

**Keles v Trustees of Columbia Univ. in the City
of N.Y.**

2009 NY Slip Op 30865(U)

April 9, 2009

Supreme Court, New York County

Docket Number: 107052/08

Judge: Milton A. Tingling

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. MILTON A. TINGLING

PART 44

J.S.C.

Index Number : 107052/2008

KELES, RESAT

VS.

TRUSTEES OF COLUMBIA

SEQUENCE NUMBER : 001

DISMISS ACTION

INDEX NO. _____

MOTION DATE 10/1/08

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion *and cross-motion are*
decided in accordance with annexed decision.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

FILED
APR 17 2009
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 4/9/09

mat

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 44

-----X

Resat Keles,

Plaintiff,

-against-

Index No.:107052/08

The Trustees of Columbia University
in the City of New York,
Alan Brinkley, Roxie Smith,
Rimas Vacaitis, and Christain Meyer,

Defendants.

-----X

FILED
APR 17 2009
COUNTY CLERKS OFFICE
NEW YORK

Judge Milton A. Tingling:

This action arising out of, and in connection with, the significant delay incurred by the plaintiff, Resat Keles (Keles), in obtaining a graduate degree (PhD) from co-defendant, The Trustee of Columbia University in the City of New York (Columbia University).

Columbia University, and the individual co-defendants Alan Brinkley, Roxie Smith, Rimas Vacaitis, and Christian Meyer (Columbia University Employed Faculty/Administration) presently move, pursuant to CPLR 3211 (a) (5) [statute of limitations] and (7) [failure to state a cause of action], seeking an order dismissing the complaint in its entirety.

In response, Keles, inter alia, opposes the motion, as well as seeks leave to amend the complaint in the event the court concludes that it is not sufficiently plead.

Solely for the purpose of this motion, the facts and circumstances are as follows.

Keles received a written offer, dated February 21, 2001, to become a paid teaching assistant at Columbia University beginning September 1, 2001, plus a stipend summer researcher. In return, Keles's teaching assistant duties included advising, grading, teaching and

assisting students for up to 15 hours per week. This offer was for three years, and conditioned upon Keles's timely and successful completion of the three-year PhD program for a Doctor of Engineering Science degree. Thereafter, Keles accepted the teaching assistantship offer by returning a completed "Admission Response Form", dated March 9, 2001.

On September 5, 2001, Mr. Keles enrolled in a doctoral program in Columbia University's Department of Civil Engineering and Engineering Mechanics. Keles completed all courses and fulfilled the PhD-required 30 credits. Some nine months later, Keles received written notice, dated May 21, 2002, that his teaching assistantship was being terminated because he dropped courses without prior approval, failed to complete the requisite courses, and earned an unacceptable, below standard combined grade point average (GPA) of 3.14. However, Keles' transcript indicates that his 3.284 GPA exceeds the requisite standard GPA of 3.25.

In response to Keles's subsequent oral and written protests and objections, a member of the Columbia University Employed Faculty/Administration stated that Mr. Keles's "reasoning has no basis".

In the spring of 2003, Keles was advised that effective September of 2003, new Department Guidelines for Qualification Exams would be applicable rather than those issued in 1998.

By letter dated July 1, 2003, a member of the Columbia University Employed Faculty/Administration asked Keles to choose areas for the PhD qualifying examination, as well as seek approval of his choices by a different member of the Columbia University Employed Faculty/Administration, namely his faculty advisor, the professor and chairman of the department. On July 22, 2003, Keles's faculty advisor approved his choices for the three subject

areas to be tested on the September 2003 qualifying examination. A copy of this approval letter was then forwarded by Keles to the necessary members of the Columbia University Employed Faculty/Administration. After the July 30th deadline to submit his approved choices, Keles received a Columbia University generated letter, dated August 11, 2003, advising him that he must choose another two test areas because two of his previously approved areas were not acceptable. Within a few days thereafter, Keles responded in writing with two other proposed areas. However, on August 18, 2003, 17 days before the qualifying examination, Keles was advised that his two additional choices were also unacceptable. In addition, the letter also notified Keles that he would have to add a certain identified area which he had neither requested nor prepared. At about the same time, Keles was further advised that other doctoral candidates would not be examined on two of the previously approved areas he had specifically prepared for and chose. Keles did not pass the September 2003 qualification examination.

Shortly there after, Keles learned that, contrary to what members of the Columbia University Faculty/Administration had informed him, certain areas originally chosen by him and subsequently substituted were, in fact, areas offered to, and included in, other doctoral candidates' sitting for the qualification examination. Keles then advised whom he thought to be the appropriate member of the Columbia University Employed Faculty/Administration, of a number of other problems that he found wrong with either the exam, his grade or both (letters dated September 9, 2003 and September 15, 2003). In the interim, Keles received a response advising him that the matter was being referred to the Columbia University Departmental Exam Committee.

