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A. Plaintiffs' CFA Claims Arise out of a Controversial Societal Issue

Cases:

Acuna v. Turkish passim
 192 N.J. 399 (2007)

Bray v. Alexandria Women's Health Clinic
 506 U.S. 263 (1993) 8

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Gonzales v. Carhart
 530 U.S. 173 (2000)

Perth Amboy Iron Works, Inc. v. Am. Home Assurance Co. 2
 226 N.J. Super. 200 (Ch. Div. 1993)

I.

INTRODUCTION.

Plaintiffs base their opposition to defendants' motion to dismiss on four inaccurate propositions. (See Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion To Dismiss ["Opp.,"] at pp. 1-2.)

First, it is not defendants who attempt to "misdirect the inquiry away from the concrete allegations" of the complaint, but rather the plaintiffs. Plaintiffs brazenly deny

party subpoena duces tecum. At that time, the Court indicated that it would treat

postponed the hearing to give plaintiffs additional time to respond.

Third, plaintiffs' contention that this case merely "touches on a controversy not at issue in this litigation" is risible. The question of whether sexual orientation is

performance' of the product or service itself." (See *Omni*, at n. 5.) In fact, the actual

language of the CEA states, "subsequent performance of such person as aforesaid" 42

complaint adequately alleges the three elements required to state a claim under New Jersey's Consumer Fraud Act -- conduct unlawful under the statute, ascertainable loss, and a causal connection between the two. (See Opp. at pp. 3-7.) The "unlawful conduct"

of which plaintiffs accuse defendants in this case are alleged "misrepresentations." Interestingly, most of the examples of such alleged misrepresentations cited by plaintiffs pertain to the issue of "change" -- i.e., statements by the defendants that sexual orientation can be effectively changed through therapy. (See Opp. at p. 6.) To prevail on their CFA claims, plaintiffs must prove that such statements are fraudulent; in other words, they

defendant testimony that plaintiff's characterization of the embryo as a living human being is a moral, theological, or ideological judgment, not a scientific or biological one.

duty on the physician only if it accepted one side of the medical, philosophical, and religious debate as to when life begins -- which the *Acuna* court properly declined to do.

Thus, the *Acuna* court disposed of a dispute "involving" a scientific, philosophical,

Acuna v. Turkish teach, however, is that the judicial branch cannot answer the underlying question itself when there is no societal consensus. Thus, the United States Supreme Court can find a constitutional right to privacy precluding restrictions on abortions, while noting that “the judiciary is not in a position to speculate as to the answer” to the “difficult question of when life begins” “[w]hen those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus.” (*Roe v. Wade, supra*, 410 U.S. at 159.) Similarly, the New Jersey Supreme Court can find that summary judgment of a claim for lack of informed consent can be upheld based on no

duty, while declining to answer the question identified in *Roe* for the same reasons. (*Acuna v. Turkish, supra*, 192 N.J. at 419-420.)

This case differs from cases “involving” or “implicating” profound societal issues, however, because deciding the substantive legal issue here — i.e. whether defendants’

Health Clinic, 506 U.S. 263, 270 (1993) [opposition to abortion is a “common and respectable” point of view].) But as defendants noted previously, plaintiffs here would

more ineffective and that the representations Defendants made to the contrary were

therefore false.” (See Opp. at pp. 10-11.)

Interestingly, it is actually the plaintiffs who are “mischaracterizing” their own

not prove the falsity of statements about the potential efficacy of those services. Each of

the plaintiffs signed Agreements with defendants acknowledging that “successful results
~~could not be guaranteed~~” (See Brief at fn. 7). Just because SOCF may not be effective

for some people does not mean that it is not effective for others. Certifications by six

Acuna court found dispositive. (*Acuna v. Turkish*, *supra*, 192 N.I. at 416.)²

Importantly, there is also no theological consensus regarding the nature or immutability of homosexuality. For example, the Catechism of the Catholic Church teaches that homosexual acts are “disordered” (i.e., sinful). (See Exhibit 2 to *Supra*

[i]ndri Dae] Similarly, traditional Jewish teaching upon which defendant JONATHAN

judicial branch. Plaintiffs' contention that "this case does not even present the scientific, philosophical, theological, moral, or societal controversy that Defendants urge is non-

justiciable" is most generously described as inexplicable.

3. Defendants' supporting expert certifications.

Plaintiffs next object to the Cummings and Cretella certifications submitted by defendants for the purpose of allowing the Court to take judicial notice of the lack of

scientific, philosophical, or theological consensus regarding the immutability of sexual

~~Consent Of course, Dr. Costello's Certification and the cases cited in it establish the~~

breadth of that lack of consensus. Plaintiffs make a half-hearted attempt to challenge these authorities by arguing that "legitimate scientists" must be distinguished from "scribbles and skeletons." Filed and served with this Reply is the Certification of

but as part of a nation-wide, ideologically-driven strategy to stamp out all SOCE, which they refer to as “conversion therapy.” (See Brief at 15-18.) Further, defendants are not arguing at this time that this case presents a political question. (See Opp. at p. 15.)

Rather, defendants are relying on the reasoning of the New Jersey Supreme Court in *Acuna v. Turkish*, which teaches that courts cannot resolve profound issues of societal importance about which there is no scientific, philosophical or theological consensus and