

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION

No. 22-2033G

DURANJAY DOBSON, KESLER BONHEUR,
DANIEL DORINVIL AND ANDRE MARCUS,

Plaintiffs

vs.

CURRY COLLEGE,

Defendant.

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
2022 SEP -6 A 11: 17
MICHAEL JOSEPH DONOVAN
CLERK / MAGISTRATE

COMPLAINT
(Jury Demanded)

Introduction

This action seeks damages as compensation for the defendant's breach of contractual obligations and for its unlawful interference with civil rights guaranteed to them under the laws of the Commonwealth and the United States.

Parties, Jurisdiction, and Venue

1. Plaintiff Duranjay Dobson ("Dobson") is a resident of the commonwealth, domiciled at 19 Roseclair St., unit 2, Dorchester, MA 02125.
2. Plaintiff Kesler Bonheur ("Bonheur") is a resident of the commonwealth, domiciled at 15 Burris way Randolph MA.
3. Plaintiff, Daniel Dorinvil ("Dorinvil") is a resident of the State of Florida, presently domiciled at 109 6th street Fort Lauderdale, FL 33304.
4. Plaintiff Andre Marcus ("Marcus") is a resident of the State of New York, presently domiciled at 325 Sherman Ave apt D-16 Peekskill NY 10566.

5. Defendant Curry College (“Curry”) is a corporation organized and existing under the laws of the commonwealth the principal of business of which is to provide, for consideration and pursuant to federal grant and federally funded or guaranteed student loans, post-secondary school college degrees to students matriculating at its campus at 1071 Blue Hill Avenue Milton, Norfolk Co., MA 02186.

6. The Superior Court Department of the Trial Court of the Commonwealth has jurisdiction under the common law claims asserted herein because each of the Plaintiffs can reasonably be expected recover at least \$50,000 on such claims, and it the only department of the Trial Court Department of the Commonwealth vested with jurisdiction to determine and award relief upon the plaintiff’s statutory claims under G. L. c. 12, §§ 11H & 11I.

7. Venue is appropriate in the Suffolk Division of this court because one or more of the parties resides and/or conducts business therein.

8. All conditions precedent to the commencement of this action have occurred or been performed.

Facts

9. Dobson, Bonheur, Dorinvil, and Marcus, each of whom is black and have always self-identifies by gender as male, as assigned to them at birth, were enrolled as full-time students with Curry and had paid, were paying, or had paid on their behalf, tuition, room and board, for the 2019 Spring semester.

10. In the course of being enrolled at Curry as full-time resident students Dobson, Bonheur, Dorinvil, and Marcus, occasionally collaborated to create video recordings that could be replayed for entertainment and educational purposes to provoke discussion amongst fellow students and others on issues and topics that might be of interest to other students, both at Curry

and at large and would occasionally post such videos on the well-known internet sharing sites such as YouTube.

11. Among the videos that they created were some depicting impromptu and unrehearsed questioning of fellow students on issues of public and campus concern ranging from romantic school relationships to social justice / BLM issues.

12. Such videos as the created and posted on the internet that would post under the social media moniker "Unkut Kings," a name chosen to reflect that their posted work was typically completely unedited and raw: i.e. "un-cut."

13. In the course of attending Curry as resident students Dobson, Bonheur, Dorinvil, and Marcus (the "plaintiffs") had each and all formed associational ties with another student, "JAB," as a result of overlapping social circles and from one of more of them living in the same Curry College dormitory as JAB.

14. JAB, like the plaintiffs, self-identified as male, the gender assigned to him at birth, and as a result of his associational ties with the plaintiffs knew of their collaboration in producing and posting on the internet videos concerning issues of public and campus concern.

15. Curry was also aware of the collaboration of the plaintiffs in creating videos on issues and topics of campus concern as a result of their having created video content for the Curry men's hockey team.

16. In the Spring of 2019 the plaintiffs chose as subject for a video the issue of date rape and other forms of sexual assault among students at college campuses.

17. In accordance with their usual practice of recording thinly sketched impromptu scenarios that stayed true to their raw footage / un-cut style they arranged it so that JAB would

find himself alone in the dorm room of a female student who had communicated to him both an invitation to visit her in her dorm room and that she had been drinking or was drunk.

18. The dorm room of the female student who had agreed to play the part of the intoxicated student inviting JAB to her room was set-dressed with empty beer cans to maintain the illusion that she had been drinking when, in fact, she not been and was not vulnerable from drink.

19. JAB had previously been in videos created by the Plaintiffs and accordance with the plaintiffs' creative style of creating videos of thinly sketched and impromptu events and scenarios JAB was not to be informed in advance that the female student inviting him to her room was not, in fact, intoxicated and vulnerable, but was playing a role or a part in collaboration with the plaintiffs to create a video to educate fellow students and the public of otherwise innocent situations and encounters that could devolve into, or present an opportunity for campus date rape or sexual assault, or even an unfounded accusation of same.

20. On May 1, 2019, shortly after the female student collaborating with the plaintiffs communicated via text message an invitation to JAB to visit her in her dorm room and that she had been drinking, JAB accepted the invitation and went to the female student's dorm room.

