Archdiocese of Newark
OFFICE OF THE ARCHBISHOP

October 18, 2004

Professor Claudine Metallo
Adjunct Professor of Italian
Fahy Hall 218
Seton Hall University
400 South Orange Avenue
South Orange, New Jersey 07079-2696

Dear Professor Metallo:

Thank you for your letter to me of October 11, 2004. I certainly agree with your disappointment in many of the messages which are about to proliferate on the campus of Seton Hall University. I think it is important that such matters be addressed. I also believe we have a responsibility to be crisp and clear in our Catholic identity and to make it clear that we do not support any organization or persons who oppose that identity. I hope that you, and those who agree with you, are able to make this message clear to the faculty and administration of the University.

With kindest personal regards, I am

Sincerely in the Lord,

✠Most Reverend John J. Myers
Archbishop of Newark

pr

c: Reverend Paul Holmes, S.T.D.

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SUPERIOR COURT OF NEW JERSEY

ESSEX VICINAGE

CHAMBERS OF
CLAUDE M. COLEMAN
JUDGE

HALL OF RECORDS
465 DR. MARTIN LUTHER KING, JR., BLVD.
NEWARK, NEW JERSEY 07102

NOT FOR PULBICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

Memorandum of Decision on Motion for Reconsideration

Case Name: Anthony Romeo vs. Seton Hall, et al.

Docket No.: ESX-L-1866-04

Date: September 20, 2004

Relief Sought: Motion to Reconsider and Vacate Dismissal of Complaint

TO: Thomas D. Shanahan, Esq., Co-Counsel for Plaintiff
Marianne Auriemma, Esq., Attorney for Plaintiff
Connel Foley, LLP, Attorney for Defendant
Dania M. Billings, Esq., Attorney for Defendant
Mark D. Haefner, Esq., Attorney for Defendant

Materials Reviewed: Plaintiff's Brief in Support of its Motion to Vacate the Dismissal and for Reconsideration of the Motion to Dismiss.

Defendant's Brief in Opposition to Plaintiff's Motion to Vacate the Dismissal and for Reconsideration of the Motion to Dismiss.

This Memorandum deals with the motion filed by Plaintiff seeking reconsideration of the Court's Order on June 25, 2004, which dismissed Plaintiff's complaint with prejudice. The application on June 25 was unopposed and was decided on the materials submitted and the reasoning stated therein.

Plaintiff argues that the motion should have been heard on July 9, 2004, to which the parties had apparently agreed, but due to misunderstandings and some confusion on the part of the parties and the court, the Defendant did not have time to prepare its opposition and appear at oral argument. Plaintiff also argues that the court failed to consider Plaintiff's arguments, and therefore its decision on June 25, 2004 was arbitrary, capricious or unreasonable. The court finds some merit to Plaintiff's arguments and in its discretion reconsiders its prior Order, and after listening to the

arguments of counsel, reading the briefs of both parties, and considering the colloquy between counsels and the court on August 30, 2004, the Court GRANTS Plaintiff's Motion to Amend and VACATES its previous Order to Dismiss With Prejudice, and allows this matter to proceed to trial.

Defendant's Motion to Dismiss is brought under R.4: 6-2(e), failure to state a claim upon which relief can be granted. The Rule provides that if matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided by R. 4:46. Defendant presented its motion with matters outside the pleadings. However, Defendant's and Plaintiff's arguments and the exhibits presented were directed to the allegations contained in the pleadings and toward the standard informing decision of a motion to dismiss for failure to state a claim under R. 4:6-2. There were no statements of facts, no affidavits, and no referrals to depositions. Since all parties have now responded and no facts beyond the pleadings were relied upon, the court decides the motion using the standard under R. 4:6-2. Under this Rule, the complaint must be searched in depth and with great liberality to determine if a cause of action can be gleamed even from an obscure statement, particularly if further discovery is taken. See Printing Mart v. Sharp Electronics, 116 N.J. 739 (1989). Every reasonable inference is accorded the plaintiff, and the motion is granted only in rare instances, and ordinarily without prejudice.

