SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

Present: HON. THOMAS RADEMAKER, J.S.C.

MADDISON BOOTH, on behalf of herself and all others similarly situated,

Plaintiffs,

Index No: 608750/2020

DECISION AND ORDER

against

Motion Sequence: 003
Submitted: 10/25/2022

MOLLOY COLLEGE,

Defendant.

UPON DUE DELIBERATION AND CONSIDERATION BY THE COURT of the foregoing papers, including e-filed documents/exhibits numbered 74 through and including 121, this motion is decided as follows:

The Plaintiff, Maddison Booth, on behalf of herself and others similarly situated moves by Notice of Motion for an Order: (i) certifying this action as a class action; (ii) designating Leeds Brown Law, P.C. as Class Counsel; (iii) approving for publication the proposed Notice of Class Action Lawsuit and FERPA Disclosures, (iv) endorsing the proposed Publication Order; (v) granting the parties additional time to complete post-class certification discovery. The Defendant opposes this motion.

On August 21, 2020, the Plaintiff filed this action against the Defendant for breach of contract, unjust enrichment, and conversion and theft of property, both in her individual capacity and on behalf of the members of a similarly situated class. The class that Plaintiff seeks to represent are "[a]ll persons who paid tuition and/or mandatory fees for a student to attend in-

person class(es) during the semester affected by COVID -19 at Molloy College, including the Spring 2020 and Summer 2020 semesters, but had their classes and educational experience moved to only online learning.

On January 15, 2021, Defendant filed its Motion to Dismiss Plaintiffs' Amended Complaint. Subsequently, the Court issued a Decision and Order denying Defendant's Motion to Dismiss. (Booth v. Molloy College, August 10, 2021, Sup. Ct., Nassau County, Rademaker, J. Index No. 608750/2020, mot seq 001, 002).

On June 27, 2022, Plaintiffs and Defendant filed their Stipulation on the proposed discovery schedule stipulating a bifurcated discovery schedule. The parties agreed to complete pre-class certification discovery on or before June 2, 2022 and Plaintiffs agreed to move for class certification on or before July 29, 2022. According to the briefing schedule agreed upon by the parties, the Defendant was to file its opposition to Plaintiffs' motion on or before September 14, 2022. The Plaintiffs in turn were to file their reply in support of their class certification motion on or before September 30, 2022, with the remaining discovery to be conducted after the Court renders a decision to determine if certification of the class is appropriate.

CPLR § 901 sets forth five prerequisites to class certification. One or more members of a class may sue or be sued as representative parties on behalf of all if, 1) the class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable; 2) there are questions of law or fact common to the class which predominate over any questions affecting only individual members; 3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; 4) the representative parties will fairly and adequately protect the interests of the class; and 5) a class action is superior to other available methods for the fair and efficient adjudication of the controversy. (CPLR § 901[a] (Consol., Lexis Advance through 2022

released Chapters 1-642). "These factors are commonly referred to as the requirements of numerosity, commonality, typicality, adequacy of representation and superiority" (Moreno v Future Health Care Servs., Inc., 186 AD3d 594, 595-596 [2d Dept 2020] citing to City of New York v Maul, 14 NY3d 499, 508 [2010]).

In deciding whether to certify a class, "a court must be mindful of [the Appellate Division's] holding that the class certification statute should be liberally construed." (Kudinov v.Kel-Tech Construction Inc., 65 A.D.3d 481, 481 [1st Dept. 2009] citing Englade v. Harper Collins Publs., Inc., 289 A.D.2d 159, 159 [1st Dept. 2001]; see also Borden v.400 E. 55th St. Assoc., L.P., 24 N.Y.3d 382, 393-94 [2014]; Pruitt v. Rockefeller Center Properties, Inc., 167 A.D.2d 14, 21 [1st Dept. 1991] ["[a]ppellate courts in this state have repeatedly held that the class action statute should be liberally construed... any error, if there is to be one, should be ... in favor of allowing the class action"] see also Friar v. Vanguard Holding Corp., 78 A.D.2d 83, 90-92, [2d Dept. 1980]; Galdamez v. Biordi Construction Corp., 13 Misc. 3d 1224[A] [Sup. Ct. N.Y. Cty. 2006], aff'd 50 A.D.3d 357 [1st Dept. 2008]; Pajaczek v. Cema Const. Corp., 859 N.Y.S.2d 897 [Sup. Ct. N.Y. Cty. 2008] citing Brandon v. Chefetz, 106 A.D.2d 162 [1st Dept. 1985]; see also Stecko v. RLI Ins. Co., 121 A.D.3d 542 (1st Dept. 2014).

