STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

NEWPORT, SC. **SUPERIOR COURT**

(Filed: May 16, 2012)

ST. MICHAEL'S COUNTRY DAY SCHOOL	:	
v.	:	**C.A. No. NC 08-0012**
MATTHEW BERLUTI and JOAN M. BERLUTI	:	

DECISION

CLIFTON, J. Before the Court is Defendants Matthew and Joan Berlutis' (collectively "Defendants") Motion for Summary Judgment (Motion) on all claims of Plaintiff St. Michael's Country Day School's ("St. Michael's" or the "School") Complaint ("Complaint"). St. Michael's Complaint sets forth claims for breach of contract and book account relating to tuition owed for educational services. For the reasons stated herein, Defendants' Motion for Summary Judgment is denied.

I

Facts and Travel

St. Michael's is a non-profit Rhode Island Corporation located in the City of Newport. (Compl. ¶ 1.) St. Michael's is a private school that provides educational services to children in kindergarten through eighth grade. Each year, parents who wish to enroll their child in the School must sign an enrollment contract. The enrollment contract describes very generally the rights and obligations of each party—the School and the student/parent. St. Michael's requires

that all signed enrollment contracts be received by the School no later than March 1 of the preceding school year.[1]

On February 22, 2007, St. Michael's entered into a written contract with the Defendants. Pursuant to the contract, St. Michael's agreed to provide educational services to the Defendants' two sons for the academic year of 2007-2008. In exchange, Defendants agreed to pay $16,425.20 for educational services provided to their eldest son.[2] Id. at 3. At the time the contract was entered into, the eldest son was already enrolled at the School.

The contract provided, among other things, a five hundred dollar deposit to be received when the parent or guardian of a student returned the signed contract to the School. (Def. Ex. A.) The Defendants submitted the five hundred dollar deposit as required by the contract. The signed contract, along with the deposit, secured placement for the Defendants' two children for the 2007-2008 academic year. However, on June 29, 2007, Defendant Joan Berluti sent a letter to the School stating that both children would not be attending St. Michael's for the 2007-2008 academic school year. (Def. Ex. B.)

On July 3, 2007, St. Michael's informed the Defendants that they would not release the Defendants from paying the tuition as stated in the contract. (Aff. of Joan Berluti ¶ 5.) St. Michael's referenced a cancellation provision in the contract, which stated that:

> "[t]he enrollment as specified may be cancelled in writing without penalty . . . prior to close of the school business day on May 1 of the academic year stated above. . . . If enrollment is cancelled after May 1st of said year, with or without written notice to the Admission Office, the full annual charges are due and payable." Id. (Emphasis added).

[1] The preceding school year refers to the 2006-2007 school year. For example, in the case at bar, Defendants needed to return signed enrollment contracts by March 1 of the 2006-2007 school year to secure placement for the upcoming 2007-2008 school year.

[2] As will be discussed infra, the tuition owed to St. Michael's for the Defendants' younger son is unknown and not subject to this suit.

Importantly, the only academic year referenced in the contract was the upcoming 2007-2008.

However, in an effort to mitigate the potential damages to the Defendants, St. Michael's began looking for students to take the place of the two children. Later in July, St. Michael's informed the Defendants that they had found a student to take the younger child's place, but not for the older son. Id. The School was ultimately unsuccessful in finding a replacement for the eldest child. Consequently, the School relieved the Defendants from payment for one, but demanded payment for the older child. After not receiving payment, St. Michael's filed suit with this Court on January 10, 2008.

II

Standard of Review

When ruling on a motion for summary judgment, the only question before the trial justice is whether there is a genuine issue as to any material fact which must be resolved. Rhode Island Hospital Trust National Bank v. Boiteau, 119 R.I. 64, 376 A.2d 323 (1977). If an examination of the pleadings, affidavits, admissions, answers to interrogatories, and other similar matters, viewed in the light most favorable to the opposing party, reveals no such issue, then the suit is ripe for summary judgment. R.I. Hosp. Tr. Nat'l Bank, 119 R.I. at 66, 376 A.2d at 324; Harold W. Merrill Post. No. 16 American Legion v. Heirs-at-Law Next of Kin and Devisees of Smith, 116 R.I. 646, 360 A.2d 110 (1976). On consideration of a motion for summary judgment, this Court must draw "all reasonable inferences in the light most favorable to the nonmoving party." Hill v. Nat'l Grid, 11 A.3d 110, 113 (R.I. 2011) (quoting Fiorenzano v. Lima, 982 A.2d 585, 589 (R.I. 2009)). However, the nonmoving party "carries the burden of proving by competent evidence the existence of a disputed material issue of fact and cannot rest on allegations or denials in the pleadings or on conclusions or legal opinions." Chavers v. Fleet Bank (RI), N.A.,

