

Jeffers v American Univ. of Antigua

2018 NY Slip Op 33365(U)

December 24, 2018

Supreme Court, New York County

Docket Number: 153386/2012

Judge: Margaret A. Chan

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MARGARET A. CHAN

PART 33

Justice

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

INDEX NO. 153386/2012
MOTION DATE
MOTION SEQ. NO. 006

Plaintiffs,

DECISION AND ORDER

- v -

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

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 253, 254, 255, 256, 257, 258 were read on this motion to/for Reargument

Defendant American University of Antigua (AUA) seeks leave to renew and reargue, pursuant to CPLR 2221, this Court's Decision and Order dated January 10, 2018, which denied AUA's motion for summary judgment and plaintiff's cross-motion for same. As to the instant motion, AUA claims that the court overlooked or misapprehended the facts and law in the January 10, 2018 Decision. Plaintiffs oppose the motion to which AUA replies. The decision is as follows:

The undisputed facts as discussed in the prior motion sequences (MS) 003, 004, and 005, and in the appellate decision (Jeffers v Am. Univ. of Antigua, 125 AD3d 440 [1st Dept 2015]). Briefly, plaintiffs are former nursing students in defendants' two-year nursing program at AUA School of Nursing (AUASN) in Antigua and Barbuda. Upon graduating from the AUASN program with an Associated Science of Nursing degree, the students would then be able to take the National Council Licensing Examination for Registered Nurses (NCLEX-RN) in New York State and enroll in a "one-year R.N. to B.S. in Nursing" program at Lehman College, City University of New York (Lehman), for a Bachelor of Science Degree in Nursing (BSN).

The first graduating class in 2009 was not permitted to take the NCLEX because the Antigua and Barbuda Nursing Council did not approve AUASN, and consequently, the New York State Education Department (NYSED), did not certify

the AUASN program. Upon learning this, some students withdrew from the AUASN program in 2010 or 2011.

Two years after the first AUA graduating class, NYSED reversed its prior determination of not certifying AUASN, and AUASN graduates were permitted to take the NCLEX in New York in December 2011, which then allowed them to enroll in Lehman's one-year BSN program. In the interim, Lehman accepted AUASN graduates into its Generic Nursing Program without requiring them to take the NCLEX, which was not a one-year program (*Jeffers*, 125 AD3d at 441).

In MS 004, AUA moved for summary judgment arguing that defendants had delivered on all their promises and that plaintiffs failed to establish damages. Plaintiffs cross-moved for summary judgment alleging that AUA misrepresented that its graduates would be eligible to take the NCLEX immediately upon graduation and, upon passing the NCLEX, could enroll in Lehman's one-year BSN program. Plaintiffs claim that their damages include the two-year period they were in limbo. This court denied both defendants' motion and plaintiffs' cross-motion for summary judgment.

AUA now seeks reargument on the grounds that: (1) the Court erroneously concluded that AUA breached a promise to certain graduated plaintiffs that they would "immediately" be able to take the NCLEX, and be able to do so in New York State, because the Court misapprehended the law and the undisputed evidence that no such promise was made; (2) the Court misapprehended the facts and the law concerning plaintiffs who withdrew from AUA or failed to complete their course work and thereby frustrated AUA's performance of its implied contract with them; and (3) the Court failed to dismiss the complaint brought by two plaintiffs (Oluwabusayo Alake and Ruslan Berdichevsky) who were precluded from offering any evidence in support of their claims for breach of contract and another plaintiff (George Mafwil) who defaulted in opposing the motion and failed to submit evidence to create a triable issue of fact. The first two branches of the motion are denied and reargument is granted as to the third branch of the motion. Upon reargument, the claims brought by plaintiffs Alake, Berdichevsky, and Mafwil are dismissed.

A motion to reargue must be "based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion" (CPLR 2221[d]). "Reargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided or to present arguments different from those originally asserted" (*see William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992] [internal citations omitted]). Such a motion is left to the sound discretion of the court (*see 204 Columbia Hgts., LLC v Manheim*, 148 AD3d 59, 61 [1st Dept 2017], *lv to appeal dismissed*, 29 NY3d 1119 [2017]).

As to the first two branches of defendants' motion, the court denies reargument as the court did not misapprehend the facts or law in its prior determination. AUA's arguments that it made no promise as to the time frame for its students to be able to take the NCLEX and that plaintiffs frustrated its ability to deliver on any actual promises will not be reconsidered. Reargument on these issues is denied.

A review of the procedural background of this case is required for the third branch of defendant's reargument motion which addresses the claims brought by plaintiffs Alake, Berdichevsky, and Mafwil. AUA first moved for summary judgment before another Justice of this Court, Hon. Joan Madden, who denied the motion as premature (*Jeffers v American University of Antigua*, 2014 NY Slip Op 30669[U] [Sup Ct, New York Cty 2014]). On appeal, the Appellate Division, First Department, modified the determination and dismissed all but the except breach of contract cause of action (*Jeffers*, 125 AD3d 440). Discovery continued on the singular claim for breach of contract. AUA sought sanctions against certain plaintiffs for their failure to comply with discovery demands. On August 3, 2016, Hon. Madden precluded plaintiffs Alake and Berdichevsky from offering any evidence at trial based on their failure to comply with discovery demands (*see Jeffers v Am. Univ. of Antigua*, Sup Ct, NY Cty, August 3, 2016, index No. 153386/2012). AUA brought a second motion for summary judgment in MS 004, which resulted in this court's January 10, 2018 Decision and Order.

AUA argues that this court overlooked Justice Madden's order precluding plaintiffs Alake and Berdichevsky from offering evidence in their favor. AUA points out that this court missed the preclusion information which appeared in a footnote in its memorandum of law in the prior motion for summary judgment against all the plaintiffs. Since this court missed the salient information placed in the footnote in the prior motion, the footnote information will now be considered.

Plaintiffs summarily oppose reargument on this point as to Alake and Berdichevsky and attempt to bootstrap Alake and Berdichevsky's claims onto those of the other plaintiffs who are not precluded from submitting proof of damages at trial. Plaintiffs Alake and Berdichevsky are differently situated, and because they were precluded from submitting any proof of damages at trial, their claims should be dismissed. Reargument on this point is granted, and upon reargument, plaintiffs Alake and Berdichevsky's claims are dismissed.

AUA's reargument to plaintiff Mafwil is that Mafwil defaulted in opposing the underlying summary judgment motion by failing to submit any evidence to create a triable issue of fact. AUA's main argument as to plaintiff Mafwil in the underlying motion was that he failed to provide verified interrogatories responses. This court squarely addressed that argument when it denied summary judgment and instructed discovery to continue. AUA's request to dismiss plaintiff Mafwil was

submitted in its opposition to plaintiff's underlying cross-motion for summary judgment (NYSCEF doc no 242, p 24). There was no reply by plaintiffs that addressed this request. Reargument as to plaintiff Mafwil based on his failure to support his claim in the summary judgment motion is granted. Therefore, upon reargument and plaintiff's Mafwil's failure to oppose the underlying summary judgment motion, plaintiff Mafwil's claim is dismissed.

Accordingly, it is hereby ORDERED, that reargument is granted only as to the claims asserted by plaintiffs Alake, Berdichevsky, and Mafwil, and upon reargument, the claims of these plaintiffs are dismissed. The court adheres to its prior decision and order dated January 10, 2018 in all other respects.

This constitutes the decision and order of the court.

12/24/2018

DATE



MARGARET A. CHAN, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED
SETTLE ORDER
DO NOT POST

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: