IN THE STUDENT SUPREME COURT IN AND FOR THE FLORIDA STATE UNIVERSITY

PHI ALPHA DELTA, a Graduate Registered Student Organization,

Petitioner,

v.

JOSHUA SCRIVEN, Speaker, Congress of Graduate Students,

Respondent.
_____/

Moorhead, C.J. and Coughlin, J.[1] *Deliver the Opinion of the Court, with whom Burns, J.*[2] *concurs.*

Published September 18, 2018.

SYLLABUS

This case comes before the Court on an appeal by Phi Alpha Delta ("PAD"), a graduate registered student organization, from a decision by the Congress of Graduate Studies ("COGS"), through its speaker, Joshua Scriven ("Scriven"), to not reimburse travel costs incurred by PAD.

COGS argues that PAD was not entitled to a reimbursement because PAD failed to follow the necessary requirements that all registered student organizations must follow in order to receive reimbursements for travel costs. PAD argues that a staff representative of the Florida State University Student Government Association ("SGA") misrepresented to PAD that all the necessary requirements to receive reimbursements had been met. PAD argues it reasonably relied on the representations, and therefore COGS should be estopped from using PAD's failure to follow the requirements against PAD. PAD accordingly seeks reversal of the COGS decision.

ISSUES

1. Did an officer or employee of the Student Government Association misrepresent the requirements for travel reimbursement, in a manner which was misleading?
2. Is PAD entitled to a reimbursement?
3. Is PAD entitled to damages, and if so, what amount?

HOLDING

1. The uncontradicted position of PAD, and the evidence entered in support of its claim establish Rosalind Sapp made a misleading representation to PAD regarding the required travel request paperwork.
2. Based on the misrepresentation of an employee of SGA, PAD is entitled to a reimbursement.
3. PAD is entitled to nominal damages of $1.00.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

PAD is a graduate registered student organization affiliated with the Florida State University College of Law. COGS is a legislative body which, *inter alia*, serves to distribute funds among graduate funding boards, and graduate registered student organizations. The Student Government Association's Accounting Office ("Accounting") is comprised of

[1] Samantha Coughlin, Associate Justice sitting by Designation.

[2] Conor Burns, Associate Justice sitting by Designation.

administrative staff who are salaried through Activity and Service fees.

The actions underlying this case began on October 17, 2017, when PAD filed for registration for a mock trial competition in Washington, D.C. On October 19, 2017, the Treasurer of PAD met with Rosalind Sapp, an employee in the Accounting office, regarding the release of funds to pay for the registration fee. According to PAD, Ms. Sapp represented that PAD had done everything necessary to make sure it would later be reimbursed for its costs, so long as PAD procured the necessary funds through the proper channels, specifically by way of the Law Student Council ("LSC") and COGS. On January 18, 2018, LSC allocated $1,850 to PAD in the category of Expense, for travel to and from Washington, D.C. for the competition. On February 18, 2018, PAD's members, which were listed on the Group Travel Roster submitted to Accounting on October 19, 2017, travelled to Washington, D.C., competed, and returned. On or about June 3, 2018, PAD submitted its travel receipts to the Accounting office, as previously instructed, and were informed on June 4, 2018 that no advance travel requests had been filed, and accordingly, PAD would not be reimbursed without the intervention of COGS. PAD contacted COGS the next day seeking to begin the reimbursement process, and by June 11, 2018 COGS had begun to undertake is own review of the matter. Two days later, on June 13, 2018, Scriven emailed Carolyn Harris, a member of SGA staff that he was prepared to tell PAD that COGS would deny the reimbursement. Scriven informed PAD of the decision to deny funding on June 19, 2018, and the next day the director of SGA, Danielle Acosta, Ph.D., was still seeking clarification regarding the decision.

The instant action was filed on June 22, 2018 and heard August 28, 2018. The hearing was noticed as evidentiary, and all evidence submitted to the Court was entered prior to the hearing.

ANALYSIS

I

The first, and possibly most difficult, issue for the Court is to determine if there was a misrepresentation made to PAD by an officer or employee of SGA. *See* §205.3(E)(2). It should be said at the outset, what makes this determination difficult is the tradition our Court has of not subpoenaing non-student employees of SGA, which includes those in Accounting. What we are left with, to make our determinations, is that testimony and evidence given by the parties and their witnesses, and to determine if substantial evidence supports the decision reached. *See* Sup. Ct. R. Proc. 5(d).

PAD submitted its brief, an affidavit, and electronic communications which they support their contention that a misrepresentation was made. Specifically, the most persuasive piece of evidence before the Court was an affidavit of the member of COGS who had communications regarding form submission with Ms. Sapp. The affidavit stated PAD "had done everything necessary to make sure [it] would later be reimbursed for our *travel costs*." Aff. Of Lauren Pettine (dated Aug. 27, 2018) (emphasis added). At oral argument, PAD pressed the representation made by Ms. Sapp was that PAD was "all set" in terms of filing their paperwork, so long as the funds were procured through the proper channels, namely LSC. COGS raised no argument against any piece of evidence, and gave no conflicting testimony or evidence as to PAD's assertions.

"[T]he substantial evidence rule is not satisfied by evidence which merely creates a suspicion or which gives equal support to inconsistent inferences." *Fla. Rate Conference v. Fla. R.R. and Pub. Util. Comm'n*, 108 So.2d 601, 607 (Fla. 1959). Here, there is no evidence which goes to boost one inference over the other. PAD argues the representation "all set" is a misrepresentation, since there was remaining required paperwork. COGS argues all organizations requesting funding are supposed to know the forms which are required to receive funding, citing its decision to deny a similar retroactive reimbursement request brought by the OB/GYN Interest Group ("OIG"). However, the facts of the OIG decision by COGS are easily distinguishable in that there was no evidence put forth by COGS that a similar meeting occurred between Accounting and the OIG which OIG's appeal to COGS was based on, unlike here. While COGS is not directly in a position to make an argument to the contrary, it appears as though COGS never attempted to get Ms. Sapp's side of the story for presentation to the Court, be it through affidavit, or counsel's argument.

Accordingly, the evidence before the Court gives equal support to inconsistent inferences pressed by the counsels, which fails to meet the "substantial evidence" requirement. Therefore, the Court is able to find there to be a misrepresentation on the part of Ms. Sapp, while likely unintentional, the statute only requires the employee to provide information which is misleading. *See* §205.3(E)(2), SBS. Here, a reasonable person could be, and was, misled by the use of the phrase "all set" if used in the context suggested by PAD. Given that PAD was requesting funds for a conference, albeit a portion of the total funds sought, the use of "all set" placed PAD, reasonably, in a state of mind where all that needed to occur to be paid the total ultimately allocated, was that the money actually be allocated.

II

The next issue the Court resolved was whether or not PAD was entitled to a reimbursement.

PAD asserts that the reliance on the representation mandates a full reimbursement, since, they argue, had the representation been made, their forms would have timely been submitted and reimbursement would have occurred. COGS argues that, all organizations funded through SGA are supposed to have knowledge of the required forms, and even if PAD had filed the required forms in the required time frame, they would not be reimbursement, since the receipts for their expenses were not submitted to Accounting until more than thirty (30) days after the travel had occurred. *See SGA & COGS FINANCIAL MANUAL FISCAL YEAR 2017-2018*, at 26.

PAD asserts the doctrine of equitable estoppel, in support of their claim for reimbursement. *See generally State v. Harris*, 881 So.2d 1079, 1084 (Fla. 2004) (elements of equitable estoppel defined); *see also Walker v. Unite (24 Hour Waiting Period)*, Fla. St. Univ. Rep. (2018).

