

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

DAVID BENOIT MECH)
d/b/a THE HAPPY/FUN MATH TUTOR,)
))
Plaintiff,)
))
v.)
))
SCHOOL BOARD OF PALM BEACH)
COUNTY,)
))
Defendant.)

Civil Action No: 9:13-cv-80437-
MARRA/MATTHEWMAN

**DEFENDANT’S MOTION FOR SUMMARY JUDGMENT
AND MEMORANDUM OF LAW IN SUPPORT THEREOF**

The Defendant, School Board of Palm Beach County (“School Board”), by and through its undersigned counsel, hereby files this Motion for Summary Judgment as to all claim asserted in Plaintiff’s, David Benoit Mech d/b/a The Happy/Fun Math Tutor (“Mech”), second Amended Complaint. This Motion is filed pursuant to Federal Rule of Civil Procedure 56 and Rule 56.1 of the Local Rules of the United States District Court for the Southern District of Florida.

I. INTRODUCTION

On or about February 13, 2014, Mech filed his second Amended Complaint Under the Civil Rights Act, 42 U.S.C. §§1983, for Damages, Injunctive, and Declaratory Relief. In his four-count second Amended Complaint, Mech seeks injunctive relief, declaratory judgment, and damages for Violation of First Amendment Rights (Count I), Violation of Fourteenth Amendment Right to Due Process (Count II), Violation of Fourteenth Amendment Right to Equal Protection (Count III), and Breach of Contract (Count IV).

Each of Mech's claims arises out of his assertion that, at all times relevant to the second Amended Complaint, he was a party to *separate agreements* with the School Board relating to Omni Middle School, Boca Raton Middle School, and Spanish River High School (second Amended Complaint, ¶23). According to Mech, the removal of the banner/fence screen from the fences at each of the aforementioned schools in February 2013 constituted a breach of a valid, enforceable advertising contract with the school (second Amended Complaint, ¶28). Because he was entitled to have the banner/fence screens on the fences pursuant to such contracts, the removal of the banner/fence screens in violation of the terms of those contracts resulted in a violation of his First Amendment and Fourteenth Amendment rights. Thus, in order to assert his First and Fourth Amendment claims, Mech must, at a minimum, show that at the time of the removal of the fence screens from the schools fences, he had valid, enforceable contracts with each of the schools.

The School Board asserts that it is entitled to summary judgment with regard to claims relating to the removal of the fence screen the schools because 1) the document purported to be a contract with the School Board to hang a banner/fence screen at Omni Middle School had expired months before the fence screen was removed; thus, Mech had no contractual or constitutional right to have the fence screen hang on the fence at that school on the date that it was removed; 2) the document purported to be a contract with the School Board to hang a banner/fence screen Spanish River High School was not a valid, enforceable contract with the School Board or the Spanish River High School; thus, Mech had no contractual or constitutional right to have the fence screen hang on the fence at that school on the date it was removed; and 3) the Business Partnership Agreement (PBSD 1570) signed by Mech to document the banner/fence screen posted to recognize sponsor donation revenue at Boca Raton

Middle School clearly reflects that Mech agreed and acknowledged that he made a donation to the school, that the fence screen was not advertising, and that principals had discretion with regarding the selecting and approving business partners; thus, thus, Mech had no contractual or constitutional right to have the fence screen hang on the fence at that school on the date it was removed. For the reasons set forth herein, the School Board seeks summary judgment regarding all claims.

ARGUMENT

Standard for Summary Judgment

Summary judgment is proper if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). The Court stated in *Celotex*, “[i]n our view, the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. at 322.

Omni Middle School

A. The document purported to be a contract with the School Board relating to Omni Middle School had expired months before the fence screen was removed; thus, Mech had no contractual or constitutional right to have a banner/fence screen hang on the fence at that school on the date that such banner/fence screen was removed.

According to Article IX, section 4(b), Florida Constitution, the school board shall operate, control and supervise all free public schools within the school district. Each school district is a political subdivision of the State of Florida. *See* §1.01(8), Fla. Stats. As a political

subdivision of the State of Florida, school boards are entitled to sovereign immunity from lawsuit, except where such immunity has been waived.