844 A.2d 666, 669-70 (R.I. 2004) (quoting United Lending Corp. v. City of Providence, 827 A.2d 626, 631 (R.I. 2003)).

Where it is concluded "that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law," summary judgment shall enter. Malinou v. Miriam Hosp., 24 A.3d 497, 508 (R.I. 2011) (quoting Poulin v. Custom Craft, Inc., 996 A.2d 654, 658 (R.I. 2010)); see Holliston Mills, Inc. v. Citizens Trust Co., 604 A.2d 331, 334 (R.I. 1992) (stating "summary judgment is proper when there is no ambiguity as a matter of law"). Conversely, "if the record evinces a genuine issue of material fact, summary judgment is improper." Shelter Harbor Conservation Soc'y, Inc. v. Rogers, 21 A.3d 337, 343 (R.I. 2011) (citations omitted). Finally, our Supreme Court has cautioned that "[s]ummary judgment is an extreme remedy that should be applied cautiously." Hill, 11 A.3d at 113 (quoting Plainfield Pike Gas & Convenience, LLC v. 1889 Plainfield Pike Realty Corp., 994 A.2d 54, 57 (R.I. 2010)).

III

Analysis

A

Contract Interpretation

In support of its motion, Defendants argue that they had an absolute right to cancel the contract. Defendants direct this Court's attention to the cancellation provision in the contract. The cancellation provision provides that Defendants are entitled to cancel the contract without penalty if done so before the close of business on May 1st of the academic year cited in the contract. The academic year cited in the contract is 2007-2008. Therefore, Defendants argue that under a plain reading of the contract, they had until May 1, 2008 to cancel the contract, which they cancelled in June 2007. Defendants further argue that they are entitled to summary

judgment because St. Michael's has not suffered any damages and any damages alleged amount to a penalty.

In opposing the motion, St. Michael's argues that the reference to the 2007-2008 academic year was an error in draftsmanship and that the preceding academic year was the year meant to be referenced in the contract—the 2006-2007 school year. To support this position, St. Michael's states that the purpose for receiving the enrollment contracts from the parents in February is so that the School can construct a budget for the upcoming school year. After receiving the enrollment contracts, St. Michael's knows its enrollment and tailors its budget accordingly. St. Michael's argues that it would make little sense to allow a parent to keep a child enrolled in the School and then allow the parent to withdraw the child as late as May 1st of that academic year. Consequently, St. Michael's argues that the enrollment contract should be reformed to express the true intent behind the agreement.

It is well settled that a breach of contract claim requires the existence of a valid contract, a breach of the contract, and damages resulting from the breach. See Petrarca v. Fidelity & Cas. Ins. Co., 884 A.2d 406, 410 (R.I. 2005). The elements of a valid contract are offer, acceptance, consideration, mutuality of agreement and mutuality of obligation. See Smith v. Boyd, 553 A.2d 131 (R.I. 1989); Lamoureux v. Burrillville Racing Assn., 91 R.I. 94, 161 A.2d 213 (R.I. 1960). Here, neither party has addressed the formation issue regarding the enrollment contract. Therefore, the basic tenets of a contract, as outlined above, need not be discussed by this Court. The Court can turn its attention to the meaning of the enrollment contract.

Essentially, this Court is asked to interpret the provisions of the enrollment contract, specifically, the cancellation provision. As noted supra, the cancellation provision provides that "[t]he enrollment as specified may be cancelled in writing without penalty . . . prior to close of

the school business day on May 1 of the academic year stated above. . . ." St. Michael's contends that the cancellation provision allows a parent to cancel the enrollment contract anytime before May 1st of the preceding school year. In other words, a parent has until May 1st to determine whether their child will attend St. Michael's for the upcoming school year. If a parent notifies the School before May 1st, then the parent can cancel the enrollment contract without penalty. If, however, a parent notifies St. Michael's after May 1st, then the parent is liable for a full year's tuition regardless of whether the child actually attends. On the other hand, Defendants advocate for a strict interpretation of the contract and argue that they were allowed to cancel the contract until May 1st of the academic year they agreed to enroll their children. Simply stated, the Defendants contend they had until May 1, 2008 to cancel the contract because 2007-2008 was the only academic year referenced in the contract.

