

Oct 2021 | [Articles Blog: The Westchester Litigator](#)

Westchester Quarterly Roundup: Notable Decisions of the Westchester County Federal and State Courts

Judge Halpern Grants Plaintiff's Default Judgment Motion in Part in a Copyright Action

In *Tetra Images, LLC v. Grahall Partners, LLC*, et al., No. 19-CV-05250 (PMH), 2021 WL 2809566 (S.D.N.Y. July 6, 2021), the plaintiff sought monetary damages and a permanent injunction under the Copyright Act, 17 U.S.C. § 101 et seq., for the defendant's unauthorized use of a copyrighted photograph. When the defendant failed to appear in the action, the plaintiff moved for a default judgment, a motion the court granted in part and denied in part.

Judge Halpern considered whether the plaintiff stated a claim for copyright infringement and found that it did: The plaintiff registered the photo with the United States Register of Copyrights and never granted the defendants a license to use the photograph on their website.

The court then assessed the plaintiff's claim for statutory damages under the Copyright Act. Based on the defendants' willful infringement and their refusal to respond to plaintiff's pre-litigation correspondence, Judge Halpern determined that a multiplier of five times the fair market value of the photo was an appropriate calculation for statutory damages. The court awarded \$12,500 in statutory damages along with the plaintiff's attorney's fees and costs as permitted under the Copyright Act.

Judge Halpern, however, declined to enter a permanent injunction, preventing the defendants from infringing on copyrighted materials, finding that even if the plaintiff could demonstrate the balance of hardships and a remedy in equity being warranted, it could not show it suffered an irreparable injury that could not be compensated by monetary damages.

Judge Briccetti Dismisses Two Putative Class Actions Seeking Reimbursement of University Tuition Fees Amidst the COVID-19 Pandemic

In *Fedele v. Marist College v. Mercy College*, No. 20-CV-3559 VB, 20-CV-3584 (VB), 2021 WL 3540432 (S.D.N.Y. Aug. 10, 2021), two sets of plaintiffs brought similar putative class actions against Marist College and Mercy College, respectively, asserting claims of breach of contract, unjust enrichment, conversion and money had and received. The plaintiffs claimed the colleges promised their students in-person classes and so owed tuition refunds to students who were forced to study remotely when the college campuses closed during the COVID-19 pandemic. Each defendant moved to dismiss, and the court granted both motions.

On the breach of contract claim, Judge Briccetti rejected the defendants' argument that the plaintiffs' claims were precluded by New York's bar on educational malpractice claims. The court found that although the claims centered around educational instruction, they were pled as contract claims for which the court was permitted to rule on their merits. Judge Briccetti

concluded, however, that the plaintiffs failed to state a claim for breach of contract because they did not identify a specific contractual promise by either Marist or Mercy to provide in-person educational instruction in exchange for tuition and fees. The court also found that the fact the universities had offered in-person classes prior to the pandemic did not create an implied contract with students that classes would always be in person.

Judge Briccetti then disposed of the plaintiffs' unjust enrichment, conversion and money had and received claims, finding them duplicative of the contract claims and otherwise insufficient. The court granted Marist's motion to dismiss and Mercy's motion for judgment on the pleadings.

Judge Seibel Reviews Exhaustion Requirements and Grants Defendants' Motion to Dismiss in an Individuals with Disabilities Education Act Case

In *Schneider, v. Mahopac Central School District et al.*, No. 20-CV-709 (CS), 2021 WL 3887913 (S.D.N.Y. Aug. 31, 2021), the plaintiff sued the defendants for violating the Individuals with Disabilities Education Act ("IDEA") and retaliation arising out of the defendant school district's provision of services to the plaintiff's minor child, who was diagnosed with epilepsy, autism, ADHD, and intellectual disabilities. The plaintiff objected to the aide arrangements provided to the child, the school district's communication with the parents and its management of the child's seizures. The defendants moved to dismiss the complaint, arguing, *inter alia*, that the plaintiff had failed to exhaust his administrative remedies as required under the IDEA.

Judge Cathy Seibel determined that the case required IDEA exhaustion and granted the defendants' motion to dismiss. The court found that because the changes to the accommodation were sought pursuant to the child's individual education plan and were based on the alleged denial of a free, appropriate public education ("FAPE"), the plaintiff was required to exhaust his administrative remedies before commencing litigation and his failure to do so was fatal to his claims.

Regarding the plaintiff's retaliation claims, Judge Seibel noted that the Second Circuit has not yet decided whether FAPE-related retaliation claims are subject to the IDEA's exhaustion requirement. Finding the reasoning of other courts, including the Third Circuit, the court concluded that exhaustion was required. Though Judge Seibel sympathized with the plaintiff's efforts, the court held it could not "skirt the exhaustion requirements required by law" and so dismissed the complaint.

