

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY, FLORIDA

CASE NO.

PETER B. BENEDICT, II,

Plaintiff,

v.

SAINT ANDREW'S SCHOOL OF
BOCA RATON, INC., a Florida corporation;
and MARY JO FINOCCHIARO, Individually,

Defendants.

COMPLAINT

Plaintiff, Peter B. Benedict II, by and through his undersigned counsel, sues Defendants, Saint Andrew's School of Boca Raton, Inc., a Florida corporation, and Mary Jo Finocchiaro, an individual, as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff, Peter B. Benedict, II ("Benedict"), is a resident of Indian River County, Florida.
2. Defendant, Saint Andrew's School of Boca Raton, Inc. (the "School") is a Florida corporation with its principal address at 3900 Jog Road, Boca Raton, Palm Beach County, Florida.
3. The School operates a private day and boarding school in Boca Raton, Florida.
4. The School formerly employed Benedict at the School in Boca Raton, Florida.
5. Defendant, Mary Jo Finocchiaro ("Finocchiaro"), is a resident of Palm Beach County, Florida, and was the Chairwoman of the School's Board of Trustees (the "Board").

6. Defendant Finocchiaro took action, or failed to take action, as alleged herein, while a member of the Board, individually and on behalf of the School, in Boca Raton, Florida.

7. This is an action for damages in excess of \$15,000, exclusive of interest, attorney's fees and costs.

8. Venue is proper in this Court because the Defendants reside in, and the events giving rise to this Complaint arose in, Palm Beach County, Florida.

ALLEGATIONS

Benedict's Tenure at the School

9. Benedict served as the School's Headmaster from 2013 through April 22, 2016.

10. Prior to Benedict's employment at the School, Benedict's distinguished career as an education professional included teaching positions at North Cross School (in Roanoke, Virginia) and Louisville Collegiate School (in Louisville, Kentucky), and thereafter as the Headmaster of The Miami Valley School (in Dayton, Ohio).

11. Benedict is also President of The Benedict Foundation for Independent Schools, a member of the Board of Trustees of The Hill School in Pennsylvania, a founding board member and former President of the Andrus Family Fund, and Vice Chair of The Surna Foundation.

12. At all times material to this action, Finocchiaro was the Chair of the School's Board.

13. On April 22, 2016, Benedict and the School entered into a Severance Agreement ("Agreement"), which Agreement is in the possession of all Defendants.¹

¹ Plaintiff acknowledges the requirements of Rule 1.130; however, Plaintiff has not attached a copy of the Agreement because it is subject to a "Confidentiality" provision. After service of the Complaint, Plaintiff will provide a copy of the Agreement to Defendants or their counsel.

14. Benedict makes no claim arising from events occurring *before* the execution of the Agreement on April 22, 2016.

Defendants' Misconduct After April 22, 2016

15. After April 22, 2016, on multiple occasions, Benedict requested the School fulfill its obligation under Para. 3(g) of the Agreement that the "Chair of the Board will work with Employee to create an appropriate reference letter and agreed statements that the Chair will provide potential subsequent employers who contact the Chair about Employee."

16. Despite Benedict's multiple attempts and requests to obtain an appropriate reference letter and agreed statements after April 22, 2016, including through Benedict's counsel, Defendants refused to provide Benedict the same.

17. Defendants compounded their breach of their obligations under the Agreement, by affirmatively defaming Benedict in his professional capacity. Thereby Defendants withheld Benedict's shield (the reference letter and agreed statement), while thrusting their sword (their defamation).

18. Sometime after April 22, 2016, Finocchiaro made inappropriate and defamatory accusations about Benedict to the Assistant Head of School; members of the Board; and parents of some of the School's students.

19. In making these accusations, Finocchiaro falsely stated that Benedict: (i) was dishonest with the School's money, (ii) stole from The Benedict Foundation For Independent Schools, and (iii) protected a pedophile in the community.

20. Finocchiaro's statements, which were made while Finocchiaro was serving as Chair of the School's Board, are false.

21. On May 24, 2016, Defendants collectively published "Saint Andrew's School Board of Trustees Bulletin #1" ("Bulletin") to potentially thousands of recipients, including educational professionals outside the School, such as the President of the National Association of Independent Schools, a copy of which is attached hereto as Exhibit "A."

