

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

MARIST COLLEGE,

Plaintiff

SUMMONS

-against-

Index No.

2009

5006

MATTHEW BRADY, THE COMMONWEALTH
OF VIRGINIA and JAMES MADISON
UNIVERSITY,

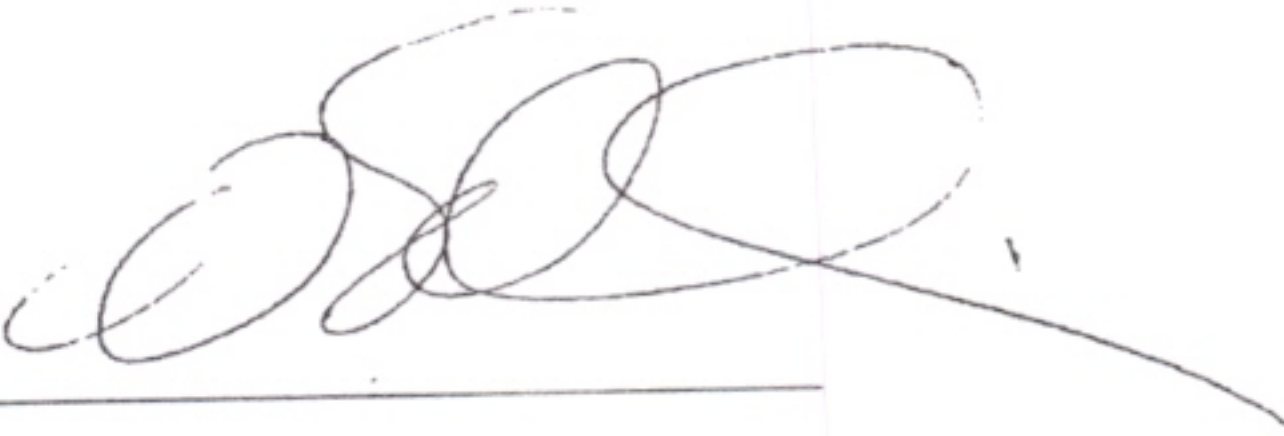
Defendants.

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Trial to be held in the County of Dutchess.

Dated this 7th day of July, 2009.



PAUL O. SULLIVAN, ESQ.
CORBALLY, GARTLAND AND RAPPLEYEA, LLP
Attorneys for Plaintiff
Office and P. O. Address
35 Market Street
Poughkeepsie, New York 12601
Tel. No. (845) 454-1110

2009 JUL -9 PM 3:20

CLERK'S OFFICE
COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

-----X
MARIST COLLEGE,

Plaintiff,

Index No.:

VERIFIED COMPLAINT

- against -

MATTHEW BRADY, THE COMMONWEALTH OF
VIRGINIA and JAMES MADISON UNIVERSITY,

Defendants.
-----X

MARIST COLLEGE, by and through its attorneys, CORBALLY GARTLAND &
RAPPLEYEA, LLP, as and for its Verified Complaint, alleges as follows:

THE PARTIES

1. Marist College (hereinafter "Marist") is a private institution of higher learning with its principal place of business at 3399 North Road in the Town of Poughkeepsie, County of Dutchess and State of New York.
2. Matthew Brady (hereinafter "Brady"), an individual now residing in Virginia and employed as the men's head basketball coach at James Madison University ("hereinafter James Madison").
3. James Madison University is a public, state-affiliated university located in Harrisonburg, in the Commonwealth of Virginia.
4. The Commonwealth of Virginia (hereinafter "Commonwealth") is a state organized under the United States Constitution, and James Madison is an agency of the Commonwealth.

VENUE

5. Venue is proper pursuant to Section 503(c) of the Civil Practice Law and Rules, as Marist's principal place of business is in Dutchess County.

JURISDICTIONAL ALLEGATIONS

6. That at all times herein after mentioned, Brady is a resident of Virginia who transacts and/or has transacted business within the State of New York and performs and/or has performed services in the State of New York.

7. Brady is currently a resident of Virginia.

8. That at all times hereinafter mentioned, James Madison has committed tortious acts without the State of New York causing injury to the plaintiff within the State of New York.

