IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DEBORAH J. TULLY, Plaintiff	:	NO. 08-01,072
	:	CIVIL ACTION - LAW
vs.	:	
	:	
EMPIRE BEAUTY SCHOOL, INC.,	:	
Defendant	:	Preliminary Objections

OPINION AND ORDER

Before the Court are preliminary objections filed by Defendant on June 17, 2008. Argument thereon was heard August 25, 2008.

Plaintiff, a formerly licensed cosmetologist, claims in her Complaint that she was told by representatives of Defendant that she needed to "re-take every class" in order to renew her license and that, based on those representations, which she claims turned out to be incorrect, she enrolled in the beauty school and attended classes for approximately one year. She has brought claims of fraud, negligent misrepresentation, and violation of the Unfair Trade Practices and Consumer Protection Law, to all of which claims Defendant had demurred on the basis of its assertion that Plaintiff cannot prove justifiable reliance. Specifically, Defendant contends the "integration clause" in the enrollment agreement signed by the parties precludes admission of any evidence of alleged misrepresentations under the parole evidence rule, relying on McGuire v. Schneider, Inc., 534 A.2d 115 (Pa. Super. 1987). The Court believes, however, that admission of evidence of the alleged misrepresentation is not precluded under McGuire, and that Defendant's reliance thereon is misplaced.

In McGuire, an employee began employment under the terms of a letter written to him by the employer's chairman of the board, but then signed a fully integrated employment agreement which contained terms of employment which varied from those contained in the letter. When the employee brought suit and attempted to enforce the terms contained in the letter, the Court held the letter inadmissible, stating:

> Where the parties to an agreement adopt a writing as the final and complete expression of their agreement, as here, evidence of negotiations leading to the formation of the agreement is inadmissible to *show an intent at variance with the language of the written agreement*. … Alleged prior or contemporaneous oral representations or agreements *concerning subjects that are specifically dealt with in the written contract* are merged in or superseded by that contract."

McGuire, *supra* at 117 (citation omitted, emphasis added). In the instant case, Plaintiff's allegation regards a representation that does not concern a subject that is dealt with in the enrollment agreement, and she is not attempting to show an intent at variance with its language.

Defendant also referenced at argument this Court's decision in Woodlands Bank v. Equipment Finance, Lycoming County No. 07-02,759 (June 16, 2008, Anderson, J.). There, the bank wished to introduce evidence of alleged representations by Equipment Finance with respect to the credit worthiness of the loans at issue, but this Court excluded the proposed evidence because the written agreement between the parties contained a clause which indicated that the bank "has independently and without reliance upon any representation by [Equipment Finance], relied upon its own credit analysis and judgment" in entering into the agreement. In the instant case, the "integration clause" reads as follows:

> 12. GENERAL PROVISIONS: This writing contains the entire agreement between School and student and supersedes any earlier written or oral agreement(s) the School and student may have had. Verbal agreements, statements and representations by any representative or employee or agent of School are not binding. This Agreement may only be amended in writing signed by student and the School's duly authorized officer … .

The Court finds this "integration clause" to differ significantly from that in Woodlands Bank. The agreement does not indicate that Plaintiff is not relying upon *any* representations of Defendant in entering the agreement; such language would indeed preclude Plaintiff's claims. Instead, by indicating that any representations are not "binding" on Defendant, the contract speaks to *representations concerning, and contrary to, terms contained in the contract*. As noted above, the allegations in this case do not concern such representations, as whether Plaintiff needed to "re-take every class" is not a subject addressed by the contract.

Defendant also preliminarily objects on the bases that (1)Plaintiff has failed to allege that the parties' agreement was in writing, (2) Plaintiff has failed to attach the agreement to the

Complaint, and (3) the agreement obligates the parties to submit their dispute to arbitration. As the claims raise by Plaintiff are *not* based on the agreement, however, these objections are without merit.

ORDER

AND NOW, this 29th day of August 2008, for the foregoing reasons, Defendant's preliminary objections are hereby overruled.

BY THE COURT,

Dudley N. Anderson, Judge

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Hon. Dudley Anderson