22. The Bulletin states, in large part:

The Association of Boarding Schools (TABS) and National Association of Independent Schools (NAIS) encouraged Heads of School, Directors of Communication, and administrators since January 2016 to consider preparing their communities for the difficult issues anticipated to be the subject of the Boston Globe Spotlight article [regarding sexual abuse of students]. These associations urged all schools to be proactive by strengthening their policies around student safety and communications around this subject. . . . The Board acted upon the advice of both the School's legal counsel, as well as consulting counsel, in considering its decision to proceed with [terminating Benedict]. . . .

23. The clear implication of the Bulletin is best described in the response of the President of the National Association of Independent Schools, who immediately asked Benedict, "Did the board really mean to imply that your departure was somehow related to a sexual abuse charge or the mishandling of it at your school? Because that's how people will read that."

24. On June 23, 2016, the Palm Beach Post reported, "Finocchiaro told a school employee that [Board member] Caragol was forced to resign because he and Benedict had stolen \$12 million from the school and diverted it to a business in Mexico."

25. On or about August 15, 2016, law firms McLane Middleton and Holland & Knight apparently delivered reports to the School regarding investigations the School commissioned.

26. On August 19, 2016, the new Interim Head of School, Dr. Jim Byer, on behalf of the Board and School, disseminated an email to the School's community purporting to attach copies of executive summaries from the McLane Middleton and Holland & Knight reports.

27. However, the purported Holland & Knight "executive summary" did not include letterhead or otherwise contain Holland & Knight's name (the "Unidentified Report"). On information and belief, this executive summary did not bear Holland & Knight's name because Finocchiaro and the School altered it prior to its dissemination.

28. On information and belief, Finocchiaro and the School also provided copies of the two executive summary reports to the media.

29. The Unidentified Report included the following false statements, including:

On or about April 26, 2016, an upper school teacher, who was not identified in the Unidentified Report, "made a number of accusations to fellow faculty members that Rubinstein and Benedict knew of sex abuse in the boys' dorm and that Rubinstein had covered it up. He unleashed a barrage of profanity and reportedly called Rubinstein a felon for not reporting this to authorities."

30. On August 20, 2016, the Palm Beach Post published an article, based on the false content of the "executive summary" released by the Defendants, that starts with, "administrators at [the School] looked the other way as a teacher engaged in secret sleepovers, private embraces and late-night excursions with boarding students, a pattern that exposed the students repeatedly to 'potential abuse,' an investigation commissioned by the school concluded."

31. Far later, the same article notes that the "many parents and staff members called the report a one-sided document released publically in an attempt by the school's [B]oard to justify Benedict's ouster and taint the reputations of other administrators."

32. On August 22, 2016, WPTV published an article stating "[a] pair of reports commissioned by the school showed administrators ignored warnings about a faculty member's relationship with students, putting boarding students at risk. ... [K]ey administrators knew what was happening, but did not share the information with authorities."

33. On that same date, the Sun Sentinel published a similar article.

34. Benedict did not ignore warnings, put students at risk or fail to share information with the authorities.

35. On August 25, 2016, the most damning false conclusion for a professional educator that could be drawn from Defendants false publications was published by the Sun Sentinel – **"Headmaster Peter Benedict resigned as a result of the scandal in April, said the report from the school-commissioned investigation."**

36. The above statements are false. Their falsity was known to the School because its Board was aware of the true facts surrounding Benedict's separation from the School, including the negotiations and terms of the Agreement, and its falsity was known to Finocchiaro because she personally and directly involved as the Chair of the Board.

37. The publication and re-publication of false statements, including in various widely-disseminated media, was reasonably foreseeable and was the direct result of Defendants defamatory conduct and misleading statements. Benedict did not resign due to the "scandal" and had no

culpability for any reported "potential abuse"; however, Defendants knowingly allowed, encouraged and published statements directly linking Benedict to their scandal. Defendants also failed to take appropriate corrective action after these false and defamatory publications and re-publications occurred.

38. Apparently Defendants were on notice of the likely ramifications of their misconduct (to the extent they did not intend those ramifications), because on May 17, 2016, certain of Defendants' employees – its own Acting Headmaster and CFO; Associate Headmaster for Admissions; Associate Headmaster for Development; and Associate Headmaster for Administration – emailed the complete Board.

