

Court of Common Pleas of Ohio  
Erie County, Civil Division

Oliver

Case No. 2008 CV 762

v.

National Collegiate Athletic Association

Decided December 12, 2008

Richard G. Johnson, for plaintiff.

Linda J. Salfrank and Kimberly W. Herlihy, for defendant.

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TONE, Judge.

{¶ 1} This matter is before the court on the motion to dismiss of defendant, National Collegiate Athletic Association (“NCAA”). After thorough review of the pleadings (defendant’s motion to dismiss, plaintiff’s motion to strike the motion to dismiss, plaintiff’s response, defendant’s reply, plaintiff’s surreply) and the applicable case law, the court has determined that defendant’s motion is not well taken and is hereby denied.

FACTS

{¶ 2} In the early months of 2006, the plaintiff retained Robert Baratta, Tim Baratta, and Icon Sports Group as his sports advisors and attorneys. On March 31, 2008, the plaintiff terminated their services and retained the Boras Corporation. In June 2006,

the plaintiff was drafted by the Minnesota Twins, and at the end of summer, the Minnesota Twins organization met with the plaintiff and his father before he left for his freshman year of college. At Tim Baratta's request, he too was present at this meeting. The Minnesota Twins made a monetary offer to the plaintiff that he rejected. He chose to attend Oklahoma State University ("OSU"), where he had previously signed a letter of intent during the fall of 2005 for a full scholarship. Because of this choice, the plaintiff would not be eligible for the amateur baseball draft until his junior year in college, in June 2009.

{¶ 3} The plaintiff played his freshman and sophomore years for OSU. During this time, the plaintiff retained the Barattas and the Icon Sports Group as his advisors and attorneys. After he terminated these advisors and attorneys on March 31, 2008, he retained the Boras Corporation as his sports advisors and attorneys.

{¶ 4} In mid-April 2008, the plaintiff received a letter and invoice from his former attorneys stating that if the \$113,000 invoice was not paid within 21 days, a suit would be filed. Several letters were exchanged between his former attorneys and attorney Quiat, the plaintiff's attorney; on May 12, 2008, his former attorneys wrote a letter to attorney Quiat alleging that six items of assistance were given to the plaintiff.

{¶ 5} Thereafter, the former attorneys contacted the NCAA to report potential violations by the plaintiff; subsequently, the NCAA and OSU initiated an investigation of the plaintiff's amateur status. Plaintiff was suspended indefinitely as of May 31, 2008. However, pursuant to a temporary restraining order ("TRO"), the NCAA reinstated the plaintiff.

## ARGUMENT

{¶ 6} The defendant, the NCAA, moves this court to dismiss Counts I through IV of the plaintiff's complaint pursuant to Civ.R. 12 (B) (1), (6), and (7). The defendant argues that the plaintiff's claims should be dismissed because he has failed to exhaust administrative remedies through the NCAA. Furthermore, the defendant contends that the plaintiff failed to join a necessary and indispensable party, OSU, and therefore his lawsuit fails as a matter of law and should be dismissed in its entirety. The NCAA also contends that the plaintiff has failed to state a claim for which relief can be granted: the plaintiff has failed to meet the pleading requirements to prove a contract existed; the plaintiff failed to plead the breach of any specific contract term or assert a contract interest; and the plaintiff's claim for tortious interference must fail because he failed to establish the requisite intent.

{¶ 7} Contrarily, the plaintiff requests that this court strike the defendant's motion pursuant to Civ.R. 11. The plaintiff states that as a matter of law the defendant's motion must fail in regard to the exhaustion of administrative remedies since the defendant has not provided any administrative relief to him.

{¶ 8} The plaintiff also asserts that under Ohio law, the plaintiff may choose to sue the NCAA without naming its agents or members (in this case OSU) and that there is absolutely no claim for relief that cannot be granted without adding OSU as a defendant. Even if the court determines that OSU is an indispensable party, the plaintiff argues, the court is limited to ordering him to join OSU as a defendant but may not dismiss the case pursuant to Civ.R. 19.

{¶ 9} The plaintiff addresses defendant's third argument regarding there being no contractual relationship between the plaintiff and the NCAA by maintaining that it is the defendant that has argued that the plaintiff must exhaust administrative remedies and this can only be done if there is a contractual relationship that exists. According to the plaintiff, even the defendant acknowledges that there is a contractual relationship between the parties. Moreover, the plaintiff asserts that he has indeed identified the contractual terms violated: the NCAA violated the implied contractual obligations of good faith and fair dealing.