Although no express legislative waiver has been granted for contract claims, the Florida Supreme Court has found an implied waiver of sovereign immunity in contract on the premise that because the legislature authorized state entities to enter into contracts, it must have intended such contracts to be valid and binding. *See County of Brevard v. Miorelli Engineering, Inc.*, 703 So. 2d 1049, 1050 (Fla. 1998). Such waiver only extends to the express terms of a valid and enforceable contract and terms implied within such contracts, but such waiver does not extend to claims totally outside the terms of the valid and enforceable contract. *See id.*

Indeed, the Florida legislature has put the public on notice that the School Board is the contracting agent for schools within its boundaries and that the School Board may be sued to enforce such contracts. *See* §1001.41, Fla. Stats. (“The district school board...shall exercise the following general powers:....(4) Contract, sue and be sued.”) Moreover, any contracts and suits thereon against the School Board, as a sovereign, must comply with the law applicable to sovereigns. Similarly, school boards may be sued under Section 1983. *Adams v. City of Orlando Code Enforcement Board*, 2007 WL 1229103 * 1 (M.D. Fla. April 26, 2007), *relying on*, *Busby v. City of Orlando*, 931 F.2d 764, 776 (11th Cir.1991); *Sherrod v. Palm Beach County School District*, 237 Fed. Appx. 423, 426 (11th Cir. 2007).

Mech’s constitutional claims, however, are wholly dependent upon a showing that he had a valid, enforceable contract with the School Board relating to each of the three schools on the date each of the three banners/fence screens were removed. Although it is the School Board’s position that Mech did not have a valid, enforceable contract giving him the right to

hang a banner/fence screen at Omni Middle School in February 2013, Mech's own answers to Defendant's First Set of Requests for Admissions to Plaintiff, Defendant's First Set of Interrogatories to Plaintiff, and Mech's statements during his deposition on February 14, 2014, show that his claims relating to Omni Middle School simply cannot stand, as set forth below.

Indeed, Mech admitted in his Answer to Request for Admissions #1 that the banner/fence screen was removed from the fence at Omni Community Middle School more than one year after he signed the document which he alleges constitutes a contract between the parties. Additionally, Mech stated in his responses to Defendant's First Set of Requests for Admissions ##2-3 that he has no documents signed or accepted by him or the School Board's employees, authorized agents, or representatives stating or providing that his banner/fence screen must be displayed at Omni Middle School in February 2013, or any time thereafter.

Similarly, during Mech's deposition on February 14, 2014, he stated that Exhibit B to the second Amended Complaint, the document titled "Advertise on the Fence", represented the document that was allegedly breached by the School Board when it removed the banner/fence screen from the fence at Omni Middle School, and that such agreement had expired. Consistent with such statement, in his response to the Interrogatory No. 4 of the Defendant's First Set of Interrogatories to Plaintiff, Mech acknowledges, "[w]hen Plaintiff's banner was removed in February 2013, Plaintiff was unaware that the contract had expired since representatives at Omni Middle School never contacted him regarding removal."

Thus, the depositions, answers to interrogatories, and admissions on file show that Mech had no contractual or constitutional right to have the fence screen hang on the fence at Omni Middle School on the date that the banner/fence screen was removed. Thus, any alleged rights arising out of such alleged contract had extinguished on the date of the School Board's action

giving rise to this lawsuit. Thus, summary judgment in favor of the School Board should be granted as a matter of law.

Spanish River High School

B. The document purported to be a contract for Spanish River High School was not a valid, enforceable contract with the School Board or the Spanish River High School; thus, Mech had no contractual or constitutional right to have the fence screen hang on the fence at that school on the date it was removed.

Section 1001.43, Florida Statutes provides in pertinent part:

The district school board may exercise the following supplemental powers and duties as authorized by this code or State Board of Education rule.

.....
(4) FACILITIES MANAGEMENT.—The district school board may adopt policies providing for management of the physical campus and its environs, including, but not limited to, energy conservation measures; building and ground maintenance; fencing, landscaping, and other property improvements; site acquisition; new construction and renovation; dedication and rededication or naming and renaming of district buildings and other district facilities; and development of facilities management planning and priorities.

(5) SCHOOL COMMUNITY RELATIONS.—The district school board may adopt policies governing public gifts and donations to schools; input from the community concerning instruction resources; advertising in schools; participation in community affairs, including coordination with local governments and planning authorities; protocols for interagency agreements; business community partnerships; community use of school facilities; public solicitations in schools, including the distribution and posting of promotional materials and literature; visitors to the school campus; school advisory councils; and parent volunteers and chaperones. (emphasis added)

Pursuant to such statutory authority, the School Board adopted School Board Policy 7.151.

When adopting such policy, the School Board delegated certain authority and duties to principals as follows: 1) to document business partnership using Business Partnership Agreement (PBSD 1570), 2) to inform business partners that funds provided to schools are considered donations, and 3) to utilize discretion with regard to selecting and approving

business partners in accordance with the educational mission of the School Board, District and community values, and appropriateness to the age group represented at the school.