The fundamental issue is whether the proposed class action asserts a common legal grievance and if common issues predominate over or outweigh the subordinate issues that pertain to individual members of the class. (Geiger v. Amer. Tobacco Co., 181 Misc.2d 875, 883 [Sup. Ct. Queens Cty. 1999] quoting 3 Weinstein Korn-Miller, N.Y. Civil Practice § 901.11); see also Pesantez, 251 A.D.2d at 11 citing Pruitt, 167 A.D.2d at 14).

The Defendant is a private college that offers numerous major fields for undergraduate and graduate students. The College is located in Nassau County, New York. According to the

Plaintiff, yearly tuition at the college costs "$15,665 for undergraduate students" plus additional mandatory fees. These additional fees include a graduation application fee of about $220, class fees of various amounts, a student activities fee of $100, a technology fee of approximately $260, and various other fees. For the Spring 2020 semester, Plaintiff allegedly paid about $15,665 in tuition and $1,011 in mandatory fees.

Plaintiff contends that Defendant retained the full amount of tuition and fees, despite being able to provide students, like Plaintiff, with the in-person opportunities that Plaintiff bargained for, contracted for, and then paid for. Plaintiff claims the $15,665 and the additional student fees of more than $1,000 were made in consideration for in-person and on-campus educational services. Plaintiff further contends that these promises can be found in Plaintiff's application materials, including marketing, advertisements, and other public representations. The Amended Complaint provides that the "College failed to off any refunds, provide any discounts, or apply any credit to Plaintiff and class members' other semesters, " and the Plaintiff seeks a pro-rata refund of tuition and fees, on behalf of herself and a class of students who attended the College during the Spring 2020 semester.

Molloy College's Spring 2020 semester began on January 13, 2020. The first positive COVID-19 case of Nassau County was announced on March 6. On March 7, 2020, Andrew Cuomo, Governor of New York, promulgated Executive Order No. 202, which declared a state of emergency in New York with respect to the COVID-19 virus. On or around March 10, 2020, in response to the COVID-19 pandemic, Defendant cancelled all in-person education and transitioned to all online learning for the remainder of the semester and did not provide in-person and on-campus educational services.

On March 13, 2020, the President of the United States declared a National Emergency in connection with the global pandemic. Pres. Proclamation No. 9994, 85 F.R. 15337 (March 13, 2020). On March 16, 2020, Governor Cuomo further ordered "every school in the state of New York" to close by March 18, 2020 for a period of 2 weeks. N.Y. Exec Order No. 202.4 (Mar. 16, 2020). On March 27, 2020, Governor Cuomo issued an executive order extending the closure of all schools in New York State through May 15, 2020. N.Y. Exec. Order 202.18 (Apr. 16, 2020). Further, it was ordered on May 7, 2020, through an executive order, that all New York State schools were to remain closed for the remainder of the school year. N.Y. Exec. Order 202.28 (May 7, 2020).

After suspending all in-person classes and closing its residence halls, Defendant issued pro-rated refunds for room and board costs for the remainder of the semester. Students who were to graduate in the Spring 2020, were refunded half of their graduation application fee. However, the Plaintiff contends that the Defendant did not refund fees for those activities and services that were previously provided on an in person basis, but were instead continued remotely.

