

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MIRANDA L. MAHER : CIVIL ACTION  
 :  
 v. :  
 :  
 MOORE COLLEGE OF ART AND DESIGN : NO. 98-2978

**MEMORANDUM AND ORDER**

BECHTLE, J.

FEBRUARY , 1999

Presently before the court are defendant Moore College of Art and Design's ("Moore College") motion to dismiss, plaintiff Miranda L. Maher's ("Maher") motion to remand, Maher's motion to conduct additional depositions and the responses thereto. For the reasons set forth below, the court will grant Moore College's motion to dismiss with respect to Count VII of Maher's Complaint and will remand Maher's remaining pendent state law claims in the case. The court will also deny without prejudice Maher's motion to conduct additional depositions.

**I. BACKGROUND**

Plaintiff Maher, a New Jersey resident, brought this action against Moore College, a non-profit corporation organized under the laws of Pennsylvania with its principal place of business in Philadelphia, Pennsylvania. On August 24, 1996, Maher enrolled as a student at Moore College and started her freshman year. On October 4, 1996, Maher was expelled from Moore College after being accused of using and distributing drugs and hiding them in the air conditioning unit in her dormitory. Maher alleges that

she was expelled without being given an opportunity to deny the accusations against her, to confront those who reported her alleged drug activity, to present evidence of her innocence or to otherwise defend herself in any way. Maher alleges that after her expulsion, Moore College held a meeting with other students informing them of Maher's expulsion. Maher further alleges that Moore College communicated in writing to the college at large that an unnamed student, who was widely known and reasonably understood to be Maher, was expelled for drug offenses.

On May 18, 1998, Maher filed her Complaint in the Court of Common Pleas of Philadelphia County, Pennsylvania. The Complaint alleges seven Counts against Moore College: Count I (Slander and Libel); Count II (Invasion of Privacy--False Light); Count III (Breach of Contract (Breach of Implied Term of Good Faith Dealing)); Count IV (Breach of Contract (Ambiguity and Construction Contra Proferentum)); Count V (Breach of Contract (Contract of Adhesion)); Count VI (Common Law Due Process); and Count VII (Constitutional Due Process). On June 8, 1998, Moore College filed a Notice of Removal, removing the entire case to federal court pursuant to 28 U.S.C. § 1441 based on the fact that Maher raised a federal question in Count VII of her Complaint. See 28 U.S.C. § 1331 (granting federal jurisdiction over claims raising federal question). On July 2, 1998, Moore College moved to dismiss Counts III, IV, V, VI and VII. On July 17, 1998, Maher moved to remand the case back to state court.

## **II. DISCUSSION**

Maher's Complaint alleges six counts under state law and one Constitutional Due Process Count. Initially, the court will dismiss Count VII (Constitutional Due Process). Then, the court will decline to exercise supplemental jurisdiction over Maher's remaining state law claims and will remand this case back to state court. Last, the court will deny without prejudice Maher's motion to conduct additional discovery.

### **A. Motion to Dismiss**

#### **1. Legal Standard**

For the purposes of a motion to dismiss, the court must accept as true all well-pleaded allegations of fact in a plaintiff's complaint, construe the complaint in the light most favorable to the plaintiff, and determine whether "under any reasonable reading of the pleadings, the plaintiff may be entitled to relief." Colburn v. Upper Darby Township, 838 F.2d 663, 665-66 (3d Cir. 1988). The court, however, need not accept as true legal conclusions or unwarranted factual inferences. Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997) (citations omitted). A complaint is properly dismissed only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

#### **2. Count VII--Maher's Federal Due Process Claim**

Under Count VII of the Complaint, Maher alleges that Moore College violated her rights under the Due Process Clause of the

Fourteenth Amendment by summarily expelling her without allowing her an opportunity to be heard. Claims alleging a violation of federal due process rights under the Fourteenth Amendment must involve state action. See Leeds v. Meltz, 85 F.3d 51, 54 (2d Cir. 1996) (stating that Fourteenth Amendment applies only to state actors). Here, Maher concedes that Moore College is a private institution. "[A] State normally can be held responsible for a private decision only when it has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the state." Blum v. Yaretsky, 457 U.S. 991, 1004 (1982).