The first element of equitable estoppel requires a representation be made as to a material fact which is contrary to a later asserted position. Having found in Part I, *supra*, that Accounting made a representation which was contrary to a later asserted position – that PAD was "all set" in terms of filing forms, only to later be told their filings were inadequate for reimbursable of travel costs beyond registration – this element can be disposed of, in the affirmative, without further comment.

The second element requires reliance on the representation. Certainly, PAD relied on the representation. Had the representation not been made, PAD submitted evidence that it would have filled out the necessary forms for reimbursement. COGS argues that PAD's officers had passed a certification exam, which theoretically, would place them in a position where reliance would be unreasonable. This argument is not without merit. PAD's officers were "financially certified" – a terms given to those who pass the aforementioned exam – and there likely would have been questions regarding form submission for travel reimbursement. In support of its claim, COGS cite *State, Department of Health and Rehabilitative Services v. Law Offices of Donald W. Belveal*, 663 So.2d 650 (Fla. 2d DCA 1995). In *Law Offices of Donald W. Belveal*, an appeal is taken on the grounds of promissory estoppel, where the Department of Health and Rehabilitative Services has oral represented to the law office that it would renew a contract whereby the law office provided the Department with legal services, only to later renege on the oral representation. The Second District Court of Appeals determined,

> [T]he Law Office did rely, to its detriment, on the unwritten word of HRS employees. It had no *right*, however, to rely upon this oral representation. The Law Office is presumed to know that an agreement of this magnitude with the state must be in writing. *See* § 287.058(1), Fla.Stat. [sic] (1993). When an agency has express statutory authority to enter into a renewable written agreement on such a major undertaking, there is no need to override the statute of frauds with the uncertainty that inevitably arises from promissory estoppel.

Id. at 653 (emphasis in original). The Court finds the case distinguishable however, based on the unequal sophistication of the parties. PAD, Accounting, and COGS all deal with financial requests; however, Accounting deals with these requests daily, COGS at least monthly but sometimes twice-monthly. PAD does not deal with the same volume of submissions these two entities do. These two entities, Accounting in particular, deal with the submission of travel request forms and reimbursement requests often enough where the Court is persuaded that their representations would be reasonably viewed as accurate representations of procedures which are to be used. The phrase "all set" could reasonably be seen, by someone of lesser sophistication in the submission of travel request forms as meaning "all forms necessary for travel, and reimbursement have been completed." PAD heard the phrase "all set," and took it to mean no further form submissions were required, with respect to the travel to Washington, D.C. The Court is persuaded PAD relied on the representation made by Accounting.

The final prong in the analysis is to determine if there was a change in position, by the party who made the representation which was detrimental to the party relying on the representation. Again, the Court finds this to be the case. PAD argues that but for the misleading representation, it would have submitted its forms, and thus, would not be left holding the bag to the tune of $1,850. COGS argument is, again, not without merit. COGS argues that there is no showing the forms would have been completed in a timely manner, since the receipts were not submitted in a timely manner. However, that argument requires a propensity inference, and the Court

is not willing to extend one to the facts at bar. PD was clearly injured as a result of the representation, specifically, PAD was not able to be reimbursed the $1,850 approved and allocated for them by LSC.

Based on PAD's assertions on the grounds of equitable estoppel, it is entitled to relief based on the representations of Accounting.

III

The principle issue in determining damages is ascertaining how much fault to apportion to the parties at issue.

Both parties agree that travel reimbursement receipts must be submitted within 30 days of the date of travel. It is undisputed that PAD submitted its receipts and sought reimbursements 68 days after travel was completed; since the date of receipt submission was on or about June 3, 2018, and the deadline to submit receipts for travel ending February 25, 2018 was March 27, 2018.

PAD's failure to submit its receipts for reimbursements until past the deadline pushed COGS into a difficult position. With the end of fiscal year quickly approaching, COGS' budget was almost completely spent by the time PAD's receipts were submitted. Further, COGS doubted whether the funding request could even be completed by the end of the fiscal year. Thus, PAD's request potentially pushed COGS into the next fiscal year's budget. Mr. Scriven testified he weighed the options and determined that funding PAD's request was not in the best interest of the student body as a whole, without speaking with any other member of COGS.