Plaintiff alleges breach of contract, unjust enrichment, and conversion and theft of property against the Defendant. Plaintiff claims that she entered into a contract with the Defendant for "in person educational services, experiences, opportunities and other related collegiate services." The Plaintiff further claims that the contract between the Defendant and the students was breached when the Defendant decided to cancel in-person classes and only offer online instruction.

The Defendant opposes certification of the class and argues that each class member is entitled to a refund of some measure of tuition or additional fees depends on the individualized questions of whether students were aggrieved by remote learning and services. The Defendant

argues that it did not close its doors and stop operating as many other businesses nationwide unfortunately were required to do, but rather created solutions that allowed students, including Plaintiff, to receive college credit for their course work and earn degrees.

It is the Defendant's position that class membership depends on whether or not Defendant failed to provide education and/or services or facilities that it was obligated to provide under an agreement. The implied contract between a student and a university consists of specific promises in the specific documents between them which will necessarily vary as individual students vary.

The Defendant further argues that even assuming a uniform contract was breached, class membership depends on whether each class member was aggrieved by the alleged breach to sustain the breach of contract claim. While a "straightforward" damages calculation is proffered, Plaintiff does not provide common proof that each class-member has a valid claim, especially in light of fee refunds the Defendant contends it already provided. Further, the Defendant contends that the Plaintiff does not have standing to represent the alleged aggrieved class in that the Plaintiff will be unable to demonstrate that she or every class member personally paid for the tuition and fees at issue in the underlying claims.

In Reply, the Plaintiff argues that Article 9 was intended to be a liberal procedural requirement to promote, rather than limit, class actions. (See Borden v. 400 E. 55th St. Assoc., L.P., 24 N.Y.3d 382 [2014]; City of New York v. Maul, 14 N.Y.3d 499, 508-509 [2010]; Bloom v. Cunard Line, Ltd., 76 A.D.2d 237, 241 [1st Dept. 1980]). As liberal construction has been repeatedly implemented by New York courts in deciding whether to certify a class. (See Friar v. Vanguard Holding Corp., 78 A.D.2d 83, 90-92 [2d Dept. 1980]; Stecko v. RLI Ins. Co., 121 A.D.3d 542 [1st Dept. 2014] [expressly rejecting the 'rigorous analysis' applied to class

certification in federal courts]; Rutella v. Nat'l Secs. Corp., 2022 N.Y. Misc. LEXIS 2311 [Sup. Ct. Nassau Cty., May 25, 2022] [J. Driscoll] denying summary judgment and granting class certification while noting "[t]he fact that Plaintiffs may have different levels of damages does not in itself defeat class certification"; see also Macaluso v. Woodbury Int'l, Inc., 2013 N.Y. Misc. LEXIS 7190 [Sup. Ct. Nassau Cty., Sept. 9, 2013]]J. Diamond]).

Upon review of the papers submitted by the parties herein, including their supporting exhibits, and in the discretion of the Court, the Plaintiff's motion for class certification is **GRANTED**, and it is hereby

ORDERED, that this matter is certified as a class action, and it is further

ORDERED, that Maddison Booth is approved as class representative, and it is further

ORDERED, that Leeds Brown Law, P.C. is designated as Class Counsel, and it is further

ORDERED, the proposed Notice of Class Action Lawsuit and FERPA disclosures, made part of the record herein as NYSCEF Doc No. 108 is approved, and the Plaintiff is hereby allowed to distribute notice to all class members in accordance with the proposed publication order, and it is further

ORDERED, that the proposed publication order made part of the record herein as NYSCEF Doc No. 109 is approved, and the Plaintiff is hereby directed to settle order upon notice pursuant to the CPLR and Uniform Court Rules the Publication Order for signature, and its further

ORDERED, that the parties have additional time to complete post-class certification discovery, and the parties are directed to submit a Joint Discovery Stipulation to be so-ordered by the Court on or before January 9, 2023, and it is further

ORDERED, that counsels are to appear for a status conference on February 8, 2023, at 10:00 a.m.

The foregoing constitutes the Decision and Order of the Court.

Dated: December 12, 2022
Mineola, N.Y.

HON. THOMAS RADEMAKER, J. S. C.