Keles subsequently received two letters, dated November 6, 2003 and November 27,

2003, advising him that his arguments and complaints were insufficient and did not warrant reconsideration of his failing grade. On January 5, 2004, Keles filed a complaint with the Columbia University Hearing Committee. In response, Keles was offered an opportunity to retake the qualification exam. Keles rejected the offer, claiming that Columbia University and Columbia University Employed Faculty/Administration acted in an erratic, arbitrary, capricious and discriminatory manner in selecting the qualifying examination topics. He claims that no clear guidelines existed regarding the topics, no guidelines were provided to him, and the areas chosen for his exam were administratively changed at the last minute.

On March 13, 2006, Keles appealed the denial of a Committee Hearing. By letter dated February 19, 2007, Columbia University advised Keles that he was “no longer a doctoral student at Columbia University”, that his appeals had been “considered at length”, that the “matter was closed”, and any further correspondence from him as to this matter would be rejected and returned to him. Keles was refused a Columbia University procedurally provided opportunity to appear in person and call witnesses at a Committee Hearing.

Keles was thereafter denied registration and enrollment into classes for his professional doctorate program. In October 2003, after claiming to have earned sufficient credits towards a Professional Engineering degree, Keles unsuccessfully demanded that such a degree be conferred upon him.

Though Keles’s subsequent internal complaint of March 13, 2006 was never addressed by Columbia University, Keles did finally receive his degree in October of 2006.

Thereafter, Keles commenced this 2008 court action asserting six causes of action designated as: (1) breach of contract as to obtaining advanced degree; (2) breach of contract as to

his teaching assistantship; (3) breach of implied covenant of good faith and fair dealing; (4) fraud as to identifying subject areas of study offered and included in the September 2003 qualifying exam; (5) fraud as to the placing of Keles's name by another on his empty exam booklet; and (6) tortious interference with a contractual relationship. In essence, Keles is seeking damages in the form of lost earning potential for the three years Columbia University failed to confer upon him the advanced degree.

Columbia University and Columbia University Employed Faculty /Administration presently seek, pursuant to CPLR 3211 (a) (5), dismissal of the action as barred by the applicable four-month statute of limitations (CPLR 217), as well as CPLR 3211 (a) (7) for failure to state a cognizable cause of action..

“Strong policy considerations militate against the intervention of courts in controversies relating to an educational institution’s judgment” with respect to core academic concerns such as student performance, admission, expulsion, examination, graduation, student and faculty grievances, and the like (*Matter of Susan M. v New York Law School*, 76 NY2d 241, 245 [1990]; *Maas v Cornell University*, 94 NY2d 87, 92 [1999])

Colleges and universities can be sued in contract or tort if: (1) the complained-of breach, is of a specific enforceable agreement/promise, or (2) the complained of negligence is a proximate cause of sustained personal injury. However, it is the “[s]ubstance of a pleading [that] is the controlling feature, not the title, caption or label” (*Dubinsky v Arthur Imerman Undergarment Corp.*, 157 NYS2d 439, 441 [Sup Ct, NY County 1956]). Keles unsuccessfully attempts to circumvent the strictures of CPLR Article 78 (Art. 78) by couching his plenary challenge to Columbia University’s academic and administrative standards and decisions in the

language of contract and tort law. Here, none of Keles's asserted complaints relate to either a specific enforceable agreement/promise or negligence causing injury. Rather, his complaint concerns core academic and administrative decisions/determinations (i.e., academic progress, the content of a PhD qualification exam, grading, and the award of a professional degree) that may be reviewed, pursuant to Art. 78, in a special proceeding only as to being arbitrary, capricious or irrational (*Chira v Columbia Univ.*, 289 F Supp 2d 477, 486 [SDNY 2003]).

Courts have converted plenary actions, attempting to assert challenges against college and university academic and administrative conduct, to Art. 78 proceedings where they are timely (*Quintas v Pace Univ.*, 23 AD3d 246, 247 [1st Dept 2005]; *Risley v Rubin*, 272 AD2d 198 [1st Dept 2000]). Art. 78 claims are subject to a four-month statute of limitations, and the claim accrues when the complained-of decision/determination becomes final and binding (CPLR 217). However, any complaint Mr. Keles may have had accrued some five years ago. As such, converting or amending this plenary action to an Art. 78 proceeding would be futile in that the asserted claims are untimely (CPLR 217).

In view of the foregoing, the court need not, and therefore will not, address the merits of the case because the mis-characterized complaint, even if converted to an Art. 78 proceeding, would be time-barred in its entirety. Accordingly, the defendants' motion to dismiss is granted in all respects, the plaintiff's cross motion seeking leave to amend the complaint is denied in all respects, and the complaint is dismissed in its entirety.

It is therefore

ORDERED that defendants' motion to dismiss is granted and the complaint is dismissed in its entirety with costs and disbursements to the defendants as taxed by the Clerk of the Court;

and it is further

ORDERED that plaintiff's cross motion seeking leave to amend the complaint is denied,

and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: *April 9, 2009*

ENTER:

mat

HON. MILTON A. TINGLING
U.S.C.

FILED
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NEW YORK