39. The email raised concerns over the School's intent to release a Boston Globe article regarding sexual abuse at independent schools, stating "we stand united in our objection to the timing of this letter. In light of the current events at our school, our constituency will immediately link this to our recent separation from our Headmaster [Benedict], a connection that is not, in our understanding, substantiated by any evidence."

40. Moreover, Benedict specifically and repeatedly warned Defendants that their conduct "stalled or perhaps ended my career in education. . . ."

41. Benedict specifically explained that he had

applied to seven opportunities [in education since his departure], all of which have passed on my candidacy based on Internet searches of Palm Beach Post articles that came out after my departure. The newspaper raised a question, asking if there was a connection between my departure and the investigation, and the School remained silent, allowing for speculation. These school search committees and their consultants have provided excellent feedback as to what could

improve my candidacy for future searches. . . . I need a statement from the School and/or Board that clarifies the relationship between my departure and the subsequent sexual misconduct investigation. I am requesting your consideration of such, as the conversations that led to our mutual separation included personnel matters [but] not related to the launching of a sexual misconduct investigation, nor financial improprieties. . . . We now know that the investigation did not reveal any sexual misconduct and that I had already made multiple policy and personnel changes to address risk management and resident life procedures. We also know that regardless of any other matters that precipitated our mutual separation, I was not involved in any sexual misconduct, any sexual misconduct cover up, any financial improprieties and I took action immediately following when I first knew about the resident life boundary issues, with my Chair and legal counsel.

42. Nonetheless, Defendants still took no action – and to the day of the filing of this Complaint have taken absolutely no action – to correct their defamatory conduct.

43. Finally, Defendants' simultaneous refusal to provide Benedict "an appropriate reference letter and agreed statements" compounded the problem by denying Benedict the ability to set the record straight with the potential employers as he actively sought to regain a position as a professional educator, let alone a headmaster.

44. All conditions precedent to bringing this action have been met, or have been waived.

COUNT I

DEFAMATION PER SE

45. Plaintiff adopts and realleges paragraphs 1 through 44 above.

46. This is an action against Defendants, for damages, for defamation *per se*.

47. After execution of the Agreement, Finocchiaro and the School published false and defamatory statements about Benedict that injured Benedict in his profession and/or imputed to

Benedict conduct, characteristics or a condition that is incompatible with the proper exercise of his lawful business, trade and/or profession.

48. These false and defamatory statements included Finocchiaro's verbal accusations that Benedict: (i) was dishonest with and stole the School's money, (ii) stole from The Benedict Foundation for Independent Schools, and (iii) protected a pedophile in the community.

49. Such false and defamatory statements were published to third parties, including, but not limited to, Sara Rubinstein, the assistant head of the School; members of the Board; and parents of certain of the children attending the School.

50. The School also published the Unidentified Report, which contained false and defamatory statements about Benedict, by releasing it to the media and all School constituents.

51. These Unidentified Report included false and defamatory statements regarding Benedict, including: (i) failure to report potential sexual misconduct at the School to the Chair for 2 years, (ii) deciding to move from reassignment to termination, and (iii) knowing about sexual abuse in the School's dormitory.

52. Finocchiaro published her false and defamatory statements with the School's express or apparent authority.

53. The false and defamatory statements by Finocchiaro and the School were published with malice and intent to injure Benedict's professional reputation.

54. Finocchiaro and the School's false and defamatory statements were published with actual knowledge they were false, or with a reckless disregard as to their truth or falsity.

55. As a reasonably foreseeable consequence of Defendants publication of false and defamatory statements about Benedict, those false and defamatory statements were re-published by numerous third parties, including in widely-disseminated media reports. Defendants are also liable for all reasonably foreseeable re-publications by any third party.

56. As a direct and proximate result of Defendants' statements described above, Benedict has been and continues to be damaged, including, but not limited to, becoming unemployable as an educational professional or headmaster, impaired reputation and standing in the community, humiliation, mental anguish and suffering.