The Court's first task when interpreting a contract is to determine whether the writing is clear or ambiguous. "Contract interpretation is a question of law; it is only when the contract terms are ambiguous that construction of terms becomes a question of fact." Dubis v. E. Greenwich Fire Dist., 754 A.2d 98, 100 (R.I. 2000) (quoting Clark-Fitzpatrick, Inc./Franki Foundation Co. v. Gill, 652 A.2d 440, 443 (R.I. 1994)). "In determining whether or not a particular contract is ambiguous, the court should read the contract 'in its entirety, giving words their plain, ordinary, and usual meaning.'" Id. at 558 (quoting Mallane v. Holyoke Mutual Insurance Company in Salem, 658 A.2d 18, 20 (R.I. 1995)). "A contract is ambiguous when it is 'reasonably susceptible of different constructions.'" Young v. Warwick Rollermagic Skating Center, Inc., 973 A.2d 553, 558 n.6 (R.I. 2009) (quoting Westinghouse Broadcasting Co. v. Dial Media, Inc., 122 R.I. 571, 579, 410 A.2d 986, 991 (1980)).

Here, the enrollment contract is clear on its face. The contract clearly states that the agreement may be cancelled by May 1st of the academic year referenced in the contract. The only academic year referenced in the contract was the 2007-2008 academic year. Therefore, under the plain terms of the contract, the Defendants had the ability to cancel the contract by the close of business on May 1, 2008. The Defendants clearly and unequivocally stated that they intended to cancel the contract in June 2007 when Defendant Joan Berluti informed the School that her children would not be attending St. Michael's for the 2007-2008 academic year. (Def. Ex. B.) Therefore, it must be determined that the Defendants were clearly within their rights to cancel the contract under the plain language of the contract.

However, our Supreme Court "has long held that, in construing the terms of a contractual provision, our primary objective is to ascertain the intent of the parties." Haffenreffer v. Haffenreffer, 994 A.2d 1226, 1233 (R.I. 2010) (citing The Elena Carcieri Trust-1988 v. Enterprise Rent-A-Car Co. of Rhode Island, 871 A.2d 944, 947 (R.I. 2005)). In determining the intent of the parties, our Supreme Court has stated that:

> "In interpreting [an] instrument it is basic that the intention of the parties must govern if that intention can be clearly inferred from its terms and can be fairly carried out consistent with settled rules of law. . . . In ascertaining what the intent is we must look at the instrument as a whole and not at some detached portion thereof. . . . And, although there is no ambiguity, we will nonetheless consider the situation of the parties and the accompanying circumstances at the time the contract was entered into, not for the purpose of modifying or enlarging or curtailing its terms, but to aid in the interpretive process and to assist in determining its meaning." Hill v. M.S. Alper & Son, Inc., 106 R.I. 38, 47, 256 A.2d 10, 15 (1969) (emphasis added).

Despite a contract being clear and unambiguous, our Supreme Court has explained that the Court can go outside the four corners of an agreement to ascertain the intent of the parties. See id.; see also Haffenreffer, 994 A.2d at 1234 (extrinsic evidence was used to ascertain the intent of the

parties at the time of drafting the contract and parol evidence rule was inapplicable). For example, the Haffenreffer Court cited with approval the following observation by Chief Justice Trainor of the California Supreme Court:

> "A rule that would limit the determination of the meaning of a written instrument to its four-corners merely because it seems to the court to be clear and unambiguous, would either deny the relevance of the intention of the parties or presuppose a degree of verbal precision and stability our language has not attained." Pacific Gas & Electric Co. v. G.W. Thomas Drayage & Rigging Co., 442 P.2d 641, 644 (1968).

Moreover, "the main purpose of a contract is to be given effect if possible and that any minor and merely incidental provisions are to be construed so as not to defeat that purpose." Massasoit Housing Corp. v. Town of North Kingstown, 75 R.I. 211, 216, 65 A.2d 38, 40 (1949); see also Grun v. Pneumo Abex Corp., 163 F.3d 411, 420 (7th Cir. 1998) (even where the contract language is unambiguous, the court will ignore it "where literal application of a text would lead to absurd results or thwart the obvious intentions of its drafters").