9. That at all times hereinafter mentioned, James Madison should have reasonably expected that its actions, detailed *infra*, would have consequences on the plaintiff in the State of New York.

10. That at all times hereinafter mentioned, James Madison derives substantial income from interstate commerce.

FACTS COMMON TO ALL CAUSES OF ACTION

11. Brady was employed as head coach of the Marist men's basketball team for the 2004-2005 season through the 2007-2008 season, pursuant to two contracts, the second of which (the "Contract") was entered into on July 1, 2007 and was to expire on March 31, 2011.

12. Marist performed all of its obligations under the Contract.

13. Included in the terms of this Contract, Brady was precluded from entering into any employment discussions with any other collegiate or professional basketball program and

further he was precluded from accepting a head coaching position with any program without the prior written consent of Marist.

14. Furthermore, if the Contract was terminated for any reason including Brady accepting another coaching position, Brady agreed to:

- 1) turn over all basketball program records and files;
- 2) end any and all contact with all Marist basketball program recruits; and
- 3) not offer a scholarship to current Marist basketball players or to any persons that he or his staff recruited to play basketball at Marist.

15. On or about March 17, 2008, Brady advised Tim Murray ("Murray"), Marist's Director of Athletics, that Brady wanted to be considered to be hired as the men's head basketball coach at James Madison.

16. On or about March 20, 2008, Jeff Bourne, in his capacity as Director of Athletics at James Madison, contacted Murray, leaving a telephone message inquiring as to the specific terms of Brady's employment contract with Marist.

17. On or about March 20, 2008, Murray telephoned Bourne, advising Bourne that there was no "buy out" provision in the Contract. Murray further advised Bourne that Brady was required, pursuant to the terms of the Contract, to obtain Marist's prior written consent to leave Marist during the term of the Contract. Murray further advised Bourne that Marist would grant Brady permission to terminate his position as head basketball coach at Marist only if and so long as Brady and James Madison abided by all provisions of the Contract relating to Brady's obligations to have no contact with or solicitation of current Marist men's basketball players and all Marist men's basketball team recruits.

18. On March 25, 2008, James Madison announced its hiring of Brady as the head coach of its men's basketball team.

19. By letter dated April 10, 2008, Murray again informed Bourne of the obligations under the Contract and supplied Bourne with identification of men's basketball players who had been actively recruited by Brady and his assistant coaches when he was the head basketball coach at Marist.

20. In direct contravention of the specific prohibitions set forth in the Contract, Brady, upon being permitted by Marist to terminate the contract and become the head basketball coach at James Madison, immediately and without the knowledge of Marist, contacted Marist's basketball recruits in an attempt to then direct those recruits to the James Madison men's basketball program.

21. The Marist basketball recruits who had no apparent knowledge of Brady's contractual obligations were contacted and solicited by Brady immediately after he left Marist. Four Marist basketball recruits were offered scholarships to James Madison by Brady. These four student-athletes thereafter freely chose to attend James Madison and became members of the men's basketball team at James Madison for the 2008/2009 season.

22. At all times it has been and will continue to be the position of Marist that student-athletes have the unfettered right to attend the educational institution of their choice. At the same time Marist expects all coaches to abide by all terms stipulated in the contracts into which they willingly entered.

23. Upon information and belief, Brady undertook the aforesaid actions within months after having negotiated a four-year extension of his contract with Marist whereby he committed to be the men's head basketball coach at Marist until 2011.

24. Marist has made several good faith attempts over the past year through all available channels to resolve this matter with Brady and James Madison in order to avoid litigation. Neither Brady nor James Madison has chosen to participate in a reasonable manner in those efforts at resolution.

AS AND FOR A FIRST CAUSE OF ACTION AGAINST MATTHEW BRADY

(Breach of Contract)

25. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 23 of the Verified Complaint as though fully set forth herein.

26. Brady, by reason of his failure to relinquish to Marist all program records and files maintained by Brady and/or his Marist coaching staff, including but not limited to recruiting files, breached the Contract.

27. Brady, by reason of his contacting at least four of Marist's recruits on James Madison's behalf, breached the Contract.

