

# United States Court of Appeals For the First Circuit

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No. 21-1227

JOHN DOE,

Plaintiff, Appellant,

v.

STONEHILL COLLEGE, INC.,

Defendant, Appellee.

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APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Leo T. Sorokin, U.S. District Judge]

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Before

Gelpí, Lipez, and Howard,  
Circuit Judges.

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Timothy C. Woodcock, with whom Janna L. Gau and Eaton Peabody were on brief, for appellant.

Christopher M. Iaquinto, with whom Philip J. Catanzano, Timothy D. Andrea, and Holland & Knight LLP were on brief, for appellee.

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December 14, 2022

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**LIPEZ, Circuit Judge.** John Doe was expelled from Stonehill College for violating its sexual misconduct policy by engaging in "nonconsensual sexual intercourse." Seeking redress for what he alleges was an unfair and biased disciplinary process, Doe filed suit against Stonehill asserting, inter alia, breach of contract, sex discrimination in violation of Title IX, negligence, and defamation. In a thoughtful decision, the district court concluded that Doe's allegations were insufficient to support any of his claims, and it dismissed his complaint in its entirety pursuant to Federal Rule of Civil Procedure 12(b)(6). Doe v. Stonehill Coll., Inc., No. 20-10468-LTS, 2021 WL 706228 (D. Mass. Feb. 23, 2021), at \*1. After review of the operative complaint and related materials, we reverse dismissal of the breach-of-contract claim but otherwise affirm the decision of the district court.

### I.

Because Doe appeals the dismissal of his complaint, "we rehearse the facts as they appear in the plaintiff['s] complaint[] (including documents incorporated by reference therein)." Hochendoner v. Genzyme Corp., 823 F.3d 724, 728 (1st Cir. 2016). Here, we consider Doe's complaint, Stonehill's sexual misconduct policy -- titled "S1.14 Opposition to Sexual and Gender-Based Misconduct and Interpersonal Violence" ("the policy" or "the

sexual misconduct policy"<sup>1</sup>) -- and documents produced as part of Stonehill's investigation into Doe's conduct.<sup>2</sup>

#### **A. The Relationship between John Doe and Jane Roe**

Doe was admitted to Stonehill's class of 2021 in the spring of 2017. He subsequently joined a Facebook group for his class, where he met Jane Roe. They began to exchange messages through Snapchat, text, and Facebook. Once on campus, they continued to exchange messages and saw each other in person numerous times.

In October 2017, the pair's relationship "grew to include sexual intimacy." Compl. ¶ 35. The complaint describes three sexual encounters prior to the incident at the heart of this case. Each involved Doe "us[ing] his fingers to stimulate" Roe, with Roe "physically communicat[ing] her consent by removing her clothing, allowing him to fondle her and to rub her bare skin, and by making her vagina more accessible to him." Id. ¶ 38; see also id. ¶¶ 41, 44. In at least the first two encounters, Doe asked Roe "if she wanted him to proceed" after he had already been

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<sup>1</sup> We refer to "the sexual misconduct policy" for simplicity, although the policy has broader coverage.

<sup>2</sup> The policy and the investigation documents were attached to Doe's amended complaint, Stonehill's motion to dismiss, or Doe's opposition, and they were considered by the district court with the parties' acquiescence. See Stonehill Coll., 2021 WL 706228, at \*1 & n.2. Neither party challenges the authenticity of these documents or argues that their consideration at this stage is improper.

digitally stimulating her. Id. ¶¶ 38, 41. The first time, Roe responded that she did. Roe subsequently asked Doe during that first encounter to stop "because she had once been sexually assaulted," and "Doe did stop as requested." Id. ¶ 40. In the second encounter, when Doe asked for "permission to proceed," Roe responded with "the same physical cues as on the first incident and, when she wanted him to stop, she told him to stop, and he did." Id. ¶ 41. In the third encounter, Doe "[a]gain" initiated the sexual activity without first asking permission, "but [Roe] presented the same physical cues from prior interactions that she wanted him to proceed to digitally stimulate her." Id. ¶ 44.

#### **B. The November 19th Incident**

In the early morning hours of November 19, 2017, Doe received a Snapchat message from Roe stating that she was scared to walk back to her room alone from another dormitory, New Hall. Doe offered to walk her back, and she accepted the offer. Doe approached New Hall, but after receiving no response to a message asking Roe about her location, he started to walk to Roe's dormitory. He soon received another message from Roe saying that she had been talking to an ex-boyfriend on the phone and that she had made it back to her dorm. After Doe walked to Roe's room and knocked on her door, she opened the door and invited him in.

Roe lay down on her bed, and Doe joined her. Roe then got up, removed her t-shirt to switch to a tank top and a fleece

pullover, and returned to lay next to Doe. Doe began rubbing Roe's back "and then moved his hand to her vagina and began to digitally stimulate her." Compl. ¶ 58. Roe began to make moaning noises and, when Doe stopped, "Roe rolled onto her back and made her vagina more accessible to him," which Doe believed was intended "to make it easier for him to continue stimulating her." Id. Doe asked Roe if she liked what he was doing, and she did not respond but "continued to make the moaning noises." Id. ¶ 59. Doe continued to touch Roe, but after a short time he asked if she wanted him to stop. Again, Roe did not respond. Instead, she rolled over so her back was to Doe and "began breathing heavily." Id. Doe asked if Roe was okay, and she responded "it's not you. It's ok." Id. ¶¶ 62, 263(I). Roe then rolled over toward Doe, and believing that she had gone to sleep, Doe left.

Later that morning, Doe received Snapchat messages from Roe stating "things like, 'what just happened?',[,] 'that wasn't consensual,' and[] 'that wasn't ok.'" Id. ¶ 65. Doe responded: "Please forgive me for being a drunken idiot. I'd never want to hurt you." In a second message, he wrote: "I'm so really sorry I know I fucked up, I totally misread the situation. What can I do to make it right?" Id. ¶ 70. Doe avers that neither message was true because he "had not been drinking on the evening of November 18-19[,], [h]e was entirely sober," and he "did not mistake the physical cues Jane Roe sent him." Id. ¶ 71. Rather, he claims

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