St. Michael's argues that the contract provision allowing a parent to cancel a contract during the academic year is the result of a scrivener's error. The case law surrounding scrivener's errors in Rhode Island is limited. See Emhart Indus., Inc. v. Home Ins. Co., 515 F. Supp. 2d 228, 247 (D.R.I. 2007). Scrivener's errors, as found by other jurisdictions, have been determined to be a form of mutual mistake. Scrivener's errors are treated as a mutual mistake because the error resulted in the writing not properly reflecting the intent of each party. See Nash Finch Co. v. Rubloff Hastings, LLC., 341 F.3d 846, 849-50 (8th Cir. 2003).

A mutual mistake is "one that is 'common to both parties wherein each labors under a misconception respecting the same terms of the written agreement sought to be [reformed].'" Merrimack Mutual Fire Insurance Co. v. Dufault, 958 A.2d 620, 624 (R.I. 2008) (quoting

McEntee v. Davis, 861 A.2d 459, 463 (R.I. 2004)). "When a mutual mistake is manifest in the agreement at the time it is entered into, the agreement 'fails in a material respect [to] correctly [] reflect the understanding of both parties.'" Id. (quoting McEntee, 861 A.2d at 463). The party asserting mutual mistake bears the burden of proving the mutuality of that mistake by clear and convincing evidence. Merrimack, 958 A.2d at 624. Generally, the existence of mutual mistake is a question of fact. Id. If the party successfully demonstrates the existence of a mutual mistake, then the contract will be judicially reformed to reflect the true intent of the parties. Id. "'[T]he classic case for reformation' is when the mutual mistake can be traced to a typo or transcription error." OneBeacon Am. Ins. Co. v. Travelers Indem. Co. of Ill., 465 F.3d 38, 41 (1st Cir. 2006) (quoting E. Allan Farnsworth, Farnsworth on Contracts § 7.5 (2001))); Fid. & Guar. Ins. Co. v. Global Techs., Ltd., 117 F. Supp. 2d 911, 918 (D. Minn. 2000) ("[A] mistake in the writing of the policy may be considered a mutual one, even if one of the parties is at fault.").

The Court need look no further than the affidavit of the business manager of St. Michael's, Margaret Sayer, to determine that there is, in fact, a genuine issue of material fact that is in dispute. The affidavit of Ms. Sayer clearly outlines the process which St. Michael's uses for determining the number of students for an upcoming school year. Parents are asked to sign and return enrollment contracts before the end of February for the upcoming school year. (Aff. of Sayer ¶ 2.) St. Michael's requires this information in February so that the School can begin to make "hiring and budget decisions for the next academic year." Id. However, the School does not bind parents to these contracts until May 1st of the current academic year. Id. at 4. Following this cancellation deadline, the School then has the summertime to realize the exact staffing requirements for the upcoming school year. Id. at 5. If enrollment is up, then more teachers will be needed, and the opposite holds true if enrollment is down. Once enrollment

numbers are determined, the School can also project the amount of money it will be receiving because the tuition paid is an integral part of the budget. Id. at 6. After May 1st, the School depends on each student to pay tuition as required because the budget is crafted before each academic year. Notably, the budget for the 2007-2008 academic year was drafted with both of the Defendants' sons to be enrolled at the School. Id. Specifically, Ms. Sayer states that "[a]t no time was it ever the intent of the School to allow contracts to be terminated as of May 1 during the next academic school year. This was strictly an error in draftsmanship." Id. at 8.

Ms. Sayer's affidavit clearly demonstrates to this Court that the intent of the parties as to the cancellation provision is in dispute. Ms. Sayer's affidavit raises an issue as far as timing of when the Defendants could cancel the enrollment contract. Ms. Sayer and the School advocate that the time to cancel the contract was months before the 2007-2008 academic year, the Defendants claim they were well within their rights to cancel the contract in June 2007. It is this Court's determination that the intent of the parties is undoubtedly a factual issue. See OneBeacon Am. Ins. Co., 465 F.3d at 41; see also Bort v. Parker, 110 Wash. App. 561, 42 P.3d 980 (Wash. Ct. App. 2002) (court denied summary judgment because a scrivener's error created a genuine issue of material fact as to reformation of contract). This factual issue is also genuine and material to this litigation, and one that needs to be decided by a trier of fact because it relates directly to the issue of breach. See Nat'l Amusements, Inc. v. Town of Dedham, 43 F.3d 731, 735 (1st Cir. 1995) (An issue is "genuine" if the pertinent evidence is such that a rational fact finder could resolve the issue in favor of either party, and a fact is "material" if it has the capacity to sway the outcome of the litigation under the applicable law.).

