[Cite as *Beamish v. Ohio Univ.*, 2015-Ohio-5661.]

WILLIAM BEAMISH Plaintiff v. OHIO UNIVERSITY Defendant	Case No. 2014-00793 Judge Patrick M. McGrath Magistrate Holly True Shaver ENTRY GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

{¶1} On August 24, 2015, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). Plaintiff did not file a response. The motion is now before the court for a non-oral hearing.[1]

{¶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).

[1]On October 22, 2015, defendant filed a motion for leave to file the original affidavit of Debra Benton, which is GRANTED, instanter.

{¶4} According to plaintiff's complaint, he was enrolled as a student in a PMBA program through defendant's School of Business. Plaintiff asserts that he paid in advance for two quarters of the PMBA program, which included a remote learning component. Plaintiff also asserts that he was told that the program would be compatible with his internet service provider, known as "Hughes-net." However, plaintiff discovered that his connection to the internet had slow speed and no capacity to download the university's coursework. Therefore, plaintiff was unable to download the class lectures. Plaintiff asserts that he was at a disadvantage because of the incompatibility of the internet connection, and that he decided at the onset of the second quarter to leave the program because of his poor grades from the first quarter.

{¶5} In 2012, plaintiff applied for another Masters' program at defendant's university and was eligible for financial aid. Plaintiff contacted Dean Sherman to appeal the grades from the PMBA program and have them changed to "withdrawn" status so that he could take the other graduate classes. Plaintiff also asked for a credit or reimbursement for the tuition that he had paid for the PMBA classes. According to plaintiff, although he was told that his grades would be changed, they were not. Plaintiff asserts that in 2013, he was informed that the only way to receive any reimbursement for the tuition that he had paid was to file a claim in this court.

{¶6} Plaintiff attached to his complaint certain documents, which include: statements of his account dated September 23, 2010, and October 15, 2010, respectively, which show that he was charged for PMBA tuition in September 2010; a statement from the registrar dated January 23, 2012, which shows plaintiff's grades from classes he took during the 2009-2010, and 2010-2011 academic years; and emails from defendant's employees, dated March 15, 2012, May 24, 2012, May 29, 2012, and June 1, 2012, which discuss plaintiff's proposal to change the grades from his PMBA courses so that he could take other graduate courses. Plaintiff filed his complaint on October 1, 2014.

{¶7} Defendant asserts that plaintiff's claims are barred by the applicable two-year statute of limitations, found in R.C. 2743.16(A), which states, in relevant part: "civil actions against the state permitted by sections 2743.01 to 2743.20 of the Revised Code 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."

{¶8} To support its motion, defendant filed the affidavit of University Registrar, Debra Benton, who avers, in pertinent part, as follows:

{¶9} "2. Mr. Beamish began his enrollment as a graduate student in the Professional MBA program at Ohio University College of Business in Summer 2009-10. He was enrolled in two CMBA (Corporate MBA) courses and one management course as described in paragraphs 3 through 8. CMBA courses are a part of the PMBA program.

{¶10} "3. Mr. Beamish was enrolled in graduate level course CMBA 603 Modern Quantitative Analysis during the 2009-10 Summer Quarter. Mr. Beamish completed this course effective August 28, 2010.

{¶11} "4. Mr. Beamish enrolled in the same graduate level course CMBA 603 Modern Quantitative Analysis during the 2010-11 Fall Quarter. Mr. Beamish subsequently withdrew from this course on October 4, 2010.

{¶12} "5. Mr. Beamish was enrolled in graduate level course MGT 691 Foundation of Accounting & Finance during the 2009-10 Summer Quarter. Mr. Beamish completed this course effective August 28, 2010.

{¶13} "6. Mr. Beamish enrolled in the same graduate level course MGT 691 Foundation of Accounting & Finance during the 2010-11 Fall Quarter. Mr. Beamish subsequently withdrew from this course on October 4, 2010.

