



Lessons from Mount Ida

By Michael Cooney and Steven Richard

The roadmap for closing a nonprofit college is not particularly well-drawn, and fiduciaries have limited guidance on how their legal obligations must be satisfied in such challenging circumstances. The United States Court of Appeals for the First Circuit provided some guidance in the case of *Squeri v. Mount Ida College*, 2020 WL 1445400 (1st Cir. Mar. 25, 2020), upholding the ruling of the Massachusetts Federal District Court, 2019 WL 2249722 (D. Mass. May 24, 2019), dismissing entirely the plaintiffs' putative class action complaint against the college, its board of trustees, and five administrators, including the college's president.

The First Circuit repeatedly identified the plaintiffs' shortcomings in pleading and prosecuting the case. Particularly, the First Circuit stressed that federal courts must not rewrite or expand clearly defined state law delineating the scope of the relationship between an institution of higher education and its students. While the First Circuit easily pronounced that none of the students' various claims passed legal muster under Massachusetts statutory and case law, there are nonetheless lessons to be learned by college trustees when facing the risk of closure.

The end came quickly for Mount Ida College, which permanently closed at the end of the spring semester in 2018 after six weeks' notice to its students. Some students faced obstacles transferring their credits, finding comparable degree programs, completing their degrees on time, and receiving adequate scholarships and financial aid. By the time of the notice of closing, the transfer deadlines for many other institutions were imminent or had already passed.

Underlying all of the plaintiffs' claims were allegations that the defendants knew that Mount Ida was on the brink of insolvency but concealed this information, instead assuring current and prospective students that the college was financially stable. The expansively pled suit brought seven Massachusetts state law claims—breach of fiduciary duty, violation of privacy, fraud, negligent misrepresentation, fraud in the inducement, breach of contract, and violation of Massachusetts General Laws ch. 93A.

Breach of fiduciary duty

The plaintiffs' claim of breach of fiduciary duty by both the individual defendants and the college itself allegedly ran to current and prospective students. That claim was soundly dispatched on the basis that, as a matter of law, Massachusetts courts have consistently held that no fiduciary

relationship exists between a student and his or her college. Instead, any fiduciary duty was owed to Mount Ida as a corporate entity. The First Circuit's analysis evidences a clear concern that the students' proffer of wide-ranging fiduciary duties would impose unclear and impractical requirements upon trustees in the fulfillment of their obligations to the institution.

The court pointed out that the interests of the students directly conflicted in some ways with those of the college. The Massachusetts Attorney General's Office (AGO), for example, recognized that premature notice by the college of financial instability could result in a self-fulfilling prophecy, with students deciding not to enroll if a gloomy picture of Mount Ida's financials were painted. As the First Circuit stated, its judicial restraint was further justified by Massachusetts' recent adoption of financial stability legislation, mandating the posting of financial information on the institution's website and imposing notification requirements to the Commonwealth's Board of Higher Education in the event of an imminent closure or circumstances negatively affecting the fulfillment of the institution's educational mission to its current and admitted students.

Violation of privacy

The plaintiffs' privacy violation claim, under ch. 214, § 1B, was premised on the transmission by the college to UMass Dartmouth of information about Mount Ida students' majors, estimated credits, transcripts, and financial aid packages, among other things. That information was used to prepare individualized information packages for students about the process of enrolling at UMass Dartmouth. Mount Ida students had not, however, given prior consent to release these records.

The court found that the transfer of financial and academic information was justified because it was authorized under Massachusetts law, requiring a closing institution "to safeguard the needs of students by organizing educational transfer opportunities, and ensuring the preservation of student records." Further, the furnishing of the information to one part of the University of Massachusetts system (UMass Dartmouth) for the eventual use by another (UMass Amherst) was not problematic. There was no actionable interference with a privacy concern because the transfer's legitimate business purpose enabled students to continue with their educations and promoted the continuity and preservation of their educational records.

Fraud, negligent misrepresentation, fraud in the inducement

These claims were all premised on the defendants holding out Mount Ida as a "viable institution" despite the fact that they knew or should have known that it was failing financially. The plaintiffs failed, however, to plead any false statement made by any of the defendants.

On the contrary, the college was subject to an array of regular disclosure obligations, which, if the plaintiffs had seen fit to review them, would have provided an accurate picture of the college's financial health. These include the filing of annual audited financial statements with the Massachusetts AGO and Form 990 with the Internal Revenue Service.

In summary, the activities of the college to maintain itself in the normal course of business (such as accepting students and enrollment deposits for the Fall 2018 entering class, advertising, and awarding scholarships) did not constitute an actionable claim, either based on an actual statement by the college or any plausible theory of fraud by omission.

Breach of contract

The inability of the plaintiffs to plead the existence of a contract, express or implied, with sufficient specificity ended their breach of contract claim.

The First Circuit’s analysis took a narrow definition of the relationship between the college and its existing students, finding that “the essence of the transaction with the students was that the students would receive a semester of education in exchange for a semester of tuition.” That perspective arguably negates any sentiment that, in enrolling in an institution of higher education, the student has a reasonable expectation and the governing board a responsibility to assure that the institution will remain open to allow students to graduate. Again, federal judicial deference guided the conclusion—as the precise legal terms and conditions of any contractual relationship between an institution and its students should be prescribed under state law.

Violation of Massachusetts General Laws ch. 93A

Relief under Massachusetts General Laws ch. 93A requires “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” While this consumer protection statute is often widely pled and litigated, the First Circuit found it to be misplaced here in the college’s educational relationship with its students.

The First Circuit upheld the district court’s finding that actions in pursuit of Mount Ida’s core educational mission were not in “trade or commerce,” while recognizing that an entity’s status as a charitable corporation is not dispositive of the issue of whether ch. 93A applies.

Additional observations

Mount Ida’s financial distress is not uncommon to many small private colleges and likely is to be shared by even more institutions given the worldwide pandemic. Massachusetts law proved highly supportive of the college’s position, and other jurisdictions may not be so beneficial. Here, the early dismissal was driven by the implausibility of the plaintiffs’ overreaching efforts to stretch established state law boundaries, especially where the record supported (even accepting the truth of plaintiffs’ allegations) that the college complied with its state law obligations in the face of its financial instability and plight. A full understanding of both reporting and notification obligations, as they evolve under state statutes or regulations and judicial common law, will ensure that the institution’s defenses will be properly aligned to defeat any efforts to impose liability for its exercise of business judgment while addressing financial challenges.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

- Michael Cooney at mcooney@nixonpeabody.com or 202-585-8188
- Steven Richard at srichard@nixonpeabody.com or 401-454-1020
- Thaddeus Stauber at tstauber@nixonpeabody.com or 213-629-6053