With respect to the question of whether Moore College can be considered a state actor, Maher's Complaint contains the following relevant allegations:

116. Within the discussion of the Drug and Alcohol Policy the College states that it has responsibilities under the law with respect to violations of drug or alcohol control laws.

117. Prohibitions under the Drug and Alcohol Policy mirror those under State and Federal Law. There is no stated violation of the Drug and Alcohol Policy with respect to the use, possession and trafficking of drugs that is not also a violation of State or Federal Law. The College outlines the applicable State and federal drug laws in the Drug and Alcohol Policy.

118. The College, by its Student Handbook, acted to enforce State and Federal drug laws when it established policies for dealing with illicit possession, use, or sale of illegal drugs.

119. The College was acting in the capacity of a State Actor when it took action against Maher for an alleged violation of the College's Drug and Alcohol Policy by enforcing State and Federal Drug laws.

(Compl. ¶¶ 116-119.)

Viewed in the light most favorable to Maher, the Complaint does not allege facts sufficient to show that Moore College was a state actor. At most, these allegations state that Moore College adopted a Drug and Alcohol Policy, that it "mirrored" state and federal drug laws and that school officials at Moore College expelled Maher based upon their belief that she violated that Drug and Alcohol Policy. Importantly, Maher's Complaint does not allege that either the Commonwealth of Pennsylvania or the United States Government coerced or significantly encouraged Moore College to adopt its Drug and Alcohol Policy. See Hack v. President and Fellows of Yale College, 16 F. Supp. 2d 183, 191 (D. Conn. 1998) (holding that defendants were not state actors where amended complaint did not "allege that the State of Connecticut, either through a regulation or a policy, exercised coercive power or significantly encouraged Yale to adopt its housing policy or to render specific housing decisions"). Maher's Complaint does allege that Moore College, "by its Student Handbook, acted to enforce State and Federal drug laws when it established policies for dealing with illicit possession, use, or sale of illegal drugs." (Compl. ¶ 118.) While this allegation describes Maher's position of how Moore College acted in making its Drug and Alcohol Policy, it does not describe how the state or federal government acted upon Moore College in causing it to adopt its Drug and Alcohol Policy. See Blum, 457 U.S. at 1004-05 (stating that "[m]ere approval of or acquiescence in the

initiatives of a private party is not sufficient to justify holding the State responsible for those initiatives under the terms of the Fourteenth Amendment").

Moreover, the Complaint does not allege facts which suggest that Moore College's disciplinary action in expelling Maher was in any manner a substitution for a state or federal criminal prosecution. See Stone v. Dartmouth College, 682 F. Supp. 106, 108 (D.N.H. 1988) (stating that "[a]s to the fact that Dartmouth maintains and enforces disciplinary standards to which students must conform, these standards do not replace laws and regulations promulgated by the state, nor do they relieve the state of its responsibility to simultaneously enforce its laws"). Maher does not cite, and the court is unable to find, any state or federal drug law which mandates expulsion from Moore College as a penalty for its violation. Thus, Maher's Complaint cannot be fairly read to suggest that Moore College, in expelling Maher, was acting to enforce state and federal drug laws. Consequently, Maher's Complaint does not sufficiently allege state action on the part of Moore College, as required to maintain a due process claim under the Fourteenth Amendment.<sup>1</sup> Thus, the court will grant

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<sup>1</sup> The court notes that other factors often considered in claims of state action do not apply here. For example, "Maher has not alleged that the College is a state actor because it receives sizeable sums of governmental monies." (Pl.'s Mem. in Opp. to D.'s Mot. to Dismiss at 20.); see Rendell-Baker v. Kohn, 457 U.S. 830, 840 (1982) (considering whether entity depended on state for funds as factor in state action analysis). In addition, Maher does not argue, and the court does not find, that Moore College was performing a "public function" which has been "traditionally the exclusive prerogative of the state." Id. at

Moore College's motion to dismiss with respect to Count VII (Constitutional Due Process) of the Complaint.