{¶14} "7. Mr. Beamish was enrolled in graduate level course CMBA 602 Management and Organizational Behavior during the 2009-10 Summer Quarter. Mr. Beamish completed this course effective August 28, 2010.

{¶15} "8. Mr. Beamish enrolled in the same graduate level course CMBA 602 Management and Organizational Behavior during the 2010-11 Fall Quarter. Mr. Beamish subsequently withdrew from this course on October 4, 2010.

{¶16} "9. Mr. Beamish has not enrolled in any additional graduate level College of Business courses since Fall 2010-11. * * *." (Defendant's Exhibit A.)

{¶17} It is well-settled that the relationship between a university and a student who enrolls, pays tuition, and attends class is contractual in nature, and that the terms of this contractual relationship may be found in the handbook, catalog, and other guidelines supplied to students. *Bleicher v. Univ. of Cincinnati College of Med.,* 78 Ohio App.3d 302, 308 (10th Dist.1992).

{¶18} "Ordinarily, a cause of action accrues and the statute of limitations begins to run at the time the wrongful act was committed." *DiNozzi v. Ohio State Dental Bd.*, 10th Dist. Franklin No. 08AP-609, 2009-Ohio-1376, ¶ 15, citing *Collins v. Sotka*, 81 Ohio St.3d 506, 507 (1998). "The 'discovery rule' generally provides that a cause of action accrues for purposes of the governing statute of limitations at the time when the plaintiff discovers or, in the exercise of reasonable care, should have discovered the complained of injury." *Investors Reit One v. Jacobs*, 46 Ohio St.3d 176, 179 (1989).

{¶19} However, the discovery rule does not apply to breach of contract claims. "No Ohio court has applied the discovery rule to a claim for breach of contract. * * * We are not inclined to be the first court to do so. Moreover, even if we applied the discovery rule here, * * * 'constructive knowledge of facts, rather than *actual* knowledge of their legal significance, is enough to start the statute of limitations running under the discovery rule.' * * * 'If a person has knowledge of such facts as would lead a fair and prudent man, using ordinary care and thoughtfulness, to make further inquiry, and he

fails to do so, he is chargeable with knowledge which by ordinary diligence he would have acquired.'" (Internal citations omitted.) *Cristino v. Adm'r.*, 10th Dist. Franklin No. 12AP60, 2012-Ohio-4420, ¶ 41.

{¶20} Based upon Benton's affidavit, plaintiff withdrew from the PMBA classes in October 2010. The statement that plaintiff submitted with his complaint, dated October 15, 2010 states: "By registering for classes a student incurs a legal obligation to pay tuition and fees. All balances are due immediately to avoid financial holds." Even construing the evidence most strongly in favor of plaintiff, it is undisputed that plaintiff withdrew from his PMBA courses on October 4, 2010. Although plaintiff asserts that he "discovered" in 2013 that his remedy was to file a claim in this court, the evidence he submitted to support his claim shows that he was provided defendant's policy regarding "Grade Appeals" via email on March 15, 2012. Furthermore, on May 29, 2012, Tod Brokaw, Director of Graduate and Professional Education, wrote that "we are in the process of requesting grade changes from C- to WP for the three PMBA courses in the 2009-2010 academic year." Although plaintiff asserts that the grades were not ultimately changed "for reasons unknown to me," the only reasonable conclusion is that he was on notice, at least by March 15, 2012, of defendant's policy regarding grade appeals. The most recent email that plaintiff submitted to the court is dated June 1, 2012. Plaintiff did not file his complaint until October 1, 2014.

{¶21} Inasmuch as plaintiff filed his complaint on October 1, 2014, more than two years later than any of the emails that he submitted, the only reasonable conclusion is that his claim is barred by the applicable two-year statute of limitations. Therefore, defendant's August 24, 2015 motion for summary judgment is GRANTED and judgment is rendered in favor of defendant. 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:

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