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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1306-21**

NICHOLAS PICARELLO,

Plaintiff-Appellant,

v.

**RWJ BARNABAS HEALTH INC.,
BROOKDALE COMMUNITY
COLLEGE, MELISSA LAPORTA,
CAROLINE VISSER, and KATHY
TAGGART,**

Defendants-Respondents.

Submitted May 2, 2023 – Decided July 17, 2023

Before Judges Messano and Gilson.

On appeal from the Superior Court of New Jersey, Law
Division, Monmouth County, Docket No. L-0567-21.

Nicholas Picarello, appellant pro se.

Ronan, Tuzzio & Giannone, PC attorneys for
respondents RWJ Barnabas Health, Inc., Melissa
LaPorta, and Caroline Visser (Linda A. Olsen, of
counsel and on the brief).

Lewis Brisbois Bisgaard & Smith LLP, attorneys for respondents Brookdale Community College and Kathy Taggart (Jeffrey Shooman, Elicor D. Shiloh, and Amy E. Canning, of counsel and on the brief).

PER CURIAM

Plaintiff Nicholas Picarello is a former student of Brookdale Community College (Brookdale), who had been enrolled in the Radiology Technology Program (the RT Program). As part of that program, plaintiff participated in clinical externships at two hospitals associated with RWJ Barnabas Health, Inc. (RWJ Health). Ultimately, plaintiff did not complete the RT Program and did not receive a technician degree from Brookdale. He sued Brookdale, RWJ Health, and three of their employees, alleging breaches of contract. Read generously, plaintiff's complaint also suggests claims for slander, conspiracy, and acts of discrimination, intimidation, retaliation, and hostility in violation of New Jersey's Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -50.

Plaintiff appeals from orders dismissing his claims against Brookdale and one of its employees and granting summary judgment to RWJ Health and two of its employees. Because plaintiff did not set forth viable breach of contract claims, and because all his other suggested claims were time-barred by the applicable statutes of limitations, we affirm.

I.

We discern the facts from the record, viewing them in the light most favorable to plaintiff, who was the non-moving party. Sashihara v. Nobel Learning Cmtys., Inc., 461 N.J. Super. 195, 206 (App. Div. 2019). In that regard, we have reviewed plaintiff's complaint, accepted his factual allegations, and have searched the complaint for suggested causes of action. See id. at 200.

Plaintiff began taking courses at Brookdale in 2013. From September 2015 to December 2017, plaintiff was enrolled in Brookdale's RT Program. As part of his course of study, plaintiff participated in several clinical externships. His clinical training was supervised by Kathy Taggart, a radiology instructor at Brookdale and the director of the RT Program.

Brookdale had an Affiliation Agreement with Monmouth Medical Center (MM Center), an affiliate of RWJ Health. The Affiliation Agreement outlined the responsibilities of Brookdale and MM Center concerning clinical training for Brookdale students. Under the Affiliation Agreement, MM Center employees helped to evaluate Brookdale students. MM Center also had the "sole discretion" to "immediately terminate a student['s] participation in the [clinical] program."

During the 2016 spring and summer semesters, plaintiff took part in a clinical externship at the "Southern Campus" of MM Center. Melissa LaPorta was an MM Center employee in the radiology department when plaintiff participated in his externship.

In the fall semester of 2016, plaintiff performed an externship at the Community Medical Center (CM Center), which is an affiliate of MM Center and RWJ Health. While at the CM Center, plaintiff took a course in x-ray technology and was evaluated by Caroline Visser, a registered technologist employed by the CM Center. Visser gave plaintiff a poor evaluation on one of his final x-ray readings and as a result he did not initially pass the course. Subsequently, however, plaintiff challenged that evaluation, and in 2017 he was given a passing grade for the course.

In July 2017, plaintiff and Brookdale prepared a "Program Completion Plan," identifying the courses plaintiff planned to take over the next three semesters to complete the RT Program. In that plan, plaintiff requested to register for an externship at MM Center's Southern Campus for the fall 2017 semester. Plaintiff and Brookdale also agreed to a "Special Project Contract" (SP Contract), describing the courses plaintiff would undertake in the fall 2017 semester and the evaluations he would need to receive.

On July 26, 2017, LaPorta sent an email to Terry Konn, Brookdale's radiology department director, requesting that plaintiff not attend the clinic at MM Center. In that email, LaPorta stated that in his previous externship, plaintiff had been uncomfortable working with female students, awkward in interacting with patients, and had not accepted constructive criticism. The email also stated that plaintiff had been involved in a situation "that [led] to the dismissal of an employee." In addition, LaPorta reported that if plaintiff returned to MM Center, some technicians had stated that they would resign.

