

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT

WENDELL TANG, M.D.,  
as Representative of the Estate of LUKE TANG  
*Plaintiff,*

v.

PRESIDENT AND FELLOWS OF HARVARD  
COLLEGE, CATHERINE R. SHAPIRO,  
CAITLIN CASEY, Ph.D., MELANIE  
NORTHROP, MSW, LICSW, & DAVID  
ABRAMSON, M.D.,  
*Defendants.*

CIVIL NO. 18-2603

**REPLY OF DEFENDANTS<sup>1</sup>**  
**IN FURTHER SUPPORT OF THEIR MOTION TO DISMISS**

**I. Defendants Breached No Duty to Luke Tang**

**A. A University's Duty to Attempt to Prevent Student Suicides is Narrowly Limited.**

There is no merit to plaintiff Wendell Tang's argument that Defendants failed to exercise reasonable care under *Dzung Duy Nguyen v. Massachusetts Institute of Technology*, 479 Mass. 436 (2018). In *Nguyen*, the Supreme Judicial Court recognized as a grounding principle that universities are "not responsible for monitoring and controlling all aspects of their students' lives." *Id.* at 451. And even when a university's limited duty to try to prevent student suicides is triggered, a university satisfies that duty "[b]y taking reasonable measures under the circumstances

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<sup>1</sup> President and Fellows of Harvard College; Catherine R. Shapiro; and Caitlin Casey, Ph.D. In this Reply, the term "defendants" is intended to refer to Harvard, Shapiro, and Casey Defendants Melanie Northrop and David Abramson are separately represented.

presented.” *Id.* at 457. As the SJC held, any duty is “limited to initiating the university’s suicide prevention protocol [or] arranging for clinical care by trained medical professionals, or, if such care is refused, alerting the student’s emergency contact.” *Id.* at 457 (emphasis added). The facts plaintiff has pleaded in his own Complaint leave no doubt that Harvard and Resident Deans Catherine R. Shapiro and Caitlin Casey met this standard. Following Luke’s April 2015 suicide attempt, Harvard transferred Luke to McLean Hospital to receive immediate in-patient care. Compl. ¶ 12. After Luke’s discharge, Defendants referred him to appropriate medical professionals, including a psycho-therapist and case manager, to continue his care. Compl. ¶¶ 36, 38. Plaintiff’s Complaint itself demonstrates that Harvard “arrang[ed] for clinical care by trained medical professionals.” *Nguyen*, 479 Mass. at 457.

Plaintiff’s repeated insistence that defendants “failed to initiate suicide prevention protocols,” Opp’n at 3, misinterprets the limited duty created by *Nguyen*. *Nguyen* requires either that a university initiate its suicide prevention protocol, or—if it has no protocol—arrange for care by trained medical professionals. *Nguyen*, 479 Mass. at 457. The Complaint does not allege that Harvard had a suicide prevention protocol and failed to initiate it, nor does it explain why Harvard’s prompt action in getting Luke in-patient psychiatric treatment and subsequent insistence by the Agreement that Luke continue receiving mental health care is not an appropriate suicide prevention protocol, albeit an unlabeled one. The Complaint does not allege that when Luke returned to school from summer vacation he said or did anything to alert the Defendants to renewed suicidal intentions. Nor does the Complaint assert that Luke said anything to any Defendant when he returned to school to suggest that he intended not to comply with the Agreement that made his enrollment possible. *Nguyen* does not require that universities use the magic words “suicide prevention protocol” to satisfy their legal duties or to make continuous emergency interventions

in a student's life without having "actual knowledge" of a student's plans or intentions to commit suicide. It simply directs them to exercise reasonable care "under the circumstances presented" within the student-university setting.

