



Fla. College Escapes Suit Over Fees During Virus Shutdowns

By Carolina Bolado
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A Florida appeals court on Wednesday shot down a proposed class suit against Miami Dade College seeking prorated refunds for student fees following 2020 campus closures prompted by the COVID-19 pandemic after finding that the college is entitled to sovereign immunity.

Florida's Third District Court of Appeal found that a lower court erred in advancing nursing student Fernando Verdini's breach of contract claim against MDC, ruling that the invoices he attached to his complaint did not satisfy the requirement for an express written contract to provide on-campus or in-person services enough to trigger an exception to sovereign immunity.

"There is nothing in the complaint or the attachments that expressly requires MDC to provide on-campus services in exchange for the student services, financial aid, capital improvement, and technology fees," the appeals court said in the opinion. "Moreover, Verdini has not identified anything that expressly prohibits MDC from providing remote services in exchange for these fees."

There is nothing in Florida Statute 1009.23 — which covers the fees charged by public higher education institutions — that requires on-campus or in-person services, according to the Third District.

Verdini argued that there could be additional unspecified documents showing an express contract and that he should therefore be allowed discovery, but the appeals court disagreed.

"Verdini has not cited, and research has failed to uncover, any authority supporting the broad proposition that discovery is warranted when a complaint merely alleges the possible existence of an unidentified contract that may or may not be another's possession," the Third District said.

Verdini sued MDC over five mandatory fees charged by the school for student services, financial aid, capital improvement, technology and parking. All but the parking fees were assessed for the Summer 2020 semester, but Verdini failed to attach a Spring 2020 invoice for a parking fee, according to the appeals court.

The trial court dismissed Verdini's unjust enrichment claim, but denied the college's motion to dismiss his breach of contract claim after finding that invoices he attached to his complaint satisfied the requirement for an express written contract. But the panel said the invoices were not enough to show an express agreement for on-campus services.

Dwayne Robinson, who represents MDC, called the decision a "resounding victory for public colleges and universities throughout Florida."

"These educational institutions went to extraordinary lengths—at great expense—to provide the best and safest learning environment for nearly 1 million students amidst the unprecedented challenges posed by the COVID-19 pandemic," he said.

His co-counsel Javier Lopez said he is confident the ruling "will serve as a signal to other courts that these cases are wholly without merit" and called them "unadulterated money grabs by lawyers."

An attorney for Verdini did not respond to a request for comment.

Judges Kevin Emas, Norma S. Lindsey and Monica Gordo sat on the panel for the Third District.

Miami Dade College is represented by Javier A. Lopez, Dwayne A. Robinson, Michael R. Lorigas and Eric S. Kay of Kozyak Tropin & Throckmorton LLP and its own Javier A. Ley-Soto.

Verdini is represented by Adam Moskowitz, Howard M. Bushman and Adam A. Schwartzbaum of The Moskowitz Law Firm PLLC.

The case is District Board of Trustees of Miami Dade College v. Verdini, case number 3D21-0470, in the Third District Court of Appeal of Florida.

--Additional reporting by Nathan Hale. Editing by Ellen Johnson.