Jeffers v American Univ. of Antigua
2014 NY Slip Op 30669(U)
March 12, 2014
Sup Ct, New York County
Docket Number: 153386/12
Judge: Joan A. Madden

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

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

INDEX NO. 153386/12

Plaintiffs,

-against-

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

Defendants.

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JOAN A. MADDEN, J.:

This is an action by 17 former nursing students seeking to recover their tuition, costs and damages from defendant American University of Antigua ("the University"), which is located in the Caribbean island nation of Antigua. Plaintiffs assert causes of action including fraud and breach of contract, based on defendants' alleged misrepresentations that graduates of the University would be educationally qualified to take the National Council License Examination for Registered Nurses in the United States, and upon passing that examination, enroll for one additional year in the Registered Nurse Completion Program at Lehman College of the City University of New York, and graduate with a Bachelor of Sciences Degree in Nursing.

Defendants move for an order pursuant to CPLR 327(b) dismissing the action on forum non conveniens grounds, asserting that the action arises out of events occurring in Antigua and Barbuda, where the witnesses and documents are located, and raises issues of Antiguan law that are best determined by the courts of Antigua and Barbuda. Alternatively, defendants move for an order pursuant to CPLR 3212 granting summary judgment dismissing the complaint on the merits. Plaintiffs oppose the motion.

As codified in CPLR 327, the doctrine of forum non conveniens permits the court to dismiss an action that is jurisdictionally sound, but would be better adjudicated elsewhere. See Islamic Republic of Iran v. Pahlavi, 62 NY2d 474 (1984), cert den 469 US 1108 (1985). The burden rests on the defendant challenging the forum to demonstrate relevant private or public interest factors that militate against accepting the litigation. See id. Among the specific factors considered are the burden on New York courts, the potential hardship to defendant, the unavailability of an alternative forum, whether both partes are nonresidents, and whether the transaction out of which the cause of action arose occurred primarily in a foreign jurisdiction. Id. Although no one factor is controlling, plaintiff's residence is "generally the most significant factor" in determining a forum non conveniens motion. Sweeney v. Hertz Corp, 250 AD2d 385 (1st Dept 1998); accord Cadet v. Short Line Terminal Agency, Inc, 173 AD2d 270 (1st Dept 1991). Also, unless the balance of the factors is "strongly in favor of defendant," plaintiff's choice of forum "should rarely be disturbed." OrthoTech, LLC v. Heathpoint Capital, LLC, 84 AD3d 702 (1st Dept 2011).

Applying the relevant factors, the court concludes that defendants have failed to sustain their burden to warrant dismissal on forum non conveniens grounds. Contrary to defendants'

assertion, plaintiffs' action has a substantial nexus with New York, as 10 of the 17 named plaintiffs,[1] and defendant Manipal Education Americas, LLC, s/h/a GCLR, LLC,[2] are New York residents. The record indicates that the University conducts business in New York through its agent, defendant Manipal, a New York limited liability company that maintains an office in New York City. Notably, the University has a website listing its address in the United States as "Manipal Education Americas, LLC Agent for American University of Antigua, One Battery Park Plaza, 33rd Floor, NY NY 10004." The University also has a written "Services Agreement" with GCLR/Manipal, which shows that it is directly and actively responsible for promoting the University's programs, and the process by which students are recruited and ultimately admitted to the University.[3] The court notes that any dispute as to whether Manipal played a role in the

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[1]According to the complaint, the seven additional plaintiffs reside in Connecticut (1), Massachusetts (1), Texas (1), Maryland (1), Cyprus (1) and Antigua (2).

[2]Defendants state that the named defendant GCLR, LLC, is the "prior name" of Manipal Education Americas, LLC. For the purposes of consistency, the court will refer to this entity as Manipal or GCLR/Manipal.

[3]Schedule A of the Services Agreement details the services for which GCLR/Manipal is responsible. For example, under the category of "Admissions," Schedule A lists the following services:

> a) Preparing and distributing brochures, newsletters and other marketing materials to prospective students.
> b) Responding to inquiries and providing applications and information packages to prospective students who have expressed an interest in one of more AUA programs.
> c) Hosting receptions and other events for prospective students.
> d) Conducting phone and in-person interviews for prospective students.
> e) Reviewing applications and selecting successful candidates for further review by the Faculty Admissions committee.
> f) Assisting students in coordinating their relocation to Antigua.
> g) Developing/executing marketing an branding campaigns for all programs

circumstances underlying plaintiff's claims, cannot be resolved on the record presented, especially since the parties have not yet completed discovery.

As to defendants' assertion that the action raises issues of Antiguan law, courts in New York are frequently called upon to apply the law of a foreign jurisdiction. See American BankNote Corp v. Daniele, 45 AD3d 338 (1st Dept 2007). Moreover, any potential hardship to defendant University in defending this action in New York, weighs equally in favor of the majority of plaintiffs who are New York residents and who would be forced to litigate this action in Antigua. Notably, the record suggests that New York may not be all that inconvenient for the University, since the University commenced and litigated the related Article 78 proceeding in New York, and its Services Agreement with GCLR/Manipal contains a New York forum selection clause.

The court notes that two decisions of the Appellate Division First Department, and two lower court decisions have previously determined that the identical defendant, the American University of Antigua, was entitled to dismissal on forum non conveniens grounds. Those decisions, however, are distinguishable on their facts from the case at bar, as none of the plaintiffs in those cases was a New York resident.

In Patel v. American University of Antigua,104 AD3d 568 (1st Dept 2013), the First Department reversed the lower court and held that the action had no connection to New York, since plaintiff was a California resident, suing for personal injuries sustained when he slipped and fell on the University's campus in Antigua. The Court found that GCLR's Service Agreement with the University did not support a negligence claim against GCLR, since it

showed that GCLR did not own, manage or otherwise control the University's premises in Antigua.

The plaintiff in Alla v. American University of Antigua, 106 AD3d 570 (1st Dept 2013) was a California resident. The First Department affirmed the lower court's conclusion that New York was an inconvenient forum and lacked a "substantial nexus" to the Article 78 proceeding, which sought to annul a determination by the University's medical school. Although the First Department found that the "evidence does not support petitioner's contention that respondent [the University] has its principal office in New York," the nature of such evidence was not identified.

Finally, in Garcia v. American University of Antigua School of Nursing, 2013 WL 57400199 (Sup Ct, NY Co 2013), plaintiff was resident of New Jersey, and GCLR was not named as a defendant.

Thus, under the circumstances presented, where the majority of the plaintiffs and one of the defendants are residents of New York, defendants are not entitled to dismissal on forum non conveniens grounds. See Sweeney v. Hertz Corp, supra; Cadet v. Short Line Terminal Agency, Inc, supra.

Defendants' motion in the alternative, for summary judgment, is denied as premature, since the parties have not completed discovery. See CPLR 3212(f); Global Minerals & Metals Corp. v. Holme, 35 AD3d 93 (1st Dept 2006), lv app den 8 NY3d 804 (2007).

Accordingly, it is

ORDERED that defendants' motion is denied in its entirety; and it is further

ORDERED that the parties are directed to appear for a compliance conference on April 10, 2014 at 9:30 am, in Part 11, Room 351, 60 Centre Street.

DATED: March 12, 2014

ENTER:

HON. JOAN A. MADDEN
J.S.C.