28. Brady, by reason of his offering scholarships to four Marist recruits to attend James Madison and play on its men's basketball team, breached the Contract.

29. As a result, Marist has sustained substantial monetary damages.

AS AND FOR A SECOND CAUSE OF ACTION AGAINST MATTHEW BRADY

(Breach of Fiduciary Duty)

30. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 28 of the Verified Complaint as though fully set forth herein.

31. By reason of the nature of the employer-employee relationship between Marist and Brady, Brady owed a fiduciary duty to Marist.

32. By reason of the foregoing, Brady breached the fiduciary duty he owed to Marist.

33. As a result, Marist has sustained substantial monetary damages.

AS AND FOR A THIRD CAUSE OF ACTION AGAINST MATTHEW BRADY
(Breach of Implied Covenant of Good Faith and Fair Dealing)

34. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 32 of the Verified Complaint as though fully set forth herein.

35. By reason of the foregoing, defendant Brady breached the implied covenant of good faith and fair dealing implicit in his Contract with Marist.

36. As a result, Marist has sustained substantial monetary damages.

AS AND FOR A FOURTH CAUSE OF ACTION AGAINST THE COMMONWEALTH
AND JAMES MADISON
(Tortious Interference With Contract)

37. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 35 of the Verified Complaint as though fully set forth herein.

38. James Madison, an agency of the Commonwealth, through its agents, employees and/or servants, were aware of the existence of the Contract between Brady and Marist, and in particular, section 14 thereof, which precluded Brady, *inter alia*, from contacting recruits that he and his staff pursued while he was head basketball coach at Marist.

39. James Madison intentionally procured a breach of the aforesaid Contract between Brady and Marist without economic justification to so act.

40. As a result, Marist has sustained monetary damages.

AS AND FOR A FIFTH CAUSE OF ACTION AGAINST THE COMMONWEALTH
AND JAMES MADISON
(Tortious Interference With A Fiduciary Duty)

41. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 39 of the Verified Complaint as though fully set forth herein.

42. By reason of the foregoing, James Madison, knowingly induced and/or participated in Brady's breach of his fiduciary duty to Marist.

43. As a result, Marist has sustained monetary damages.

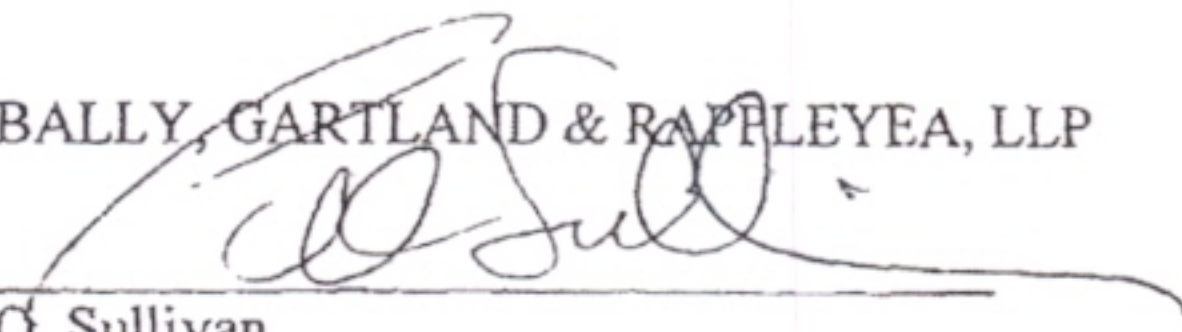
WHEREFORE, plaintiff Marist College demands:

- (1) A monetary judgment over and against Matthew Brady on the First, Second and Third Causes of Action, together with interest, costs, disbursements and reasonable attorneys' fees;
- (2) A monetary judgment over and against the Commonwealth and James Madison on the Fourth and Fifth Causes of Action, together with interest, costs, disbursements and reasonable attorneys' fees;
- (3) Any further relief the Court deems just and proper.

Dated: Poughkeepsie, New York
July 7, 2009

CORBALLY, GARTLAND & RAPPLEYEA, LLP

By:


Paul O. Sullivan
Attorneys for Plaintiff Marist College
35 Market Street
Poughkeepsie, New York 12601
845-454-1110