#### LAW AND ANALYSIS

{¶ 10} Civ.R. 12(B)(1) permits dismissal where this court lacks jurisdiction over the subject matter of the litigation. The standard of review for a dismissal pursuant to Civ.R. 12 (B)(1) is whether any cause of action cognizable by a forum has been raised in a complaint. See *Milhoan v. E. Local School Dist. Bd. of Edn.*, 157 Ohio App.3d 716. This court is not confined to the allegations of the complaint when determining its subject-matter jurisdiction under this rule, and it may consider pertinent material without converting the motion into one for summary judgment. See *Southgate Dev. Corp. v. Columbia Gas Transm. Corp.* (1976), 48 Ohio St.2d 211.

{¶ 11} Pursuant to Civ.R. 12(B)(6), a defendant may move to dismiss a complaint for failure to state a claim upon which relief can be granted. The dismissal of a complaint for failure to state a claim is proper when it appears beyond doubt that the plaintiff can prove no set of facts entitling him to relief. *Celeste v. Wiseco Piston* (2003), 151 Ohio App.3d 554. In ruling on a motion to dismiss, this court must conduct a de novo review, construe the complaint in the light most favorable to plaintiff, presume all factual

allegations in the complaint are true, and make all reasonable inferences in favor of the plaintiff. See *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St.3d 190, 192. In contrast to motions pursuant to Civ.R. 12(B)(1), this court may not rely on allegations or evidence outside the complaint in addressing a motion under Civ.R. 12(B)(6) unless, with reasonable notice to the parties, it treats the motion as a Civ.R. 56 motion for summary judgment.

{¶ 12} Civ.R. 12(B)(7) permits dismissal when the plaintiff failed to join a party under Civ.R. 19 or 19.1. An indispensable party has been defined as one whose absence seriously prejudices any party to the action or prevents the court from rendering an effective judgment between the parties or one whose interests would be adversely affected or jeopardized by a judgment between the parties to the action. *Layne v. Huffman* (1974), 43 Ohio App.2d 53, 59. A party may raise the defense of failure to join an indispensable party by late pleading, motion for judgment on the pleadings, or at trial.

{¶ 13} In the case at bar, the defendant's first argument as to why Counts I to IV should be dismissed is that the plaintiff has failed to exhaust the administrative remedies provided by the NCAA. The defendant asserts, "Plaintiff's first and best chance for relief is through the administrative channels established by the NCAA membership." The defendant also submits that it has described the specific remedies available in its supplemental memorandum.

{¶ 14} It should be noted that this decision is subsequent to the phone conference held with the court and the attorneys on November 13, 2008. This decision also comes after a meeting held on December 8, in which both sides were represented by counsel. During the former conversation, the plaintiff's attorney reiterated that his client would

not execute a public-records release (known as a “Buckley statement”), which would begin the process of the administrative review for the plaintiff’s eligibility for reinstatement on the OSU baseball team. Thereafter, the NCAA agreed to waive its general requirement (the plaintiff would not have to sign the Buckley statement) and to proceed with its administrative review of the plaintiff’s eligibility. The NCAA pledged to expedite the administrative-reinstatement-review process, including any appeal, to be concluded by December 1, 2008. At the latter meeting, it was determined that there were additional steps that the NCAA wanted the plaintiff to complete. Pursuant to the meeting with the attorneys, the court and counsel have attempted to come to an agreement concerning the plaintiff’s eligibility to participate in OSU’s baseball program, concentrating on fairness as it relates to both parties. With that being stated, the issue whether the plaintiff has satisfied all administrative appeals has been graciously addressed by both parties and is a moot issue for purposes of this decision.

{¶ 15} Next, the defendant contends that the plaintiff’s claims should be dismissed pursuant to Civ.R. 12(B)(7) for failure to join OSU as an necessary and indispensable party since it is OSU that has the authority to determine whether the plaintiff will participate on its baseball team. The plaintiff asserts that he may choose to sue NCAA without naming its agents and designates OSU as such. Furthermore, the plaintiff contends that there is no claim that cannot be granted without adding OSU as a defendant.

