

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

EMMANUEL DUNAGAN, et al.,)	
)	
Plaintiffs,)	No. 19-CV-809
)	
v.)	Hon. Charles R. Norgle
)	
ILLINOIS INSTITUTE OF ART-CHICAGO,)	
LLC., et al.,)	
Defendants.)	

ORDER

Defendant Dream Center’s motion to dismiss or, in the alternative, stay litigation [56] is denied.

For case control purposes, Defendant’s previous motions to stay [21] and dismiss [24] [41] are denied as moot.

The pending motions to appear pro hac vice [27] [31] are granted.

An agreed written status report, to include information related to the Ohio litigation, 1:19-cv-145 (N.D. Ohio), is due no later than February 14, 2020.

STATEMENT

On July 19, 2019, Plaintiffs filed their second amended complaint against the Illinois Institute of Art (“IIA”) schools in Chicago (“IIA-Chicago”) and Schaumburg (“IIA-Schaumburg,” collectively, the “IIA Schools”), the Dream Center Foundation (“DCF”), Dream Center Education Holdings, LLC (“DCEH”), and John Does 1-10 (collectively, “Defendants”). Plaintiffs—former students at the IIA Schools—allege that Defendants violated the Illinois Consumer Fraud and Deceptive Practices Act, 815 ILCS 505/2 and brought additional claims for negligent misrepresentation and fraudulent concealment. Specifically, Plaintiffs allege non-party Education Management Company, the former owner of IIA and which had operated the schools for profit, sold IIA to DCF, which intended to turn the schools into non-profit institutions. Prior to the sale, the IIA Schools were accredited by the Higher Learning Commissions (“HLC”). Following the sale, on January 20, 2018, the HLC stripped IIA of its accreditation. Plaintiffs allege that over the next six months, Defendants concealed this loss of accreditation and at times actively misrepresented the school’s status. The amended complaint expands on these allegations in great detail in 340 paragraphs spanning 60 pages.

Defendant DCF has now moved to dismiss the complaint, arguing in chief that Plaintiffs have not alleged that DCF made any statements whatsoever concerning the IIA Schools’ accreditation status and that Plaintiffs are effectively seeking to disregard the corporate form and pierce DCF’s corporate veil. The Court disagrees, as Plaintiff has made detailed and specific

allegations about DCF's involvement in the sale process and has alleged that DCF was involved in the decision not to appeal the initial accreditation determination, which Plaintiffs allege had an underlying nefarious motive because it lulled students into a sense of security because it drew less attention to the accreditation loss.

Rule 8(a) of the Federal Rules of Civil Procedure requires that a complaint contain a "short and plain statement of the claim showing that the plaintiff is entitled to relief." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 554-557 (2007). The statement must provide sufficient plausible facts to put a defendant on notice of the claims against him. Brooks v. Ross, 578 F.3d 574, 581 (7th Cir. 2009). The complaint "must provide enough factual information to 'state a claim to relief that is plausible on its face' and 'raise a right to relief above a speculative level.'" Doe v. Village of Arlington Heights, 782 F.3d 911, 914 (7th Cir. 2015) (quoting Twombly, 550 U.S. at 555, 570).

While the federal rules generally provide for the above liberal notice pleading, Rule 9(b) requires that plaintiffs alleging fraud state "with particularity the circumstances constituting fraud." Fed. R. Civ.P. 9(b). Specifically, Rule 9(b) requires plaintiffs to plead the "who, what, when, where, and how: the first paragraph of any newspaper story," of the "circumstances constituting fraud." DiLeo v. Ernst & Young, 901 F.2d 624, 627 (7th Cir.1990). "Rule 9(b) requires heightened pleading of fraud claims in all civil cases brought in the federal courts, whether or not the applicable state or federal law requires a higher standard of proving fraud." Ackerman v. Nw. Mut. Life. Ins. Co., 172 F.3d 467, 470 (7th Cir.1999) (citing Herman & McLean v. Huddleston, 459 U.S. 375, 387-89, 103 S.Ct. 683, 74 L.Ed.2d 548 (1983)).

Plaintiff has provided detailed allegations outlining DCF's involvement in the IIA purchase and subsequent events surrounding the accreditation issue which have met this heightened pleading standard. At this juncture, these allegations are sufficient to allow the case to proceed against DCF. Specifically, and chief among the key allegations against DCF, Plaintiff avers:

- DCF was involved (through its managing director Randall Burton) with an allegedly nefarious decision not to appeal the HLC's accreditation decision, ¶ 130-136;
- DCF is being investigated in the Ohio litigation as to whether DCF was paying its executives bonuses "as the schools were collapsing" ¶ 199.

These allegations, among others throughout the complaint, are sufficient to make out a claim against DCF. Moreover, the Court agrees with Plaintiff's position that discovery will be needed to untangle the apparent web of interlocking officers and directors among the Dream Center entities at issue in this case. While discovery could potentially vindicate DCF's position in its 12(b)(6) motion, the Court accepts all well pleaded allegations as true at this stage of the proceeding. As such, the motion to dismiss is denied.

Defendant's alternative motion to stay is also denied. The parties are ordered to submit an agreed written status report on February 14, 2020, to include information related to the Ohio litigation.

IT IS SO ORDERED.

ENTER:



CHARLES RONALD NORGLE, Judge
United States District Court

DATE: January 6, 2020