Plaintiff was informed of the content of that email and several months later received a copy of the email. In September 2017, plaintiff began an externship at the CentraState Medical Center. Thereafter, in December 2017, he stopped attending the Brookdale RT Program and never received a degree.

Over three years later, in February 2021, plaintiff sued Brookdale, Taggart, RWJ Health, Visser, and LaPorta. Plaintiff, who was self-represented, asserted one count: "BREACH OF CONTRACT." He, however, included allegations of "an unsafe and hostile environment"; a conspiracy to "commit a fraud by forging critical documents"; "intimidatory and retaliatory acts"; "slander"; and violations of the LAD.

In support of his contract claims, plaintiff pointed to the Brookdale student handbook and asserted that there was a "mutual and reasonable contract of expectation between a student and a learning institution." Plaintiff also alleged that there was a "basic contract when a medical center accepts a student to perform services as an unpaid intern." Plaintiff then asserted that both Brookdale and RWJ Health had breached their contracts with him.

Plaintiff's complaint also asserted several allegations against the individual defendants. Plaintiff alleged that Visser had forged his signature on an evaluation prepared in December 2016, and that evaluation had led to plaintiff initially failing the course he was taking. Plaintiff alleged that Taggart had thrown a roll of tape at him during a course in April 2016, and that incident had caused him humiliation. Regarding LaPorta, plaintiff alleged that she had slandered him by making untrue statements in the email she sent on July 26, 2017.

RWJ Health, Visser, and LaPorta moved for summary judgment. Shortly thereafter, Brookdale and Taggart filed a motion to dismiss plaintiff's complaint for failure to state a claim. Plaintiff opposed both those motions, and the parties submitted various papers, including certifications, in support of their positions.

The trial court heard oral argument on the motions on July 30, 2021. Thereafter, on November 3, 2021, the court issued a statement of reasons and two orders: one granting summary judgment to RWJ Health, Visser, and LaPorta; and the other dismissing the claims against Brookdale and Taggart. The trial court found that there was no contract between plaintiff and Brookdale. The court also found that plaintiff was not a party to or a third-party beneficiary of the Affiliation Agreement between MM Center and Brookdale. In addition, the court found that plaintiff's claims of slander, conspiracy, and violations of the LAD were all time-barred under the one-year and two-year statutes of limitations governing those causes of actions.

Plaintiff now appeals from the trial court's November 3, 2021 orders dismissing his claims against all defendants.

II.

On appeal, plaintiff makes numerous contentions, which can be distilled into three arguments. First, plaintiff asserts that the trial court erred in dismissing his contract claims against Brookdale. He asserts he had both an implied and an express contract with the college. Second, plaintiff argues that he had an implied contract with RWJ Health, and he was a third-party beneficiary to the Affiliation Agreement. Finally, plaintiff argues that the trial

court acted prematurely and should have allowed him to conduct discovery. Treating that third argument most favorably towards plaintiff, in essence he is contending that his complaint suggested other causes of action that were viable legal causes of action.

Having considered plaintiff's arguments, the allegations in his complaint, and the applicable law, we hold that plaintiff did not identify a viable contract with Brookdale or RWJ Health. We also hold that all other causes of action suggested by the allegations in plaintiff's complaint were time-barred.

A. Our Standard of Review.

Appellate courts review de novo an order dismissing a complaint for failure to state a claim. MTK Food Servs., Inc. v. Sirius Am. Ins. Co., 455 N.J. Super. 307, 311 (App. Div. 2018). "When reviewing a motion to dismiss under Rule 4:6-2(e), we assume that the allegations in the pleadings are true and afford the pleader all reasonable inferences." Sparroween, LLC v. Township of West Caldwell, 452 N.J. Super. 329, 339 (App. Div. 2017). "The essential test is 'whether a cause of action is "suggested" by the facts.'" Sashihara, 461 N.J. Super. at 200 (quoting Printing Mart-Morristown v. Sharp Elecs., 116 N.J. 739, 746 (1989)). "Where, however, it is clear that the complaint states no basis for relief and that discovery would not provide one, dismissal of the complaint is

appropriate." Sparroween, 462 N.J. Super. at 339 (quoting J.D. ex rel. Scipio-Derrick v. Davy, 415 N.J. Super. 375, 397 (App. Div. 2010)). When certifications and materials beyond the pleadings are submitted, we treat the matter as a motion for summary judgment. R. 4:6-2.