WHEREFORE, Plaintiff, Peter B. Benedict II, demands judgment against Defendants, Saint Andrew's School of Boca Raton, Inc. and Mary Jo Finocchiaro, for defamation per se, and seeks an award of damages, costs, and such other and further relief as this Court deems just and proper

COUNT II

DEFAMATION BY IMPLICATION/FALSE LIGHT

57. Plaintiff adopts and realleges paragraphs 1 through 44.

58. This is an action against Defendants, for damages, for defamation by implication, which arises not from what is stated, but from what is implied when a defendant (1) juxtaposes a series of facts so as to imply a defamatory connection between them, or (2) creates a defamatory implication by omitting facts. In such cases, Defendants may be held responsible for the defamatory implication created by their statements.

59. After execution of the Agreement, Finocchiaro and the School published false and defamatory statements about Benedict that injured Benedict in his profession and/or imputed to

Benedict conduct, characteristics or a condition that is incompatible with the proper exercise of his lawful business, trade and/or profession.

60. These false and defamatory statements included Finocchiaro's verbal accusations that Benedict: (i) was dishonest with and stole the School's money, (ii) stole from The Benedict Foundation for Independent Schools, and (iii) protected a pedophile in the community.

61. Such false and defamatory statements were published to third parties, including, but not limited to, Sara Rubinstein, the assistant head of the School; members of the Board; and parents of certain of the children attending the School.

The School also published the Unidentified Report, which contained false and defamatory statements about Benedict, by releasing it to the media and all School constituents.

62. These Unidentified Report included false and defamatory statements regarding Benedict, including: (i) failure to report potential sexual misconduct at the School to the Chair for 2 years, (ii) deciding to move from reassignment to termination, and (iii) knowing about sexual abuse in the School's dormitory.

63. Finocchiaro published her false and defamatory statements with the School's express or apparent authority.

64. The false and defamatory statements juxtaposed a series of facts so as to imply a defamatory connection or a defamatory meaning portraying Benedict in a negative light, or created a defamatory implication by omitting facts necessary to understanding the truth about Benedict.

65. By publishing these false and defamatory statements about Benedict, Finocchiaro and the School may be held responsible for the defamatory implication created by their statements.

66. Despite publishing these false and defamatory statements about Benedict, neither Finocchiaro nor the School took any action to correct the false impression given of Benedict or to

otherwise correct the negative light in which their statements portrayed Benedict during his time as the School's Headmaster.

67. The false statements were published negligently or with indifference to Benedict's rights, and have caused injury to Benedict's professional reputation.

68. As a reasonably foreseeable consequence of Defendants publication of false and defamatory statements about Benedict, and their failure to take appropriate corrective action, those false and defamatory statements were re-published by numerous third parties, including in widely-disseminated media reports. Defendants are also liable for all reasonably foreseeable re-publications by any third party.

69. As a direct and proximate result of Defendants' statements described above, Benedict has been and continues to be damaged, including, but not limited to, becoming unemployable as an educational professional or headmaster, impaired reputation and standing in the community, humiliation, mental anguish and suffering.

WHEREFORE, Plaintiff, Peter B. Benedict II, demands judgment against Defendants, Saint Andrew's School of Boca Raton, Inc. and Mary Jo Finocchiaro, for defamation by implication or false light, and seeks an award of damages, costs, and such other and further relief as this Court deems just and proper.

COUNT III

BREACH OF CONTRACT

70. Plaintiff adopts and realleges paragraphs 1 through 44 above.

71. This is an action against the School, for damages, for breach of contract.

72. Benedict and the School were parties to the Agreement.

73. The Agreement required the School, under Para. 3(g), to "work with [Benedict] to create an appropriate reference letter and agreed statements that the Chair will provide potential subsequent employers who contact the Chair about Employee."

74. School breached the Agreement by failing to provide Benedict with an appropriate reference letter or agreed statement regarding his termination, despite Benedict's multiple attempts and requests to obtain an appropriate reference letter and agreed statements.

75. School's breach of the Agreement directly and proximately damaged Benedict, including, but not limited to, preventing Benedict from gaining employment as an educational professional or headmaster.

76. The Agreement provides for an award of attorneys' fees and costs to the prevailing party.

77. Benedict has retained the undersigned law firm, and has agreed to pay or reimburse the firm for costs incurred and to pay the firm reasonable attorneys' fees in connection with the prosecution of this action.

WHEREFORE, Plaintiff, Peter B. Benedict II, demands judgment against Defendant, Saint Andrew's School of Boca Raton, Inc., for breach of contract, and seeks an award of damages, interest, costs, attorneys' fees pursuant to the Agreement and any applicable statute, and such other and further relief as this Court deems just and proper.

