

STATE OF VERMONT

SUPERIOR COURT
Rutland Unit

CIVIL DIVISION
Docket No.: 380-7-16 Rdcv

_____)
Lola Duffort,)
)
Plaintiff,)
)
v.)
)
Vermont Agency of Education, and Vermont)
State Board of Education,)
)
Defendants.)
_____)

DEFENDANTS' MEMORANDUM IN OPPOSITION
TO THE PLAINTIFF'S MOTION
FOR A PARTIAL JUDGMENT ON THE PLEADINGS

I.

The Plaintiff's Motion for Partial Judgment on the Pleadings should be denied. First, the Plaintiff's assertions that the form of some of the Defendants' denials in their answer is procedurally improper is incorrect. Secondly, with respect to the merits of the Plaintiff's motion, the motion fails to meet the standards for a judgment on the pleadings.

II.

The Defendants' answer not only meets the minimum requirements of Rule 8(b) of the Vermont Rules of Civil Procedure, it goes beyond the requirements of Rule 8. The theory of Rule 8 is that a defendant's pleading should apprise the opponent of those allegations in the complaint that should be admitted and will not be in issue at trial, and those allegations that are contested and will require proof to be established in order to enable the plaintiff to prevail. Plain notice of the issues being raised by the defendant is all that is required at the pleading stage. The parties are provided with adequate discovery and pretrial procedures to develop in

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detail the facts pertinent to their claims. Responsive pleadings are subject to the Rule 8(e) standard of terseness, and the Rule 8(f) directive that pleadings be construed so as to do substantial justice. Wright & Miller, Federal Practice and Procedure: Civil 3d § 1261.

Here, the Defendants' denials, where appropriate, rather than simply being a cursory "denied", set out that the "denied" in some instances goes to the characterization of the Plaintiff's interpretation of specific Exhibits referred to and attached to her complaint. In response to some averments pled in the complaint the Defendants' answer is "denied". For example, paragraphs 11, 31,49,55,82,83,88,139,142,162,164 are more fact based, or contain a mixed question of fact and law, in nature and are "denied" as such. However, rather than obfuscate its responsive pleading by simply entering a "denied" in reference to certain averments, the Defendants made it expressly clear in their introductory statement to their answer that any denials concerning attached Exhibits were qualified regarding the Plaintiff's characterization of those Exhibits. The Defendants, rather than just entering a simple and plain "denied", went beyond the requirements of Rule 8(b) in order that the Plaintiff may be able to construe their answer in a manner that does substantial justice to the case.

The three cases cited by the Plaintiff in support of her incorrect assertion that some of the denials in the Defendants' answer did not comply with Rule 8 are inapplicable here. In each of those cases a defendant did not enter a denial whatsoever, or entered a general denial, in an answer in response to a complaint. Instead, unlike the Defendants here, defendants in those cases also simply only pled "the [document] speaks for itself". See *Lane v. Page*, 272 F.R.D. 581, 602-604 (D.N.M 2011); *Kortum v. Raffles Holdings, Ltd.*, No. 2002 WL 31455994 (N.D. Ill 2002) at *4; *Chicago District Council of Carpenters Pension Fund v. Balmoral Racing Club, Inc.*, No. 00C 2375, 2000 WL 876921 at *4 (N.D. Ill. June 26, 2000). Here, the Defendants expressly denied the averments at issue. The Plaintiff failed to distinguish these cases.

III.

In order to grant a plaintiff's motion for judgment on the pleadings under Rule 12(c) a court must take as true all well-pleaded factual allegations in the defendant's pleadings including all reasonable inferences to drawn from them, and any contravening assertions in the plaintiff's pleadings are considered false. *Goodby v. Vetphram*, 2009 VT 52 ¶ 3, 186 Vt. 63. Furthermore, a plaintiff may not secure a judgment on the pleadings when the answer raises issues of fact which, if proved, would defeat recovery. Wright & Miller, *Federal Practice and Procedure: Civil 3d* § 1368.

Here, the Exhibits attached to the plaintiff's own complaint establish that there is a substantial and material factual dispute between the plaintiff and the defendants. The heart of this case is whether the public records that the plaintiff is requesting even exist in the first instance, and whether in response to the plaintiff's request the Defendants would have to create a public record.

The Vermont Access to Public Records Act provides in pertinent part that if a record does not exist the custodian shall so certify in writing. See 1 V.S.A. § 318 (a)(4). In addition, the Act provides that public agency is not required to create a public record in response to a request. See 1 V.S.A. §316(i). Here, the Defendants' certified to the Plaintiff that the records she was seeking do not exist. See Exhibit G. Furthermore, the Defendants endeavored to explain in detail to the Plaintiff that the information she was seeking would require the creation of a public record that the Defendants were unable and unwilling to do considering the nature of substantial and material factual dispute regarding the highly technical computerized nature of the reporting and record keeping system which is at issue here is not appropriate for a judgment of on the pleadings.

The Plaintiff's own complaint establishes that the Defendants contend the records being sought do not exist, and that to attempt to comply with the Plaintiff's request would require the creation of a public record from data that does not exist in the form and manner the Plaintiff seeks, something that the Act does not require.

In light of the well pled denials in the Defendants' Answer, coupled with the Exhibits in the Plaintiff's own complaint which establish the existence of a substantial and material factual dispute between the Plaintiff and the Defendants, the Plaintiff's motion should be denied on the merits.

IV.

For all the above-stated reasons the Plaintiff's Motion for Partial Judgment on the Pleadings should be DENIED.

DATED at Montpelier, Vermont this 18 day of January, 2017.

STATE OF VERMONT

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