However, Defendants further argue that St. Michael's is precluded from asserting reformation because it was not specifically pled in their complaint. To support this contention,

Defendants direct this Court to Dimond v. Barlow, 82 R.I. 399, 110 A.2d 438 (1955). However, Dimond is readily distinguishable from the case at bar. The Dimond Court was faced with reforming a deed that improperly described a parcel of land. Id. at 402, 110 A.2d at 440. The court ultimately determined that a plaintiff must plead with precision when seeking to reform a deed. Id. at 405, 110 A.2d at 441. Here, on the other hand, the Court is not faced with a deed, but rather an enrollment contract. The Dimond Court spent considerable time addressing the principles of reformation; however, the rules of law enunciated dealt specifically with deeds for land and not with contracts, as is the case at bar. Also, Dimond was decided close to sixty years ago. Since then, our Courts have been faced with reformation and mutual mistake on several occasions and have not reiterated the need to specifically allege facts, as was the case in Dimond. See, e.g., Merrimack, 958 A.2d 620; McEntee v. Davis, 861 A.2d 459; Rivera v. Gagnon, 847 A.2d 280 (R.I. 2004).

Notably, other courts have faced this very issue and decided that due to the liberal pleading standards, it was perfectly reasonable to not specifically plead reformation when it relates to a scrivener's error. See Davenport v. Beck, 576 P.2d 1199 (Okl. App. 1977); see also Olds v. Jamison, 195 Neb. 388, 238 N.W.2d 459 (1976) ("Where a written contract is the basis of an action and neither party asks for a reformation thereof, it is the duty of the court to ascertain its meaning and enforce it accordingly.") (citation omitted). Our Courts still adhere to the more liberal pleading standards.[3] See Sarni v. Meloccaro, 113 R.I. 630, 324 A.2d 648 (1974)

[3] Though recent Supreme Court of the United States decisions Bell Atl. Corp. v. Twombly and Ashcroft v. Iqbal arguably raise the bar for sufficiency by requiring plaintiffs to allege a set of plausible, rather than possible, facts showing an entitlement to relief, our jurisdiction has not expressly adopted (or rejected) this new precedent. Even in decisions published after Iqbal and Twombly, the Rhode Island Supreme Court continues to ascribe to the notice pleading doctrine. See Barrette v. Yakavonis, 966 A.2d 1231, 1234 (R.I. 2009) (avoiding Iqbal and Twombly by applying the standard that a "motion to dismiss is appropriate 'when it is clear beyond a reasonable doubt that the plaintiff would not be entitled to relief from the defendant under any set of facts that could be proven in support of the plaintiff's claim'").

(under the more liberal pleading standards, the court should be more concerned with substance of the complaint, not labels).

B

Damages

Finally, Defendants contend that they are entitled to summary judgment because St. Michael's suffered no damages as a result of Defendants' not paying tuition; thus, the Defendants maintain the damages sought by St. Michael's amount to a penalty. St. Michael's responds that they did, in fact, suffer damages as a result of the Defendants not paying tuition. St. Michael's further argues that they operated at a loss during the 2007-2008 academic year because their budget was depending on the tuition being paid by the Defendants.

While never specifically defined by our Courts, "a penalty is a sum inserted in a contract not as the measure of compensation for its breach but rather as a punishment for default. . . ." 22 Am. Jur. 2d Damages § 491 (2012). Our Supreme Court has, however, stated that a penalty must be viewed in light of the circumstances of each case and the intention of the parties as thus disclosed. Paolilli v. Piscitelli, 45 R.I. 354, 121 A. 531 (1923).

A review of the pleadings and affidavits convinces this Court that the alleged damages do not amount to a penalty. St. Michael's request for damages in its Complaint is limited to the tuition the Defendants agreed to pay the School for educational services to be provided to their eldest son. Compl. ¶¶ 5, 7. Furthermore, the affidavit from St. Michael's business manager also demonstrates that the damages suffered are limited to the tuition the School would have received from the Defendants. (Aff. of Margaret Sayer ¶ 11.) Finally, nowhere does the enrollment contract state a specific monetary amount to be paid to the School in the event of a breach. See

22 Am. Jur. 2d Damages § 491. Therefore, this Court finds that the damages requested do not amount to a penalty, but are instead compensatory.

IV

Conclusion

For the foregoing reasons, the Court concludes that there exists a genuine issue of material fact concerning the intent of the parties as it relates to the cancellation provision in the enrollment contract. Accordingly, Defendants' Motion for Summary Judgment is denied. Counsel shall submit an appropriate Order for entry consistent with this Decision.