School Board Policy 7.151, on its face, does not provide that the School Board delegated actual authority to the School principal or a school's Parent Teacher Student Association (PTSA) to enter into advertising contracts relating to banners/fence screens posted to recognize sponsor donation revenue. Neither the School principal nor a school's Parent Teacher Student Association (PTSA) had apparent authority to enter into advertising contracts that could bind the School Board.

In the private context, apparent or ostensible authority arises where a principal allows or causes others to believe the agent possesses such authority, as where the principal knowingly permits the agent to assume such authority or where the principal by his actions or words holds the agent out as possessing it. *Tampa Sand and Material Co. v. Davis*, 125 So.2d 126 (Fla. 2d 1960). When dealing with a public agency, however, the doctrine of "apparent authority" is not applicable. See *Deborah Bovarnick Mastin, The Florida Bar, Florida Civil Practice Damages*, §7.47.

Florida law specifically rejects the legal theory of apparent authority in connection with governmental agencies. Only a duly authorized officer or body of a governmental agency may create a binding obligation of the agency. See *Ramsey v. City of Kissimmee*, 111 Fla. 387, 149 So. 553 (1933) ("Under the charter, the city of Kissimmee was, by its city commission alone, authorized to make a contract of the kind sued on in this case. And the plaintiffs, in dealing with the city of Kissimmee, and in accepting a paper signed by the mayor-commissioner alone, were bound to ascertain the nature and extent of the authority of the mayor-commissioner to sign the contract sued on, in behalf of the city."); *Town of Madison v. Newsome*, 39 Fla. 149,

22 So. 270 (1897) (finding that a contract made by the mayor, or by the mayor and less than a majority of the council will not bind the town). Those doing business with public entities are charged with notice of the limits of the authority of the individual public employees or officers with whom they may communicate. *See id.* A governmental agency is not liable for services rendered when an official of the agency exceeds his or her power or authority of contract. *See* 12A Fla. Jur 2d Counties, Etc. §216.

The School Board articulated the extent to which it delegated authority to principals regarding posting banner/fence screens to recognize sponsor donations when it adopted Policy 7.151. The Spanish River PTSA did not have actual or apparent authority to bind the School Board to terms that differed from School Board Policy 7.151. Because Mech did not fill out a Business Partnership Agreement (PBSD 1570) to document the banner at Spanish River High School, the alleged contract with the School Board to document the banner/fence screen posted to recognize sponsor donation revenue at Spanish River was actually on PTSA letterhead, Mech paid monies to the PTSA, and such monies were placed in PTSA bank accounts, Mech has not shown that he had a valid and enforceable contract with the School Board on the date the banner/fence screen was removed from the fence at that school. Thus, Mech had no contractual or constitutional right to have the fence screen hang on the fence at that school on the date it was removed. Summary judgment in favor of the School Board should be granted as a matter of law.

C. The Business Partnership Agreement (PBSD 1570) signed by Mech to document the banner/fence screen posted to recognize sponsor donation revenue at Boca Raton Middle School clearly reflects that Mech agreed and acknowledged the terms set forth in School Board Policy 7.151; thus, Mech had no contractual or constitutional right to have the fence screen hang on the fence at that school on the date it was removed.

Mech signed a Business Partnership Agreement (PBSD 1570) documenting the banner/screen he wished to post at Boca Raton Middle School in August 2012. Mech

acknowledge during his deposition that he was provided with School Board Policy 7.151, which provided monies given to the Boca Raton Middle School was a donation and that the banner/fence screen would not be considered advertising.

Additionally, the Business Partnership Agreement (PBSD 1570) signed by Mech, on its face, provided that he read and understood School Board Policy 7.151 and that he acknowledged and agreed with School Board Policy 7.151. Because Mech knew that he was making a donation to the school and was not entering into an advertising agreement with the School Board, Mech had no contractual or constitutional right to have the fence screen hang on the fence at that school on the date it was removed. Thus, summary judgment in favor of the School Board should be granted as a matter of law.

CONCLUSION

For the grounds set forth below, the School Board asserts that its Motion for Summary Judgment should be granted.

WHEREFORE, the School Board respectfully requests that this enter an Order Granting its Motion for Summary Judgment.

Dated: May 13, 2014

Respectfully Submitted By:

/s/ Kalinthia R. Dillard
Kalinthia R. Dillard, Esq.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of May, 2014, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified, via transmission of Notices of Electronic Filing generated by

CM/ECF and email to James K. Green, Esq., JAMES K. GREEN, P.A., Suite 1650, Esperante,
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THE SCHOOL BOARD OF PALM BEACH
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