

**Padiyar v Albert Einstein Coll. of Medicine of
Yeshiva Univ.**

2009 NY Slip Op 30925(U)

April 17, 2009

Supreme Court, New York County

Docket Number: 116296/06

Judge: Carol R. Edmead

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

PRESENT: **HON. CAROL EDMEAD**

PART 35

Index Number : 116296/2006
PADIYAR, JEEVAN
vs.
ALBERT EINSTEIN COLLEGE
SEQUENCE NUMBER : 004
SUMMARY JUDGMENT

INDEX NO. _____
MOTION DATE 3/30/09
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

this motion to/for _____

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

FILED
PAPERS NUMBERED
APR 22 2009
COUNTY CLERK'S OFFICE
NEW YORK

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion


This motion is decided in accordance with the accompanying Memorandum Decision. It is hereby

ORDERED that defendants' motion for summary judgment is granted and the complaint is dismissed with costs and disbursements to defendant as taxed by the Clerk of the Court upon the submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that counsel for defendant shall serve a copy of this order with notice of entry within twenty days of entry.

Dated: 4/17/09


HON. CAROL EDMEAD J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

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

SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART 35

-----x
JEEVAN P. PADIYAR,

Plaintiff,

Index No.: 116296/06

-against-

DECISION

ALBERT EINSTEIN COLLEGE OF MEDICINE OF
YESHIVA UNIVERSITY, YESHIVA UNIVERSITY,
SUE GOLDING GRADUATE DIVISION, JAMES
DAVID, Associate Dean for Students, and
WILLIAM JACOBS Jr., Professor, as aiders
and abettors,

Defendants.

-----x

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APR 22 2009
COUNTY CLERK'S OFFICE
NEW YORK

EDMEAD, J.:

BACKGROUND

Defendants move, pursuant to CPLR 3212, to dismiss the action against them.¹ Plaintiff, a former medical student, has asserted nine causes of action against defendants: (1) unlawful discrimination against plaintiff, pursuant to New York State Executive Law § 290; (2) unlawful discrimination against plaintiff, pursuant to the Local Laws of the City of New York, Administrative Code §§ 8-107 (a) and 8-502; (3) retaliatory discrimination against plaintiff, in violation of New York State Executive Law § 290; (4) violation of the Local Laws of the City of New York, Administrative Code §§ 8-107 (a) and 8-502, for

¹The motion papers lacked copies of the pleadings, as required by CPLR 3212 (b); however, plaintiff did not question this, and defendants provided the pleadings in their reply, which the court accepts nunc pro tunc.

which plaintiff seeks damages of \$100,000,000.00; (5) as against the individual defendants only, violations of the above-referenced laws for which seeks damages as a jury may award; (6) wilful, wonton, malice, gross carelessness, recklessness and depraved indifference in violation of plaintiff's civil rights; (7) tortious interference with contract; (8) breach of contract; and (9) breach of implied covenant of good faith and fair dealing.

The facts of this case have been extensively detailed in an earlier decision of the court, in which the court denied granting plaintiff's requested relief in an Article 78 proceeding against defendants.² Plaintiff's alleged injuries result from defendants' decision to dismiss plaintiff as a full-time research candidate in the MD/PhD program in the university's Department of Microbiology and Immunology. The university's determination, affirmed by the court, found that plaintiff engaged in professional misconduct and demonstrated poor academic performance. In this plenary action, filed more than eight months after university's final determination of the matter, plaintiff alleges the same facts, but this time asserts that defendants' actions were based on unlawful discrimination. Further, in the instant action, plaintiff seeks damages, whereas

2. Index No. 110578/05, against the university defendants only, December 16, 2005 (Abdus-Salaam, J.), reargument denied, June 12, 2006

in the earlier Article 78 proceeding he only sought vacatur of the university's decision and reinstatement as a research candidate.

DISCUSSION

"The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case [internal quotation marks and citation omitted]." *Santiago v Filstein*, 35 AD3d 184, 185-186 (1st Dept 2006). The burden then shifts to the motion's opponent to "present facts in admissible form sufficient to raise a genuine, triable issue of fact." *Mazurek v Metropolitan Museum of Art*, 27 AD3d 227, 228 (1st Dept 2006); see *Zuckerman v City of New York*, 49 NY2d 557, 562 (1980). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied. See *Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 (1978).

Defendants' motion is granted.

