

DOCKET NO: UWYCV236072103S

SUPERIOR COURT

STATE OF CONNECTICUT
 V.
 CAREER TRAINING SPECIALISTS, LLC
 D/B/A STONE ACADE Et Al

JUDICIAL DISTRICT OF WATERBURY
 AT WATERBURY

3/2/2024

ORDER

ORDER REGARDING:

07/13/2023 101.00 NOTICE OF APPLICATION FOR PREJUDGMENT REMEDY / HEARING (JD-CV-53)

The foregoing, having been considered by the Court, is hereby:

ORDER:

The hearing in probable cause of the issuance of a prejudgment remedy is not contemplated to be a full scale trial on the merits of the plaintiff's claim. The plaintiff does not have to establish that he will prevail, only that there is probable cause to sustain the validity of the claim ... The court's role in such a hearing is to determine probable success by weighing probabilities." *Canty v. Otto*, 304 Conn. 546,565, 41 A.3d 280 (2012). Moreover, this weighing process applies to both the legal and factual issues... It is the trial court that must determine, in light of its assessment of the legal issues and the credibility of the witnesses, whether the plaintiff has sustained the burden of showing probable cause to sustain the validity of its claim..." *Blakeslee Arpaia Chapman, Inc. v El Constructors, Inc.* 32 Conn App., 118,126, 628 A.2d 601(1993). The court is vested with broad discretion when making its determination of probable cause. *Canty v. Otto*, supra, 304 Conn. 565.

"Proof of probable cause as a condition of obtaining a prejudgment remedy is not as demanding as proof by a fair preponderance of the evidence." *Ledgebrook Condominium Assn., Inc. v. Lusk Corp.*, 172 Conn. 577, 584, 376 A.2d 60 (1977). "Probable cause is a flexible common sense standard. It does not demand that a belief be correct or more likely true than false." *New England Land Co., Ltd. v. DeMarkey*, 213 Conn. 612, 620, 569 A.2d 1098 (1990).

"Section 52-278d(a) explicitly requires that a trial court's determination of probable cause in granting a prejudgment remedy include the court's 'taking into account any defenses, counterclaims or [setoffs] ...'" (Emphasis omitted.) *TES Franchising, LLC v. Feldman*, 286 Conn. 132, 141, 943 A.2d 406 (2008).

Since a prejudgment remedy hearing is not contemplated to be a full scale trial on the merits, the evidence presented at such a hearing will not be as well developed as it would be at trial. *State v. Bacon Construction Co.*, 300 Conn. 471, 484, 15 A.3d 147 (2011) (quoting *TES Franchising*, supra, 286 Conn. 143).

In their application, the plaintiff seeks a prejudgment remedy in the amount of Ten Million dollars (\$10,000,000.00) against two of the defendants, Career Training Specialists, LLC dba Stone Academy (Stone Academy) and Joseph Bierbaum (Bierbaum) (collectively, "the PJR defendants").

Here, the State offered additional compelling evidence regarding the misconduct of the PJR defendants, which was in addition to the evidence submitted in conjunction with the related lawsuit against these defendants. The additional testimony of Bierbaum in the present PJR hearing did nothing to change the court's initial impression, as set forth in more detail in the court's December 4, 2023 decision in the related matter, nor did the additional evidence submitted change the court's finding that Stone Academy failed to provide the instruction and clinical training that it promised their students.

The court finds that the State has established probable cause that it will prevail on its causes of action based on the Connecticut Unfair Trade Practices Act (CUTPA) as to the PJR defendants. While Stone Academy was one of many practical nursing programs in Connecticut negatively effected by the COVID pandemic, the intentional, unfair, and deceptive acts of the PJR defendants stand separate and apart from any consequences relating to the pandemic. The PJR defendants materially misrepresented to consumers significant aspects of Stone Academy's practical nursing program, including the hands-on clinical hours and experience promised in its marketing materials, the graduation timeline it continued to promise students even in the face of COVID, its ability to properly prepare its students for the NCLEX exam, resulting in an unacceptably low pass rate, and its ability to provide qualified faculty. Despite these failings, Stone Academy continued making false promises in its marketing to consumers and continued to enroll new students into its programs.

The court previously found that the State acted reasonably in refusing to allow Stone Academy to offer a teach-out, and the evidence still supports that determination. Importantly, the fact that the State did not authorize a teach-out does not excuse the misconduct of the PJR defendants, or their violations of CUTPA. The actions of the PJR defendants constituted unfair and deceptive acts and practices in violation of §42-110b(a), and said defendants acted knowingly, in violation of §42-110b, such that there is probable cause that the plaintiff will prevail with respect to the civil penalty provision of \$5,000.00 per violation, pursuant to §42-110o(b).

For the foregoing reasons, the court grants a prejudgment remedy, in the amount of Five Million dollars (\$5,000,000.00) against the PJR defendants.

Judicial Notice (JDNO) was sent regarding this order.

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Judge: BARBARA N BELLIS

This document may be signed or verified electronically and has the same validity and status as a document with a physical (pen-to-paper) signature. For more information, see Section I.E. of the *State of Connecticut Superior Court E-Services Procedures and Technical Standards* (<https://jud.ct.gov/external/super/E-Services/e-standards.pdf>), section 51-193c of the Connecticut General Statutes and Connecticut Practice Book Section 4-4.