Plaintiff's first cause of action accuses Defendant of violating the New Jersey law Against Discrimination. Plaintiff concedes that Seton Hall is a religious or sectarian institution, maintained by the Roman Catholic Archdiocese of Newark, and is exempt from the requirements of NJLAD. Plaintiff alleges, however, that Seton Hall has affirmatively waived its exemption by its own internal policies and by its conduct. Plaintiff cites Seton Hall's Student Handbook and its anti-discrimination policy which appears on its website and includes participation in extracurricular activities.

> "The University supports and implements all state and federal anti-discriminate ton laws,...No person may be denied employment or related benefits or admission to the university or to any of its programs or activities, either academic or non-academic, curricular or extracurricular, because of race, color, religion, age, national origin, gender, sexual orientation, handicap, and disability or veteran's status...These policies are to be applied in all decisions regarding hiring, promotion, retention tenure, compensation, benefits, layoffs, academic programs, and social and recreational programs."

The concept of waiver requires in intentional relinquishment of a known right. Allstate v. Howard Savings Inst., 127 N.J. Super. 479 (Ch. Div. 1974). Thus, Plaintiff must show that Defendant knew of its right to an exemption and deliberately and voluntarily intended to relinquish it. Defendant's argument that the interpretation of NJLAD would be on its own terms and in "accordance with catholic teachings" is not at all clearly or prominently mentioned and is not deemed to be a limitation or qualification of the rights promised by implantation of all State and Federal Anti-Discrimination Laws. Plaintiff's claim involves a determination of Defendant's state of mind or intent. Discovery is not completed, and the court is faced with a meager record. Other evidence and circumstances may show more clearly unmistakably signs of Defendant's decision to forgo an advantage it may have insisted on in order to attract students from around the world and of

different backgrounds and cultures. Defendant voluntarily solicits and accepts students from around the nation and the world, many of whom have been the subject of discrimination and suffer from confusion and rejection. Incoming students have need of not just financial support, but moral and emotional support. Defendant has allowed other similar groups to organize for purposes of social and emotional support. Defendant's message at its website and in its handbook seems to promise students not only acceptance at its facilities and protection against discrimination, including discrimination based upon sexual orientation, but to allow all incoming students equal access to its social, recreational and academic programs, and the same services and privileges provided other groups. Giving the Plaintiff the benefit of all favorable inferences, the facts as alleged would seem to support a claim of waiver. Having shown that Defendant waived its exemption under LAD, Plaintiff must then show that Defendant has violated LAD by denying to Plaintiff that to which it had accorded all other groups at its facilities. Again, the facts would tend to support a claim that plaintiff's application was DENIED because of its sexual orientation.

Plaintiff's second cause of action alleges Breach of Contract by Defendant. Plaintiff cites Seton Hall's Student Handbook, which seeks to protect students against sexual oriented, based discrimination and submits that the student handbook creates a binding contract between student and university, which is binding on both. Woolev v. Hoffman, 99 N.J. 284 (1985).

The law of contracts also requires that there be intent to form a contract. Defendant's intent may be express or implied. P. Ballantine & Sons v. Gulka, 117 N.J.L. 84 (N.J. Sup. 1936). Without evidence of the surrounding circumstances and the reasonable inferences to be drawn therefrom, the court is unwilling at this stage to state as a matter of law that Defendant's handbook creates a unilateral enforceable contract. The facts here are similar to those in Woolev: The website is available to everyone. The handbook is distributed to every incoming student; and the " terms" are reasonable clear. Plaintiff alleges that he relied upon the statements made in making his choice of universities. Thus, the factual allegations are sufficient to support a claim from which relief can be granted. Giving the Plaintiff every reasonable inference at this point, and for this purpose, "all facts alleged in the complaint and legitimate inferences drawn therefrom are deemed admitted", a promise and reliance upon that promise may be found. Defendant's refusal to accord Plaintiffs the same rights that it grants to others at its facilities could be deemed a breach of the promise made by Defendant.

The court in its decision merely allows the complaint to survive dismissal. Plaintiff must prove each element of one or both counts of his case, and the fact that it may be a long and arduous journey does not justify the court blocking the road at this point. Printing Mart v. Sharp Electronics, Supra.. Nor does this decision preclude further motions or cross motions after discovery is completed.

An appropriate order shall accompany this memorandum.

CLAUDE M. COLEMAN, J.S.C.