Defendants' primary argument is that the instant action should have been brought as an Article 78 proceeding, and as such is time-barred, having been filed more than four months after the university's final determination. See *Kowalczyk v Ricci*, 269 AD2d 865 (4th Dept 2000). In opposition, plaintiff does not address this argument, but instead asserts that the earlier

decision is not *res judicata* because he did not raise the issue of unlawful discrimination in the Article 78 proceeding, and because he is now seeking monetary relief, which also was not sought previously. In both these arguments, plaintiff is incorrect.

"Courts retain a 'restricted role' in dealing with and reviewing controversies involving colleges and universities. In these so-called 'university' cases, CPLR article 78 proceedings are the appropriate vehicle because they insure that the over-all integrity of the educational institution is maintained and, therefore, protect more than just the individual's right Thus, a CPLR article 78 proceeding is the route for judicial review of such matters, not a plenary action. Notably, when litigants fail to avail themselves of the CPLR article 78 avenue, courts may justifiably dismiss plenary claims . . . [citations omitted]."

Maas v Cornell University, 94 NY2d 87, 92 (1999); *Quintas v Pace University*, 23 AD3d 246 (1st Dept 2005).

Merely couching causes of action in terms of contract and tort to avoid the four-month statute of limitations are unavailing, since the claims arise out of the university's administrative decisions. *Demas v Levitsky*, 291 AD2d 653 (3d Dept 2002). In his opposition papers, plaintiff is re-arguing the university's determination, but this time alleging that the actions were founded on unlawful discrimination. However, the gravamen of his claims are that defendants improperly dismissed him as a research candidate, which must be asserted in an Article 78 proceeding, governed by a four-month statute of limitations. *Broderick v Board of Education, Roosevelt Union Free School*

District, 253 AD2d 836 (2d Dept 1998).

Further, plaintiff's argument that the instant action is not barred by the doctrine of *res judicata* is misplaced. Since plaintiff's causes of action state "merely an alternative theory which the plaintiff had a full and fair opportunity to advance in the earlier proceedings, it ... is barred by *res judicata*."

Sterngass v County of Rockland, 208 AD2d 916, 919 (2d Dept 1994). The actions complained of arose out of the same grievance and set of facts as the earlier determination, and plaintiff cannot now attempt to revive his grievance merely by clothing the circumstances in a new theory.

Additionally, plaintiff's assertion that in this action he is seeking damages, which were not sought in the earlier proceeding, is unavailing to allow him to maintain the instant lawsuit. As the court stated in *Keane v New York Law School* (186 AD2d 453, 453 [1st Dept 1992]), in affirming the dismissal of a claim asserting monetary relief,

"Using the 'transactional analysis' approach, the court properly determined that all claims arising from plaintiff's dismissal as a student at New York Law School were barred by the doctrine of *res judicata*. The previous decision in the Article 78 proceeding upheld the policy against judicial intervention in academic disputes regarding student evaluations absent evidence of 'bad faith, arbitrariness, capriciousness, irrationality or a constitutional or statutory violation.

In the prior proceeding, plaintiff could have sought damages arising out from the alleged violation of contractual rights. CPLR 7806 'authorizes the court in an article 78 proceeding to grant ... damages that are incidental to the primary relief sought' if, as here,

damages are recoverable on the same set of facts
[citations omitted]."

See also, *Pauk v Board of Trustees of the City University of New York*, 68 NY2d 702 (1986); *Dobkin v New York University*, 278 AD2d 24 (1st Dept 2000); *Matter of Y&O Holdings (NY), Inc. v Board of Managers of Executive Plaza Condominium*, 278 AD2d 173 (1st Dept 2000).

CONCLUSION

Based on the foregoing, it is hereby

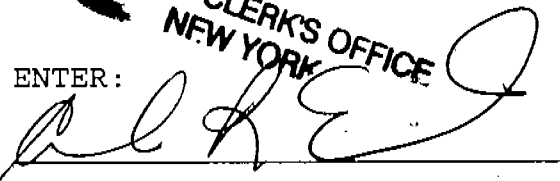
ORDERED that defendants' motion for summary judgment is granted and the complaint is dismissed with costs and disbursements to defendant as taxed by the Clerk of the Court upon the submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that counsel for defendant shall serve a copy of this order with notice of entry within twenty days of entry.

Dated: April 17, 2009

FILED
APR 22 2009
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ENTER:


Carol Robinson Edmead, J.S.C.
HON. CAROL EDM EAD