

Rashid v New York Inst. of Tech.

2009 NY Slip Op 32035(U)

September 3, 2009

Supreme Court, New York County

Docket Number: 102535/2009

Judge: Marilyn Shafer

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

Hon. Marilyn Jaffe
Justice

PART 8

Index Number : 102535/2009

RASHID, NASIR

vs.

NEW YORK INSTITUTE OF TECHNOLOGY

SEQUENCE NUMBER : # 001

CHANGE VENUE

INDEX NO. 102535-09

MOTION DATE

MOTION SEQ. NO. #001

MOTION CAL. NO.

_____ were read on 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 accord with the
Annex of memorandum.*

FILED

SEP 09 2009
COUNTY CLERK'S OFFICE
NEW YORK

**MARILYN SHAFER
J.S.C.**

Dated: 9/3/09

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 STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 8

-----X
NASIR RASHID,

Plaintiff,

-against-

NEW YORK INSTITUTE OF TECHNOLOGY,

Defendant.

-----X
Shafer, J.:

Index No. 135/2009

FILED
SEP 09 2009
COUNTY CLERK'S OFFICE
NEW YORK

In motion sequence 001, plaintiff Nasir Rashid (Rashid) moves, pursuant to CPLR 325 (b), to remove the above-captioned action from the Civil Court of the City of New York to the Supreme Court, New York County, on the ground that the Civil Court does not have jurisdiction to provide Rashid with the appropriate relief. Rashid also moves, pursuant to CPLR 3025 (b), for leave to amend the complaint. Defendant New York Institute of Technology (NYIT) cross-moves, pursuant to CPLR 3211 (a) (7), to dismiss the complaint on the ground that it fails to state a claim.

Background

Rashid alleges that he attended NYIT from the Fall 2000 semester through the Fall 2005 semester. Rashid's tuition was paid for through a combination of sources, including New York State TAP funds. During the Spring 2005 semester, Rashid's state TAP funds failed to pay NYIT, leaving his account at NYIT in

arrears by \$1,737.50. Rashid alleges that he was told by Margaret Dunbar, in the NYIT Office of Financial Aid, that it was not unusual for TAP funds to be paid late.

On May 26, 2005, Rashid received a tuition bill for \$2,012.50, which included the \$1,737.50 that he owed due to the failure of the TAP funds, plus a \$275 "registration" charge, which was later dropped. Rashid completed and passed all of his classes for the Spring 2005 semester, but had not paid the outstanding tuition bill when the Fall 2005 semester commenced.

On September 3, 2005, the first day of registration, Rashid attempted to register for the 18 credits that he needed to graduate, but was denied registration on the account of the unpaid tuition balance for the Spring 2005 semester. At this point, Ms. Dunbar allegedly advised Rashid to call New York State in regard to the TAP funds. Rashid did so, and learned that he no longer qualified for the TAP funds.

On September 12, 2005, Rashid received another tuition bill for the Spring 2005 semester, minus the \$275 "registration" fee. On that day, Rashid alleges that the Dean of Students gave him permission to register for the Fall 2005 semester, despite the fact that he owed tuition money for the Spring 2005 semester. Rashid allegedly went to the registrar's office, where he was told to get a registration form signed by the professors of the classes he wished to take for the Fall 2005. Rashid alleges that

between September 12, 2005 and September 19, 2005, he attended classes and procured signatures from each of the professors. On September 19, 2005, Rashid allegedly spoke to Mr. Jamaal Murray, of the registrar's office, who advised him to also procure an Authorization for Registration form, again to be signed by all professors. Rashid allegedly submitted the registration form on September 19th and the Authorization for Registration form on September 26th, each containing the signatures of his professors. The registration form was also signed by Rashid's student advisor. At this time, Rashid believed he was registered for the Fall 2005 semester.

In November 2005, Rashid paid off the balance owed for his Spring 2005 tuition. On December 3, 2005, Rashid allegedly went to the bursar's office to inquire about his Fall 2005 tuition bill, as he had not received one. It was at this time that he was informed that he was not registered for the Fall 2005 semester. Rashid alleges that he was advised to register for classes again and sit for the final exams in the classes he had been attending, which Rashid did and passed each exam. On December 13, 2005, Rashid alleges that Guy Hildebrant, the NYIT Registrar, informed Rashid that he would be able to get him successfully registered, a claim Mr. Hildebrant denies. A day or two after this meeting, Mr. Hildebrant sent an e-mail to Rashid informing him that he could not register for classes for the Fall

2005 semester, because registration was closed.