Finally, Mr. Tang's claim that Defendants "failed to contact Luke's parents as required by ... *Nguyen*" is both (1) a misreading of *Nguyen*, and (2) not actually alleged in the Complaint. First, *Nguyen* requires that universities alert a student's emergency contact only if a student *refuses* care. *Nguyen*, 479 Mass. at 457. As the Complaint shows, Luke Tang was regularly meeting with his case worker for mental health check-ins until he left campus in May. The Complaint also is devoid of any factual allegation that Luke communicated an intention to refuse care when he returned to school in September.<sup>2</sup>

Because Mr. Tang has failed to plead that defendants breached any duty to Luke, Counts One, Three, and Five should be dismissed.

**B. Even Assuming Defendants Voluntarily Assumed a Duty, Plaintiff Has Pled No Facts Giving Rise to Liability.**

As plaintiff himself acknowledges, a voluntarily-assumed duty only leads to liability where: (1) the failure to exercise due care increases the risk of harm "beyond that which existed without the undertaking," or (2) "the harm is suffered because of the other's reliance upon the undertaking." Opp'n at 13; *Nguyen*, 479 Mass. at 460. Here, plaintiff has pled no facts supporting either theory. First, although Harvard offers mental health support services to all its students, Mr. Tang has not alleged that these services increased Luke's risk of suicide, nor has Mr. Tang alleged

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<sup>2</sup> The Complaint likewise does not allege, as the Opposition argues, that Harvard did not contact Luke Tang's parents. See Opp'n, at 10.

that Defendants' efforts to secure Luke's safety increased Luke's risk of suicide. *Nguyen*, 479 Mass. at 460.

Second, while the Complaint makes the bare assertion that Luke "relied" upon the Agreement, Mr. Tang has pled no facts supporting this assertion. Instead, the facts suggest the opposite—that while Luke regularly attended counseling sessions after his hospital discharge, he was skeptical about the value of treatment, would have preferred to make his own decisions and "expressed frustration and puzzlement over why [counseling] would be any better or more helpful to him than 'sharing thoughts with [] friends and advisors.'" Compl. ¶¶ 21, 24, 43. The Complaint also alleges that Luke felt "forced by the power of Harvard to turn to mental health professionals." Compl. ¶ 20. None of these facts suggest Luke relied on either Defendants or the Agreement.

Because Mr. Tang has pled no facts giving rise to liability, Counts One, Three, and Five should be dismissed.

**II. Mr. Tang Failed to Plead Any Facts Suggesting Defendants Engaged in Reckless or Grossly Negligent Conduct.**

The remaining causes of action against Defendants—Counts Two, Four, and Six—require that a plaintiff establish that a defendant acted in a "willful, wanton, or reckless manner, or their conduct was deemed to be grossly negligent." M.G.L. c. 229, § 2. Plaintiff has plainly failed to allege any facts in support of this conclusion. As the Complaint alleges, Harvard transferred Luke to McLean Hospital; met with him both while he was in hospital and after he was discharged; referred him to the appropriate medical professionals, including a psycho-therapist and case manager; stayed informed about his treatment; and advised him to continue seeking treatment while away from Harvard. Compl. ¶¶ 28, 34-36, 39-40, 44-45. None of these actions suggest "indifference," "utter forgetfulness," or "a heedless and palpable violation of legal duty respecting

the rights of others.” *Aleo v. SLB Toys USA, Inc.*, 466 Mass. 398, 410 (2013) (defining gross negligence).

Because Mr. Tang has provided no support for the allegation that Defendants acted recklessly or grossly negligently, Counts Two, Four, and Six must be dismissed.

**CONCLUSION**

For the reasons set forth above and in their memorandum in support of its motion to dismiss, Defendants request that the Court dismiss Mr. Tang’s complaint with prejudice.

Respectfully submitted,




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Dated: March 8, 2019

**CERTIFICATE OF SERVICE**

I hereby certify that on the 8th day of March 2019, I caused a true and accurate copy of the foregoing document to be served by email and first class mail upon counsel for Wendell Tang.

A handwritten signature in black ink, appearing to read "Rachel C. Hutchinson", is written above a solid horizontal line.

Rachel C. Hutchinson