We review summary judgment decisions de novo using the same standard that governed the motion court's decision. RSI Bank v. Providence Mut. Fire Ins. Co., 234 N.J. 459, 472 (2018) (citing Bhagat v. Bhagat, 217 N.J. 22, 38 (2014)). Under that standard, summary judgment will be granted when "the competent evidential materials submitted by the parties," viewed in the light most favorable to the non-moving party, show that there are no "genuine issues of material fact" and that "the moving party is entitled to summary judgment as a matter of law." Grande v. Saint Clare's Health Sys., 230 N.J. 1, 24 (2017) (quoting Bhagat, 217 N.J. at 38). If there are no genuine issues of fact, we decide de novo whether the trial court's ruling on the law was correct. RSI Bank, 234 N.J. at 472.

B. The Contract Claims Against Brookdale.

Plaintiff identified two types of contracts he had with Brookdale: an implied-in-fact contract he had as a student; and the express SP Contract. There

was no implied-in-fact contract, and the SP Contract does not support any of plaintiff's claims.

1. The Implied-In-Fact Contract.

In certain situations, New Jersey recognizes implied-in-fact contracts. See, e.g., Troy v. Rutgers, 168 N.J. 354, 365-66 (2001); Wanaque Borough Sewerage Auth. v. Township of West Milford, 144 N.J. 564, 574 (1996). An implied-in-fact contract is an agreement manifested by conduct rather than expressed written words. Wanaque, 144 N.J. at 574. Courts can find and enforce an implied-in-fact contract based on the parties' conduct considering the surrounding circumstances. Ibid. Whether parties acted in a manner sufficient to create an implied contract is generally a question of fact. Troy, 168 N.J. at 366. Nevertheless, if "no reasonable juror" could conclude that an implied contract existed, the issue can be resolved on a motion. Ibid.

Plaintiff contends that he entered an implied contract with Brookdale when he was offered enrollment in the RT Program and accepted that offer by paying tuition and attending classes. He also points to the Brookdale student handbook and argues that those actions, together with the handbook, created a "mutual and reasonable contract of expectations."

"New Jersey courts have declined to characterize the relationship between student and university as contractual." Hernandez v. Don Bosco Preparatory High, 322 N.J. Super. 1, 17 (App. Div. 1999); see also Mittra v. Univ. of Med. & Dentistry of N.J., 316 N.J. Super. 83, 89-90 (App. Div. 1998); Napolitano v. Princeton Univ. Trs., 168 N.J. Super. 548, 566 (App. Div. 1982). In that regard, we have long recognized that "[r]igid application of contract principles to controversies concerning student academic performance would tend to intrude upon academic freedom and to generate precisely the kind of disputes that courts should be hesitant to resolve." Mittra, 316 N.J. Super. at 91. Instead, courts will evaluate whether a student was terminated following a "fair procedure." Hernandez v. Overlook Hosp., 149 N.J. 68, 81 (1997).

Plaintiff pled no facts that could support an implied-in-fact contract with Brookdale. He has only alleged a typical student-college relationship and has not identified, nor suggested, conduct that would support finding an implied-in-fact contract with Brookdale. Moreover, plaintiff has not alleged that he was improperly dismissed from Brookdale; rather, he contends that he decided to stop taking courses because he felt he had not been fairly treated. Consequently, there were no procedures that plaintiff was owed.

2. The Express Contract.

"[T]he basic features of a contract' are 'offer, acceptance, consideration, and performance by both parties.'" Goldfarb v. Solimine, 245 N.J. 326, 339 (2021) (quoting Shelton v. Restaurant.com, Inc., 214 N.J. 419, 439 (2013)). "A contract arises from [an] offer and acceptance, and must be sufficiently definite "that the performance to be rendered by each party can be ascertained with reasonable certainty."" Id. at 339 (quoting Weichert Co. Realtors v. Ryan, 128 N.J. 427, 435 (1992)).

To establish a claim for breach of contract, a plaintiff must prove that (1) he had a valid contract; (2) he did what the contract required him to do; (3) the defendant failed to perform a defined obligation under the contract; and (4) defendant's breach caused a loss to plaintiff. Id. at 338. Interpreting a contract is a question of law. Hess Corp. v. ENI Petroleum US, LLC, 435 N.J. Super. 39, 46 (App. Div. 2014). "Absent ambiguity, the intent of the parties is to be ascertained by the language of the contract." CSFB 2001-CP-4 Princeton Park Corp. Ctr., LLC v. SB Rental I, LLC, 410 N.J. Super. 114, 119 (App. Div. 2009). "If the language is plain and capable of legal construction, the language alone must determine the agreement's force and effect." Ibid. (quoting FDIC v. Prince George Corp., 58 F.3d 1041, 1046 (4th Cir. 1995)).

Plaintiff contends that the SP Contract was an express contract with Brookdale. He also relies on the Program Completion Plan. While the SP Contract, together with the Program Completion Plan, may constitute some type of contract, plaintiff has failed to show that there was any breach. The SP Contract and the Program Completion Plan are clear in their terms. They set forth the plan for plaintiff to take courses to complete the RT Program and the required evaluations plaintiff needed to receive. The expressed language in the SP Contract and Program Completion Plan do not guarantee that plaintiff would receive a degree.