Mr. Scriven testified that he, as speaker, does have some discretion when deciding whether to allow an organizations retroactive funding request to be heard. *See e.g. COGS Code*, §206.2. However, Mr. Scriven did not make any showing he denied LSC's pre-travel grant of $1,850 to PAD. Yet, Mr. Scriven insists that even if the paperwork had been properly filed, there is no way to determine if they would have been eligible for a reimbursement, based on the number of days which elapsed between the end of the travel, and receipt submission. On this point the Court is inclined to agree.

The Court cannot speculate as to whether or not the full $1,850 or some lesser amount, if any amount at all, would have been reimbursed, since PAD did not submit its receipts until after the 30 day time-frame had elapsed. Accordingly, it cannot with any certainty come to a damage figure which would accurately reflect any penalty, if any, which may have been imposed for a failure to timely submit its receipts.

Having found Accounting made a representation to PAD which was misleading, and PAD relied on the representation to their detriment, PAD must be entitled to some compensation for the damage which occurred to them. While PAD's loss can be clearly measured as $1,850, what cannot be clearly measure is their loss where their receipts were not submitted in a timely manner. To this point, PAD urges it is entitled to the full sum, since at the end of the day, that is the amount which they were allocated, but not reimbursed but for Accounting's misleading representations. COGS more correctly urges that PAD knew of the requirement to submit receipts, as evidenced by the June 3, 2018 submittal, and even if the forms had been submitted correctly, PAD may still not have been reimbursed because of the late receipt submission. "[W]here there is insufficient evidence presented to ascertain the particular

amount of loss, the award of nominal damages is proper." *Beverage Canners, Inc. v. Cott Corp.*, 372 So.2d 954, 956 (Fla. 3d DCA 1979); *see also Price v Southern Homes Ins. Co. of Carolinas*, 129 So. 748, 751 (Fla. 1930). The evidence before the Court is such that, had the receipts been submitted in a timely manner, the Court may have been able to ascertain a sum certain for compensatory damages, however that is not the case, and the Court gives no opinion on an outcome where the fact of a timely receipt submittal occurred. Accordingly, PAD is entitled to nominal damages of $1.00.

CONCLUSION

The exact remarks made by Ms. Sapp are unclear, but the idiom "all set" is clear. The Court is persuaded the remarks made would lead the reasonable person to believe they had dotted their i's and crossed their t's, with respect to the forms the remark was made towards. The remark "all set," although colloquial, was misinterpreted, and moreover, misleading as to whether or not more requests would need to be submitted, prior to travel, for reimbursement. Section 205.3(E)(2), SBS is clear "no officer or employee will…provide false or *misleading* information." (Emphasis added). The misleading statement need not be intentional under the statute, it merely must occur. *See Moorehead v. Riddaugh*, Fla. St. Univ. Rep. (2015) (interpreting §205.3(E)(2), SBS, as strict liability). However, that misrepresentation does not entitle PAD to $1,850, since they are not without fault, and a finding otherwise would be speculative and invite jiggery-pokery by others seeking reimbursements. PAD made no showing that even if they had complied with all the form submissions that they would have submitted their receipts in a timely manner. In other words, assuming arguendo they did submit the proper forms, they still did not submit their receipts for reimbursement until after the mandated 30 day post-travel time frame had elapsed. Accordingly, although Accounting misrepresented what forms were outstanding, PAD submitted their receipts so late the request could have been cancelled regardless. While PAD is entitled to a reimbursement based on the misrepresentation, there is no conclusive showing PAD would have received the money anyway, since their receipts were late. Accordingly, PAD entitled to nominal damages of $1.00.

It is so ordered.

Engelbrecht, J. took no part in the consideration or decision of this case.