

Court of Claims of Ohio

The Ohio Judicial Center
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TODD LEIBY

Case No. 2007-02548

Plaintiff

Judge J. Craig Wright

v.

JUDGMENT ENTRY

THE UNIVERSITY OF AKRON

Defendant

{¶1} On April 10, 2007, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). Plaintiff filed a response on April 23, 2007, and a cross-motion for summary judgment. On May 2, 2007, defendant filed a response. Defendant also filed a motion to stay discovery on May 11, 2007. This cause came before the court for an oral hearing on June 6, 2007. At the conclusion of the proceedings, the court announced its decision to grant defendant's motion for summary judgment and to deny plaintiff's cross-motion based upon the determination that plaintiff's breach of contract claims are barred by the doctrine of res judicata and by the statute of limitations. On June 18, 2007, plaintiff filed a "motion for reconsideration of summary judgment."

{¶2} Civ.R. 56(C) states, in part, as follows:

{¶3} "**** Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor. ****" See, also, *Gilbert v. Summit County*, 104

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Ohio St.3d 660, 2004-Ohio-7108, citing, *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶4} Plaintiff attended the University of Akron for undergraduate study from 1994 until earning a bachelor's degree in 2000. Plaintiff then enrolled in defendant's graduate program in 2001, earning a master's degree in 2003. Plaintiff filed a complaint in 2004, Ct. of Cl. No. 2004-10094, alleging breach of contract. According to plaintiff, defendant permitted several instructors to reuse examinations from previous semesters and/or to reuse the same or similar questions on examinations from one semester to the next. On November 9, 2005, the court granted defendant's motion for summary judgment. In its decision the court held that: "The terms of the student handbook and graduate bulletin are clear and unambiguous as a matter of law. No section of the handbook either directly or impliedly prohibits instructors from using old examinations and/or examination questions. In short, defendant did not breach the contract, as a matter of law."

{¶5} The decision of the Court of Claims was affirmed by the Tenth District Court of Appeals on June 6, 2006. The appellate court held that "[g]iven the lack of an express or implied prohibition in the UA bulletins against the re-use of examination materials or the return of graded exams, coupled with the academic discretion granted to UA faculty, the trial court properly concluded that UA did not breach its contractual obligations to Leiby." *Leiby v. Univ. of Akron*, Franklin App. No. 05AP-1281, 2006 Ohio 2831, at ¶23.

{¶6} On March 5, 2007, plaintiff filed his complaint in this case asserting the same breach of contract claims against defendant. Plaintiff further alleges that defendant committed another breach when it failed to act on a complaint which plaintiff registered with the Office of Student Judicial Affairs in November 2006. Defendant argues that plaintiff's claims with reference to the examination materials are barred by the doctrine of res judicata and the statute of limitations. As to plaintiff's remaining cause of action, defendant maintains that plaintiff has not been enrolled at the university since 2003 and thus, there is no longer a contractual relationship between plaintiff and defendant. Plaintiff insists that a

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contract between the parties exists through 2007 in that plaintiff would be entitled to apply some or all of his earned credits to fulfill requirements for a second master's program if he chose to pursue another degree. According to defendant's policy, plaintiff's credits must be applied within six years from the date he initiated his graduate studies in 2001. Plaintiff acknowledged that he has not been enrolled at the university since 2003.

{¶7} Upon review of all the evidence and oral argument presented, the court makes the following determination. "The doctrine of res judicata involves both claim preclusion (historically called estoppel by judgment in Ohio) and issue preclusion (traditionally known as collateral estoppel)." *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 381, 1995-Ohio-331, Under Ohio law, "[a] final judgment or decree rendered upon the merits, without fraud or collusion, by a court of competent jurisdiction *** is a complete bar to any subsequent action on the same claim or cause of action between the parties or those in privity with them." *Id.*, quoting *Norwood v. McDonald* (1943), 142 Ohio St. 299, paragraph one of the syllabus. Plaintiff has had the opportunity to fully litigate his dispute.

{¶8} In addition, pursuant to R.C. 2743.16(A), civil actions against the state in the Court of Claims "shall be commenced no later than two years after the date of accrual of the cause of action or within any shorter period that is applicable to similar suits between private parties." *Bell v. Ohio State Bd. of Trs.*, Franklin App. No. 06AP-1174, 2007-Ohio-2790, at ¶19, citing *Talmon v. Ohio State Lottery Comm.* (Oct. 6, 1992), Franklin App. No. 92AP-693; *Gleason v. Ohio Army Natl. Guard* (2001), 142 Ohio App.3d 697. Thus, any claims that arose prior to March 5, 2005, are barred by the two-year statute of limitations.

Turning to plaintiff's remaining cause of action relating to the internal complaint filed with defendant's Office of Student Judicial Affairs, the court notes that plaintiff was not a student at the time he registered said complaint. The Tenth District Court of Appeals explained in *Leiby*, supra at ¶15 that "when a student enrolls in a college or university, pays his or her tuition and fees, and attends such school, the resulting relationship may reasonably be construed as being contractual in nature."

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{¶19} In sum, the court does not find any of plaintiff's arguments persuasive. Indeed, the court finds that any contractual relationship between the parties ceased upon plaintiff's graduation in 2003. For the foregoing reasons, defendant's motion for summary judgment is GRANTED and judgment is rendered in favor of defendant. Plaintiff's cross-motion for summary judgment is DENIED. Plaintiff's June 18, 2007, motion for reconsideration is also DENIED. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

J. CRAIG WRIGHT
Judge

cc:

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SJM/cmd	

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