Moreover, plaintiff signed the SP Contract in July 2017. The majority of his claims for damages concern actions that he alleges took place before July 2017. His claims of damages also rely on breaches that do not involve the express terms of the SP Contract or his Program Completion Plan. In short, plaintiff has not pled, and his complaint does not suggest, any facts that would support breach-of-contract claims against Brookdale.

C. The Contract Claims Against RWJ Health.

In his complaint, plaintiff contended that he had an implied contract with RWJ Health based on his participation in the clinical externships. We reject that

claim for the same reasons that we rejected his implied-in-fact contract claim against Brookdale.

Plaintiff also contends that he was a third-party beneficiary to the Affiliation Agreement. That contention has no factual or legal support. "It is a fundamental premise of contract law that a third party is deemed to be a beneficiary of a contract only if the contracting parties so intended when they entered into their agreement." Ross v. Lowitz, 222 N.J. 494, 514 (2015). "If there is no intent to recognize the third party's right to contractual performance, 'then the third person is only an incidental beneficiary, having no contractual standing.'" Id. at 513 (quoting Broadway Maint. Corp. v. Rutgers State Univ., 90 N.J. 253, 259 (1982)). Determining the intent of the contracting parties is ordinarily a question of law. Labega v. Joshi, 470 N.J. Super. 472, 486 (App. Div. 2022).

A plain reading of the Affiliation Agreement establishes that there was no intent by Brookdale and MM Center to confer contractual rights on students participating in the RT Program. Moreover, the Affiliation Agreement does not guarantee students any rights. Indeed, that agreement expressly stated that MM Center could terminate a student's participation in the program in its "sole discretion."

D. Other Suggested Causes of Action.

As already noted, plaintiff only identified one cause of action for breach of contract in his complaint. Nevertheless, we have reviewed the complaint and there are allegations suggesting causes of action based on slander, conspiracy in forging a document, and hostility, discrimination, retaliation, and intimidation in violation of the LAD. In that regard, we clarify that the claims of a hostile program environment, intimidation, retaliation, and discrimination must all be considered under the LAD. See Catalane v. Gilian Instrument Corp., 271 N.J. Super. 476, 491-92 (App. Div. 1994) (recognizing "supplementary common law causes of action [are not permitted] when a statutory remedy under the LAD exists").

All the suggested claims in plaintiff's complaint, however, are time-barred. A claim for slander must be commenced within one year after the publication of the alleged slander. N.J.S.A. 2A:14-3. Plaintiff alleges he was slandered by LaPorta in the email she sent on July 26, 2017. Plaintiff acknowledges he was informed of that email shortly after it was sent and that he obtained a copy by October 2017. Plaintiff filed his complaint in February 2021. His claim for slander is, therefore, time-barred.

The LAD claims have a two-year statute of limitations. Montells v. Haynes, 133 N.J. 282, 292 (1993). Consequently, a LAD claimant must file a complaint "within two years of the date on which the cause of action 'accrued.'" Henry v. N.J. Dep't of Human Servs., 204 N.J. 320, 324 (2010). Plaintiff complains of acts of alleged hostility, discrimination, retaliation, and intimidation that he asserts occurred between 2016 and December 2017. He filed his complaint, however, in February 2021, over three years after those alleged actions. Consequently, all claims he might have been able to bring under the LAD are time-barred.

Plaintiff's final suggested claim is a claim of conspiracy to engage in forgery. Initially, we note that forgery is generally not a civil cause of action; rather, it is a criminal claim. See N.J.S.A. 2C:21-1. It is also not clear that plaintiff has alleged a viable civil conspiracy claim. See LoBiondo v. Schwartz, 199 N.J. 62, 102 (2009) (explaining the elements of civil conspiracy). Nevertheless, even if plaintiff could have asserted a civil cause of action based on the alleged forgery, the alleged forgery occurred in December 2016, and he learned of it in 2017. Civil actions for injuries for alleged wrongful acts must be filed within two years. See N.J.S.A. 2A:14-2. Therefore, any claim based on conspiracy and forgery were also time-barred.

III.

In summary, having examined plaintiff's factual allegations in his complaint and having accorded every reasonable inference in favor of plaintiff, we conclude that he had no viable claims against any of the defendants based on his participation in the RT Program. He either does not have contracts or the contract he identifies does not support a cause of action. All his other potential claims, including his claims against the individual defendants, were time-barred by the applicable statutes of limitations. Accordingly, the trial court correctly dismissed with prejudice all of plaintiff's claims against all defendants in this action.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION