

[Cite as *Teske v. Ohio State Univ.*, 2015-Ohio-5649.]

JEREMY TESKE

Plaintiff

v.

THE OHIO STATE UNIVERSITY

Defendant

Case No. 2015-00016

Judge Patrick M. McGrath
Magistrate Gary Peterson

ENTRY GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

{¶1} On September 11, 2015, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). On October 8, 2015, plaintiff filed a memorandum in opposition. The motion is now before the court for a non-oral hearing pursuant to L.C.C.R. 4(D).

{¶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 Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317 (1977).

{¶4} Plaintiff brings this action for breach of contract. According to the complaint, plaintiff, a student at The Ohio State University (OSU), registered for two

classes for Summer Term 2013. Plaintiff relates that Summer Term 2013 was comprised of a full term and a concentrated four-week May Session. Plaintiff enrolled in both the May Session and the full term. According to plaintiff, OSU students in good standing are eligible to receive “credit” for up to 3 credit hours for the May Session.

{¶5} Plaintiff does not identify a specific provision of the contract that defendant allegedly breached. Plaintiff, however, alleges that OSU waived *tuition* for up to three credit hours for the May Session but failed to provide him with a grade upon completion of the May Session course. Plaintiff states in his complaint that he did not pay the *fees or tuition* associated with the Summer Term due to the loss of his financial aid. According to plaintiff, upon successful completion of the May Session, his financial aid should have been reinstated, covering the tuition and fees for the Summer Term. Plaintiff also alleges that he requested that he be allowed to pay the required fees associated with the May Session but that employees of OSU informed him that his grade would not be posted until he paid all tuition and fees associated with Summer Term 2013.

{¶6} Plaintiff alleges that defendant committed a breach of contract by failing to release his grade for the completed May Session. The court previously dismissed plaintiff’s claims for theft, negligence, and intentional infliction of emotional distress.

{¶7} A breach of contract occurs when a party demonstrates the existence of a binding contract or agreement; the non-breaching party performs its obligations; the other party fails to fulfill its contractual obligations without legal excuse; and the non-breaching party suffers damages. *Powell v. Grant Med. Ctr.*, 148 Ohio App.3d 1, 2002-Ohio-443 (10th Dist.).

{¶8} The relationship between a university and a student who enrolls, pays tuition, and attends class is contractual. *Bleicher v. University of Cincinnati College of Medicine*, 78 Ohio App.3d 302 (10th Dist.1992). The terms of the contractual relationship are found in the university catalog and handbook supplied to students.

Leiby v. Univ. of Akron, 10th Dist. Franklin No. 05AP-1281, 2006-Ohio-2831. See *Embrey v. Central State Univ.*, 10th Dist. Franklin No. 90AP-1302, 1991 Ohio App. LEXIS 4886.

{¶9} In support of its motion, defendant submitted an affidavit of Anthony Newland, documents entitled Academic Advising at Ohio State, How to keep Your Financial Aid Award, Important Dates | Summer 2013 Term, an OSU Registrar's Webpage outlining fee deadlines for Summer Term 2013, Student Template Emails, and plaintiff's statement of account.

{¶10} In his affidavit, Newland, the University Bursar for OSU, avers that Summer Term 2013 was comprised of one full twelve-week Summer Term and two shorter sessions: a concentrated four-week May Session and a seven-week Summer Session. Each of the sessions ran concurrently with classes beginning on May 6, 2013. Plaintiff enrolled as a student in a four-week May Session course and a twelve-week Summer Term course. Newland avers that tuition for the May Session was waived for students, including plaintiff, enrolled fulltime in the preceding Spring Term for up to three credit hours but that plaintiff was still responsible for paying the fees associated with the May Session course. (Exhibit B.)

{¶11} The "tuition credit" only covers General and Instructional Fees and Non-Residency Fees. (Exhibit B.) The student must pay all other fees, including a General Fee, Student Activity Fee, Student Union Fee, Recreation Fee, and a COTA Fee. (Exhibit B.) Additionally, tuition was not waived for the twelve-week course in which plaintiff was enrolled.

{¶12} On May 8, 2013, OSU Office of Financial Aid notified plaintiff that due to his lack of satisfactory academic progress, he was not qualified to receive federal financial aid for his two Summer Term courses. (Exhibit C.) Plaintiff did not pay the required tuition or fees for Summer Term by the June 3, 2013 deadline. (Exhibit D.) On June 12 and 18, 2013, OSU notified plaintiff by email that failure to pay past due balances by

June 21, 2013 would result in being dropped from classes for non-payment. (Exhibit F.) Plaintiff did not pay tuition and fees by the deadline and was subsequently dropped from all enrollments for non-payment. (Exhibits E and G1-9.)

{¶13} Civ.R. 56(E) provides: “When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon mere allegations or denials of the party’s pleadings, but the party’s response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.”

{¶14} In this case, plaintiff has failed to provide any evidence to controvert the testimony and evidence submitted by defendant and demonstrate a genuine issue of material fact as to whether defendant breached its contract with plaintiff. Indeed, based upon the undisputed evidence, the court can only conclude that plaintiff failed to pay the tuition and fees associated with his enrollment at OSU for Summer Term 2013. Even though OSU waived tuition for the May Session course only, plaintiff was required to pay the fees for the May Session course in addition to the tuition and fees for the twelve-week course. The fees for the May Session course consisted of a General Fee, Student Activity Fee, Student Union Fee, Recreation Fee, and a COTA Fee. There is no dispute that plaintiff failed to pay the required tuition and fees. Furthermore, plaintiff failed to identify any provision of the parties’ contract that defendant allegedly breached.

{¶15} Based upon the foregoing, the court concludes that there are no genuine issues of material fact and that defendant is entitled to judgment as a matter of law. As a result, defendant’s motion for summary judgment is GRANTED and judgment is hereby

rendered in favor of defendant. All other pending motions are DENIED as moot. All previously scheduled events are VACATED. 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.

PATRICK M. MCGRATH
Judge

cc:

Jeremy Teske
3296 Stamford Bridge
Canal Winchester, Ohio 43110

Randall W. Knutti
Stacy L. Hannan
Assistant Attorneys General
150 East Gay Street, 18th Floor
Columbus, Ohio 43215-3130

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