Judge Román Grants Defendants' Motion to Dismiss in a Title VII and American Disabilities Act Case

In *Billings v. New York State Department of Corrections and Community Supervision*, No. 19-CV-11796 (NSR), 2021 WL 4150925 (S.D.N.Y. Sept. 10, 2021), Judge Nelson Román granted the defendants' motion to dismiss after the plaintiff corrections officer sued the New York State Department of Corrections and Community Supervision ("DOCCs") and other named defendants, alleging they discriminated and retaliated against her under both Title VII and the Americans with Disabilities Act ("ADA") as a Muslim woman suffering from diabetes and stress-related mental health issues.

The plaintiff's religious discrimination and retaliation claims stemmed from three alleged adverse employment actions arising out of her request to wear a hijab while on duty: 1) "being reprimanded for wearing her hijab, 2) denial of her request to take off her hijab only in front of a female supervisor, and 3) being dismissed from work, taken off the payroll, and prevented from returning for an extended period of time." The court found that only the third allegation potentially constituted an adverse employment action. Judge Román then ruled that even if the plaintiff did plead adverse employment actions, she failed to allege facts that showed a plausible inference of discrimination. The court also dismissed the retaliation claim, finding the plaintiff failed to sufficiently allege a connection between her request for a religious accommodation and her adverse employment action – events that occurred nearly six months apart.

On the ADA claims, Judge Román found the plaintiff failed to allege that her diabetes substantially limited a major life activity and that she also failed to show a connection between her allegations of a disability from her mental illness and any adverse employment action. Accordingly, Judge Román dismissed the ADA claims as well.

Judge Karas Grants the SEC's Application for Civil Contempt in a Penny Stock Case

In *Securities and Exchange Commission v. Bronson et al.*, No. 12-CV-6421 (KMK) (S.D.N.Y. Jan. 19, 2021), Judge Kenneth Karas granted the Securities and Exchange Commission's ("SEC") motion to hold the defendant, Edward Bronson, in civil contempt for failing to pay court-ordered restitution. In 2012, the SEC filed a complaint against Bronson and others, alleging they engaged in an illegal scheme to buy penny stocks at a discounted rate and then resell them. In that case, the court entered a final judgment against the defendants on August 28, 2017, enjoining them from violating § 5 of the Securities Act and ordering Bronson to pay restitution of nearly \$12 million. On February 19, 2020, the SEC moved to hold Bronson in civil contempt for flouting the 2017 judgment by engaging in a lavish lifestyle and failing to pay restitution. Bronson, in turn, asserted a defense of inability to pay.

Judge Karas rejected that defense, finding that the SEC produced compelling evidence that Bronson had sufficient resources to satisfy his obligation and that he failed to exercise reasonable diligence to comply with the court's judgment.

With Bronson in contempt, Judge Karas addressed appropriate sanctions, noting that "incarceration or other coercive measures" would be proper as historically in cases where the defendant has already failed to pay restitution, monetary sanctions were "empty gestures." Ultimately, Judge Karas ordered Bronson to: 1) make a good-faith payment of \$25,000 to the SEC, 2) produce all financial records and other documents requested by the SEC, 3) sit in for an SEC deposition, 4) and meet with the SEC to negotiate a long-term payment plan. The court declined to have Bronson incarcerated but emphasized it would revisit that decision if he violated any provision of the sanctions order.

Justice Walsh of the Westchester County Supreme Court Denies Plaintiff's Motion for a Preliminary Injunction in a Lender Dispute

In *Dobbs Ferry Shopping, LLC v. Bethpage Federal Credit Union*, No. 51722/2021 (N.Y. Sup. Ct. West. Cty. 2021), the plaintiff shopping center owner and the defendant lender were parties to three agreements: 1) a mortgage, 2) an \$8.5 million note, and 3) an assignment of rents. Under the assignment, the defendant could collect rents from the plaintiff's tenants if certain conditions were met, including the plaintiff's default. After the plaintiff defaulted and the defendant began to collect rent, the plaintiff moved in the Westchester County Supreme Court to enjoin the defendant lender from collecting rents.

Justice Gretchen Walsh denied the plaintiff's motion for a preliminary injunction, finding the plaintiff failed to show a likelihood of success on the merits. The plaintiff argued that the defendant's conduct was precluded by certain COVID-19-related executive orders issued by Governor Cuomo, which modified the New York Banking Law on forbearance and evictions. The court found that even if the executive orders applied, the defendant had complied with the orders. Furthermore, the court found the assignment language gave the defendant the absolute right to collect rent if the plaintiff defaulted on the mortgage. It was undisputed that the plaintiff had not made mortgage payments since April 2020, received two notices of default and failed to cure within 10 days, per the agreement.