{¶ 16} Civ.R. 19(A) provides:

A person who is subject to service of process shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in

his absence may (a) as a practical matter impair or impede his ability to protect that interest or (b) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reasons of his claimed interest, or (3) he has an interest relating to the subject of the action as an assignor, assignee, subrogor, or subrogee.

{¶ 17} In the case of *Evansville v. Byers* (1964), 136 Ind.App. 448, an Indiana appellate court adopted the following definition of indispensable party: “An *indispensable party* has an interest of such a nature that a final decree cannot be made without affecting its interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience.” (Emphasis sic.) Also of interest is the definition of necessary party set forth in the opinion by Judge Allen in *State ex rel. Crabbe v. Mun. S. & L. Co.* (1924), 111 Ohio St. 178, 189, quoting *Rosina v. Trowbridge* (1888), 20 Nev. 105, 17 P. 751, 754: “Necessary parties \* \* \* are those without whom no decree at all can be effectively made determining the principal issues in the cause.” Or as defined in *Donovan v. Champion* (C.A.8, 1898), 85 Fed. 71, 72: “[A]ll those whose presence is necessary to a determination of the entire controversy must be, and all those who have an interest in the subject matter of the litigation which may be conveniently settled therein may be, made parties to the suit. The former are termed the ‘*necessary*’ and the latter the ‘*proper*’ parties.” (Emphasis added).

{¶ 18} The court determines that OSU, whether deemed an agent of the NCAA or not, is indeed a necessary party and its presence is needed for a determination of the entire controversy. Under NCAA Bylaw 6.1.1, OSU, as a member institution, has the final determination whether the plaintiff is eligible to participate in the baseball program.

How much more necessary or indispensable does a party have to be? Thus the court orders the plaintiff to join OSU as a defendant pursuant to Civ.R. 19.1(A).

{¶ 19} Last, the court addresses whether this action should be dismissed because of the defendant's argument that the plaintiff has failed to state a claim for which relief can be granted. The defendant argues in this context that the plaintiff's claim for breach of contract should be dismissed because the plaintiff cannot show that a contract exists; and the plaintiff's claim for tortious interference must fail because the plaintiff cannot allege the requisite intent.

{¶ 20} To grant a Civ.R. 12(B)(6) motion to dismiss for failure to state a claim, it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery. Reviewing the complaint in this matter, it is clear that the plaintiff alleges that he has a contractual relationship with OSU and the NCAA through his national letter of intent that obligated the parties to act in good faith and to deal fairly with the plaintiff. The plaintiff also contends that his obligations in regard to the contract were met but that the defendant breached its obligations due to a number of failures that caused him to be declared ineligible to play college baseball. Such failure included, but may not be limited to, the lost opportunity to play in and win a college regional or World Series, his reputation being damaged, and his marketability being negatively affected.

{¶ 21} This court agrees that there is a contractual relationship between these two parties; evidence of the relationship is the fact that the administrative remedies had to be exhausted before this matter could move forward. If the NCAA is found to have breached a contractual agreement involving the implied contractual obligation of good faith and fair dealing, the plaintiff could be entitled to compensatory and even punitive

damages. Without going through the elements of a contract, of which this court is sure all parties are intimately aware, this court determines that the plaintiff has stated claims for breach of contract that, if successful, would permit relief to be granted.

{¶ 22} A claim for tortious interference with a contract is comprised of the following elements: (1) the existence of a contract, (2) the wrongdoer's knowledge of the contract, (3) the wrongdoer's intentional procurement of the contract's breach, (4) the lack of justification, and (5) resulting damages. *Kenty v. Transam. Premium Ins. Co.* (1995), 72 Ohio St.3d 415. In the event that a complaint fails to allege each of these elements, the complaint can properly be dismissed for failure to state a claim upon which relief can be granted. The resolution turns upon the sufficiency of the allegations in the complaint as related to the elements of a tortious-interference-with-a-contract cause of action. A motion to dismiss in this regard is not an opportunity for this court to address the matter on its merits but must be used to determine whether the facts as alleged in the complaint, if construed as true, establish the cause of action provided for in the complaint. After thorough review of the complaint, this court concludes that the plaintiff has sufficiently pleaded the elements of tortious interference with a contract and if proven, the plaintiff's relief would be granted. Therefore, this complaint cannot be properly dismissed for failure to state a claim upon which relief can be granted within the context of tortious interference.

{¶ 23} It is therefore the decision of this court that the NCAA's motion to dismiss is hereby denied.

So ordered.