21. The plaintiffs Marcus and Dorinvil were out of sight, secreted in a closet of the female student's dorm room when JAB arrived. The plaintiffs Dobson and Bonheur where not present in the female student's dorm room but were in another nearby dorm room.

22. The female student played her part on the arrival of JAB by slurring her speech in greeting JAB at the door to her room.

23. JAB entered the female student's room and, as she climbed up to the top bunk of the room's bunk bed, she believed or concluded that JAB had attempted to kiss her, whereupon

the female student exited the room and quickly returned with Dobson and Bonheur and Dorinvil and Marcus revealed their presence, exiting the dorm room's closet. Only portions of the pre-reveal impromptu interaction between JAB and the female student were successfully recorded by Plaintiffs and that video failed to record anything said by, or even the voice of, JAB.

24. Post-reveal the plaintiffs continued to record as they spoke with JAB communicating their opinion that his accepting the invitation from the female student to visit her in her dorm room when she was drinking and potentially vulnerable was both inappropriate and foolhardy.

25. Shortly thereafter JAB expressed his concerns to the Plaintiffs about the May 1, 2019 video being posted the internet but was informed by Plaintiffs that they intended to disclaim, if necessary, that the recording depicted any actual interaction between a male student and a female student alone in her dorm room and vulnerable from drinking.

26. JAB hired an attorney who, on that June 14, 2019, commenced on his behalf in superior court a civil action by filing a twelve-page complaint with 106 paragraphs of averments, naming as defendants the Plaintiffs, the female student who had played a part in the May 1, 2019 video, and another female student.

27. More than two weeks later, a Curry "Community Standards Officer" ("Curry CSO") transmitted to one or more of the Plaintiffs by e-mail attachment correspondence on Curry letterhead dated July 2, 2019, communicating that "[b]ased upon the available information, it appears you may have violated the following College policies:

Sexual and Gender-Based Harassment and Discrimination

Sexual Exploitation is purposely or knowingly taking sexual advantage of another person without consent. Examples of sexual exploitation include, but are not limited to:

- Obscene or indecent behavior, including exposure of one's sexual organs or the display of offensive sexual behavior;
- Deliberate observation of others (including letting others hide for observation) for sexual purposes without their consent;
- Taking, posting, displaying, or disseminating pictures, video or audio of another person's intimate body parts, or another person engaged in sexual activity or in a state of undress without that person's consent;
- Possession or distribution of illegal pornography.
- Prostitution.
- Knowingly exposing another person to a sexually transmitted infection or virus without the other's knowledge.
- Providing someone with alcohol or drugs (such as "date rape" drugs), with or without that person's knowledge, for the purpose of making the person vulnerable to non-consensual sexual activity.

28. The Curry CSO's letter of July 2, 2019, set a hearing date and time just one week out for one or more of the Plaintiffs to "speak with me ... to review the information I have received as well as share any information you would like to provide" and stating that "if you choose not to attend this meeting, **I will hold the meeting in your absence and determine an outcome** that will be communicated to you in writing." [Emphasis supplied].

29. The Curry CSO's letter of July 2, 2019, set a date and time one week later for one or more of the Plaintiffs to provide information and advised them that "there is a no contact order in place effective July 2, 2019 between you and [JAB]."

30. Subsequently this same Curry employee transmitted to one of the Plaintiffs by e-mail attachment correspondence on Curry letterhead dated July 22, 2019, memorializing that they had spoken by telephone on July 18, 2019, and communicating: that "your Community Standards meeting must take place by Tuesday, July 30, 2019"; that "**the College is not able to delay the Community Standards process to accommodate the schedule of [your lawyer];** and that "the College's process is separate from any court proceedings." [Emphasis supplied.]

31. On July 23, 2019, the appearance of an attorney for and the answer of the Plaintiffs to the complaint pending superior court complaint of JAB was docketed.

32. About one week later the same Curry CSO who had been communicating with the Plaintiffs to “investigate” JAB’s complaint to Curry concerning the events of May 1, 2019, transmitted to one or more of the Plaintiffs by e-mail attachment correspondence on Curry letterhead dated July 31, 2019 communicating that: “I have finished typing up my investigative summary”; that “you now have the right to review my investigative summary to confirm that your statements have been accurately reported”; that “you will be able to view complainant statements”; but that the “[r]eview of the investigative summary must be in person” and that they must telephone to arrange a date and time to conduct such a review by “no later than Friday, August 2, 2019.”

33. Subsequently the same Curry CSO transmitted to one or more of the Plaintiffs by e-mail attachment correspondence on Curry letterhead dated August 7, 2019 communicating: that “the investigative summary and finding have been submitted to the sanctioning Administrator” whom it identified by name; and that this administrator “will be in contact with the outcome, any sanctions, appeal rights and next steps”; and to “continue to check your email as it will contain all updates and notices as well as additional deadlines that may apply to your process.”

34. The Plaintiffs did not receive further notices or correspondence from Curry staff until one or more of them received via e-mail attachment correspondence on Curry letterhead dated August 20, 2019, from the individual identified by the Curry CSO as the “sanctioning Administrator” communicating: that author’s title was “Associate Vice President for Student Affairs and Dean of Students”; that “[b]ased on all of the information obtained throughout the

investigation, including information that led the investigator to determine that Jair was not consenting to the filming or posting of the video, and based on the preponderance of the evidence standard, you have been found responsible for violating the [] policy” prohibiting “Sexual Exploitation” set forth in the CSO’s letter dated July 2, 2019 quoted above at paragraph “27” of this complaint.

35. The August 20, 2019, letter of Curry’s sanctioning administrator to one or more of the Plaintiffs also communicated to them that the no-contact order with regard to JAB remained in effect, that they were “prohibited from being on the Curry College campus effective the date of this letter through August 19, 2020[and if] found to be on the Curry College campus, [would be] subject to removal and/or arrest from Public Safety/Milton Police”; and would be required to complete some sort of vague and unspecified “counseling” and “risk assessment” process conducted by unnamed Curry staff or agents being they would be authorized to return.

36. Curry’s appeal process was invoked and by correspondence on Curry letterhead dated September 3, 2019, Curry’s “Vice President for Student Affairs” rejected the appeal.

37. Colleges such as Curry that accept federal funding are expected to adhere to regulations appearing in 34 Code Fed. Regs. Part 106, including § 106.30 and § 106.45(b), first published in 2018 as a notice of proposed rulemaking, 83 Fed. Reg. 61,462 (Nov. 29, 2018), that define what constitutes “sexual harassment” and require colleges to provide express procedural protections in the “grievance process” for those, such as the Plaintiffs, called upon to respond to allegations of sexual harassment, including the requirement the process be applied fairly to both complainants and respondents equally, and that in making any determination statements not subject to cross-examination are to be excluded because of the life-altering consequences that are often at stake in such determinations.

Causes of Action

COUNT I: Breach of Contract

38. Plaintiffs incorporate by reference herein the averments set forth above in paragraphs "1" through "37."

39. There existed between the Plaintiffs and Curry a contract, whether express, implied by law or by fact, and supported by consideration under which Curry was obligated to, and giving rise to Plaintiffs reasonable expectation that they would be treated fairly in determining the complaints against them by a fellow student, and under which the complaining student would be accorded greater due process rights and procedural protections, including the opportunity to be heard at a meaningful time and in a meaningful manner, when purporting to determine and adjudicate such a complaint, and that unreasonable and drastic sanctions including suspension, expulsion, and barring them from campus upon threat of criminal prosecution, would not be imposed for behavior or conduct that did not clearly fall within any class of conduct that Curry published as expressly prohibited and subject to sanction.

40. The Plaintiffs performed, and did not any time materially breach, the contract between each of them and Curry.

41. Curry materially breached the contract between it and each of the Plaintiffs.

42. Each of the plaintiffs has been injured in his property and prospects as a direct and proximate consequence of Curry's breach of contract.

Claim for Relief

WHEREFORE, plaintiffs demand judgment for damages, to be individually assessed for each, to compensate them for their respective injuries incurred as a result of Curry's breach of contract, and

for an award of their costs, together with prejudgment interest, and for any further relief the court may deem a reasonable and appropriate remedy.

COUNT II: Massachusetts Civil Rights Act (G. L. c. 12, §§ 11H & 11I).

43. Plaintiffs incorporate by reference herein the averments set forth above in paragraphs “1” through “42.”

44. Curry interfered and attempted to interfere by means of threats, intimidation, and coercion with rights secured by the constitution or laws of the commonwealth and of the United States, including but not limited to the following:

- the right to free speech;
- the right to free association;
- the right to petition;
- the right to equal protection;
- the right to due process extended to respondents under regulations issued by the United States Department of Education under Title IX of the Education Amendments of 1972.

45. Each of the plaintiff has been injured in their property, person, prospects as a direct and proximate result of the unlawful conduct of Curry averred above in paragraph “43.”

Claim for Relief

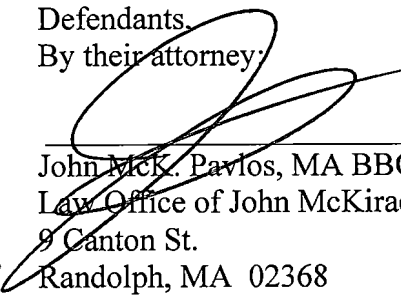
WHEREFORE, the plaintiffs demand judgment for damages, to be individually assessed for each, to compensate them for their respect injuries as a result of Curry’s interference with their civil rights, together with an award of their attorney fees, costs and prejudgment interest, and for any further relief the court may deem a reasonable and appropriate remedy, including equitable relief, whether by way or declaratory judgment or mandatory injunction, addressing he illegality of the “grievance process” employed by Curry on complaints of “sexual harassment.”

JURY DEMAND

Plaintiffs demand trial by jury on all claims so triable as a matter of law.

Respectfully submitted,
DURANJAY DOBSON, KESSLER BONHEUR,
DANIEL DORINIVIL and ANDRE MARCUS,

Defendants.
By their attorney:



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