**B. Motion to Remand**

Because the court will dismiss the only federal claim in Maher's Complaint, it need not exercise jurisdiction over Maher's remaining pendent state law claims. See 28 U.S.C. § 1367(c)(3) ("The district courts may decline to exercise jurisdiction over a claim . . . if . . . the district court has dismissed all claims over which it has original jurisdiction."). Instead, in the interests of judicial comity and efficiency, the court will remand the case back to the Court of Common Pleas in Philadelphia, Pennsylvania.<sup>2</sup> See Carnegie Mellon Univ. v.

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842 (considering entity's performance of public function as factor in state action analysis).

<sup>2</sup> Moore College's Notice of Removal in this case was based only on the existence of a federal question, pursuant to 28 U.S.C. § 1331. Although Maher is a resident of New Jersey and Moore College is a Pennsylvania nonprofit corporation with its principal place of business in Pennsylvania, removal could not have been based on diversity of citizenship under 28 U.S.C. § 1332 because defendants who are citizens of the state in which the action is brought cannot remove based on diversity. 28 U.S.C. § 1441(b).

However, the question arises whether "a properly removed case must be remanded if a change in events makes diversity of citizenship the only basis for federal jurisdiction, but a defendant is a citizen of the forum state." Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction 3d § 3739 (West 1998). In Trask v. Kasenetz, 818 F. Supp. 39 (E.D.N.Y. 1993), a federal court remanded an action after it dismissed all claims based on a federal question. Id. at 44-45. Because the defendants were sued in their home state, and thus, could not have removed the case based on diversity jurisdiction, the court stated that "it should not be compelled to exercise jurisdiction based on diversity of citizenship." Id. at 44. In explaining why remand was appropriate in such a case, the court stated:

No provision of the Judiciary Act compels this court to

Cohill, 484 U.S. 343, 357 (1988) (holding that "district court has discretion to remand to state court a removed case involving pendent claims upon a proper determination that retaining jurisdiction over the case would be inappropriate"); see also Balazik v. County of Dauphin, 44 F.3d 209, 216-17 (3d Cir. 1995).

**C. Motion to Conduct Additional Depositions**

On January 29, 1999, Maher filed a motion seeking leave of court to conduct the depositions of six additional witnesses in this case. Because the court will grant Moore College's motion to dismiss Maher's Constitutional Due Process claim and will remand Maher's remaining pendent state law claims back to state

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retain jurisdiction over a case removed by citizens of this state based upon a federal claim that has been dismissed, even where the parties are citizens of different states. The underlying logic of the statutory scheme suggests, to the contrary, that the court should remand the case to the New York state court in which the plaintiff first chose to bring it. Moreover, that court would have greater familiarity and interest in the issues that remain insofar as they relate solely to the regulation of a New York State not-for-profit corporation.

Id. at 45. The court agrees with the New York federal court's reasoning in Trask. Here, because the court will dismiss Maher's federal due process Count--the only Count based on a federal question--the court will have "dismissed all claims over which it had original jurisdiction." 28 U.S.C. § 1367(c)(3). Furthermore, the court is not compelled to exercise jurisdiction based on diversity of citizenship in this case because Moore College was sued in its home state, and thus, was unable to remove the case based on diversity jurisdiction. See 28 U.S.C. § 1441(b).

Lastly, the court notes that even if it sought to exercise diversity jurisdiction over this case it could not. Plaintiff Maher alleged only that she was a resident of New Jersey. (Compl. ¶ 1.) Because Maher's citizenship is not indicated in the Complaint, this court would not be able to determine the diversity of the parties in this case.



court, the court will deny without prejudice Maher's motion to conduct additional depositions. Due to the court's rulings discussed above, this motion would be more properly raised in the state court to which it is remanded.

### **III. CONCLUSION**

For the foregoing reasons, the court will grant Moore College's motion to dismiss with respect to Count VII (Constitutional Due Process) of the Complaint and will remand Maher's remaining pendent state law claims back to state court. Maher's motion to conduct additional depositions will be denied without prejudice.