COUNT IV

BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

78. Plaintiff adopts and realleges paragraphs 1 through 44 above and 77 through 78.

79. This is an action against the School, for damages, for breach of the covenant of good faith and fair dealing.

80. Benedict and the School were parties to the Agreement.

81. The Agreement required the School, under Para. 3(g), to "work with [Benedict] to create an appropriate reference letter and agreed statements that the Chair will provide potential subsequent employers who contact the Chair about Employee."

82. There is potential ambiguity as to the scope of "appropriate" as modifying "reference letter" and "agreed statements" as quoted above.

83. School, through its conscious and deliberate acts as described herein, failed or refused in good faith to discharge its contractual responsibilities, which unfairly frustrates the Agreement's purpose and disappoints Benedict's expectations.

84. School's failure to act in good faith and deal fairly in meeting the express provisions and requirements of the Agreement, including paragraph 3(g), constitute a breach of the Agreement, and deprived Benedict of the full and complete benefits to which he is entitled under the Agreement.

85. School's breach of the implied covenant of good faith and fair dealing in connection with its performance of the express terms and provisions of the Agreement directly and proximately damaged Benedict, including, but not limited to, preventing Benedict from gaining employment as an educational professional or headmaster.

WHEREFORE, Plaintiff, Peter B. Benedict II, demands judgment against Defendant, Saint Andrew's School of Boca Raton, Inc., for breach of contract, and seeks an award of damages, interest, costs, attorneys' fees pursuant to the Agreement and any applicable statute, and such other and further relief as this Court deems just and proper.

EXHIBIT “A”

Saint Andrew's School

Board of Trustees

Bulletin #1



Overview

Your Saint Andrew's School Board is instituting a series of communications to keep you informed.

Objective

The purpose of this first bulletin is to address questions about programming at Saint Andrew's, welcome our new Interim Head, update you on the Head of School Search process, and supplement our recent communication of May 17.

- The mission and vision of Saint Andrew's is unchanged and strong. All academic, athletic, and arts programming are moving forward and distinguishes Saint Andrew's School from all other schools.
- Our faculty is passionate about their subject or grade level. They are energized by creating and implementing curriculum that really engages your children. They make all the difference!
- Our Interim Head, Dr. Jim Byer, will officially join the Saint Andrew's community later this summer and will be visiting several times in between. Each constituency, including students, faculty, administration, and parents that met Dr. Byer has emphatically endorsed and welcomed him. Dr. Byer is eager to meet each member of our community and in the Scots spirit, please extend him a warm welcome.
- The Search Committee for the next Head is in the process of being formed. The Search Committee will be represented by all school constituencies: alumni/ae, faculty, administrators, staff, trustees, and chapel representation. Each constituency group is finalizing their nominees to present to the Board. We look forward to continuing to update you on our progress in this important work.
- The Board is committed to a strong working relationship with all school constituencies.

The following points are in response to some of the questions the Board has received lately on recent announcements:

- The Board has a fiduciary responsibility to our School, which encompasses a duty of care. Implicit in this duty of care is a duty of inquiry and investigation. The Board understands that promoting the health, safety, and welfare of students is of paramount importance, and we are committed to fulfilling that responsibility.

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- The Association of Boarding Schools (TABS) and National Association of Independent Schools (NAIS) encouraged Heads of School, Directors of Communication, and administrators since January 2016 to consider preparing their communities for the difficult issues anticipated to be the subject of the Boston Globe Spotlight article. These associations urged all schools to be proactive by strengthening their policies around student safety and communications around this subject.
- In accordance with independent schools' standard duty of care and duty of inquiry, elite independent schools have issued similar announcements, as Saint Andrew's did on May 17, to their school communities. Examples include Choate Rosemary Hall, Phillips Exeter Academy, Phillips Academy, Andover, St. Paul's School, The Hotchkiss School, and Groton School.
- The Board acted upon the advice of both the School's legal counsel, as well as consulting counsel, in considering its decision to proceed with the actions described in our May 17 communication.

We are confident that our extraordinary faculty will continue to deliver distinctive programming to enhance your child's experience here at Saint Andrew's School now and in the years to come. We thank you for your love and support of Saint Andrew's School. We look forward to partnering together to ensure a bright future for our kids and our community.

Thank you.