent to deceive” (*Thomson*, 2018 NY Slip Op 33317[U], *9, quoting *Friedman v Anderson*, 23 AD3d 163, 167 [1st Dept 2005]), and found that it could not be concluded that defendant’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” (*Thomson*, 2018 NY Slip Op 33317[U], *9, citing *Ozelkan v Tyree Bros. Env'tl. Services, Inc.*, 29 AD3d 877, 878-879 [2d Dept 2006]). As previously held, plaintiff could not have justifiably relied upon any statement in the foreword regarding the identity of the translation committee under the circumstances.

As to damages, 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. However, defendant “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” (*Thomson*, 2018 NY Slip Op 33317[U], *11). “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). As the court previously held in the third action, “[t]he 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 [defendant]” (*Thomson*, 2018 NY Slip Op 33317[U], *11). “[A]ny damages due to the lack of publication of plaintiff’s article were not proximately caused by any fraud on the part of [defendant]” (*id.*). 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” (*id.* at *11-12, quoting *Lama Holding*, 88 NY2d at 421; *see also Connaughton*, 29 NY3d at 142).

Thus, inasmuch as plaintiff has failed to allege the requisite elements of a claim of fraud, he has failed to state a viable claim for fraud. Consequently, plaintiff’s second cause of action for fraud must be dismissed (*see* CPLR 3211 [a] [7]).

With respect to plaintiff’s third cause of action for breach of fiduciary duty, it is noted that “[i]n order to establish a breach of fiduciary duty, a plaintiff must prove the existence of a fiduciary relationship, misconduct by the defendant, and damages that were directly caused by the defendant’s misconduct” (*Kurtzman v Bergstol*, 40 AD3d 588, 590 [2d Dept 2007]; *see also Village of Kiryas Joel v County of Orange*, 144 AD3d 895, 898 [2d Dept 2016]). Plaintiff alleges that there should have been a disclaimer informing readers that defendant “in reproducing the 1984 New World Translation foreword, online,

removed the New World Bible Translation Committee, authorship name & transferred it to the 2013 edition,” and that “[t]he 1984 New World Translation title also was removed from the index to Bible publications & transferred to the entry for the 2013 edition.” Plaintiff further alleges that if he had seen a disclaimer, “alarm bells w[ould] have gone off,” and “corruption to his reference material [would have] been made apparent” since “he w[ould] have stopped using [the online version and would] not have been injured by it.” This allegation essentially restates the same allegations of his fraud claim and does not allege any fiduciary relationship between him and defendant. Plaintiff fails to allege how defendant owed him any fiduciary duty.

Indeed, in the third action, the Appellate Division, Second Department, expressly held that “[t]he narrative within the complaint is devoid of facts indicating any connection between [the parties] that would give rise to a fiduciary duty” (*Thomson*, 198 AD3d at 997, quoting *Mandarin Trading Ltd.*, 16 NY3d at 179). It cannot be disputed that there was no fiduciary relationship between plaintiff and defendant. Rather, plaintiff is one of millions of people who obtained a copy of defendant’s publication. Consequently, plaintiff’s third cause of action for breach of fiduciary duty fails to state a viable claim and it must, therefore, be dismissed (*see* CPLR 3211 [a] [7]).

Conclusion

Accordingly, defendant's motion to dismiss plaintiff's second amended complaint is granted.

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

E N T E R,



J. S. C.