Between January 2006 and March 2006, Rashid alleges that he made at least one demand for his degree. In March 2006, NYIT denied Rashid's demand. On May 22, 2006, Rashid, acting pro se, filed a this action in the Civil Court of the City of New York, seeking monetary and injunctive relief. On July 21, 2008, Judge Milagros Matos entered a default judgment for \$25,000 in Rashid's favor, after NYIT failed to show at a hearing. Judge Matos also ruled that the court had no authority to impose an injunction. NYIT moved to vacate the default judgment. Judge Peter Moulton denied NYIT's motion, but was later reversed by the Appellate Term, on April 9, 2008, which found that while the motion to vacate was properly denied, absent an affidavit of merit, policy favors disposition of cases on the merits. See Plaintiff's Notice of Motion, Exhibit 7.

On February 6, 2009, DLA Piper LLP (DLA Piper) assumed representation of Rashid on a pro bono basis. After reviewing the case, DLA Piper determined that Rashid's damages now exceed the monetary threshold of the Civil Court of the City of New York and the Civil Court does have jurisdiction to impose the injunctive relief sought by Rashid. Therefore, Rashid, through his pro bono counsel, moves to remove this case to the Supreme Court, New York County, pursuant to CPLR 325 (b), and to amend the complaint, pursuant to CPLR 3025 (b). NYIT cross-moves to

dismiss the complaint in its entirety on the ground that it fails to state a claim.

Analysis

CPLR 325 (b) states, in part:

Where it appears that the court in which an action is pending does not have jurisdiction to grant the relief to which the parties are entitled, a court having such jurisdiction may remove the action to itself upon motion.

To demonstrate entitlement to such relief, plaintiffs are "required to adduce evidence showing the merits of their case, the reasons for their delay in asserting their present claims, and that their increase in damages resulted from facts that only recently came to their attention." *Barsoum v Wilson*, 255 AD2d 537, 537-38 (2nd Dept 1998). Rashid has met these criteria.

Rashid first brought this action pro se in May 2006, seeking damages that he allegedly incurred up to that point, as well as injunctive relief, which the Civil Court does not have the power to grant. NYIT delayed the proceedings in the Civil Court by bringing a motion to vacate its default in 2008, and then an appeal of the decision denying its request to vacate. Rashid alleges that this delay caused him greater damage, as he still had not obtained a degree and could not get a suitable job without it. The additional damages came to Rashid's attention when DLA Piper took him on as a client. Rashid also did not seem aware that the Civil Court could not grant his injunctive relief

when he filed the case in Civil Court. Further, Rashid has shown the merits of his case, which are addressed below. Therefore, this court finds that removal is appropriate under the circumstances. Further, Rashid is permitted to amend his complaint to include these greater damages, as well as the injunctive relief that he sought in the Civil Court, as detailed in the proposed amended complaint attached to his moving papers as Exhibit 9.

NYIT cross-moves to dismiss the complaint on the ground that it fails to state a cause of action. NYIT asserts that Rashid's allegations of entitlement to a degree are false, and that Rashid has not completed the academic requirements requisite to be awarded his degree. NYIT further asserts that, until the degree requirements are satisfied, it is not in a position to award Rashid a degree.

On a motion to dismiss, pursuant to CPLR 3211, the court must accept the facts as alleged in the complaint as true, and accord a plaintiff the benefit of every possible favorable inference. *Leon v Martinez*, 84 NY2d 83, 87 (1994). Therefore, the court must give Rashid the benefit of every possible favorable inference on this preliminary motion. At this stage, there can be no determination in regard to disputed allegations, as it is not appropriate for a motion to dismiss.

NYIT also argues that Rashid's claims may only be brought as

an Article 78 proceeding, and that he is three years too late to file a timely Article 78. This court disagrees. Rashid properly brought this action for breach of contract, based on his allegations of promises made by NYIT, and NYIT's alleged failure to fulfill those promises. *Eidlisz v New York University*, 61 AD3d 473, 475 (1st Dept 2009) (finding an action against a university does not fall within the scope of Article 78 where it is based upon the university's breach of contract with its student to award a degree where the requirements have been satisfied). The case at bar does not involve the type of academic and administrative discretionary determination that warrants an Article 78 proceeding. *Id.*

This court is dismayed that these parties could not come to an agreement where the issues giving rise to this case could easily have been resolved.

Accordingly, it is

ORDERED that New York Institute of Technology's cross motion to dismiss the complaint is denied; and it is further

ORDERED that Nasir Rashid's motion to transfer this action from the Civil Court of the City of New York to the Supreme Court, New York County, is granted. The Clerk of the Civil Court of the City of New York is directed to transfer the papers on file in this action (Civil Court Index No. 029106 CVN 2006) to the Clerk of the Supreme Court, New York County, upon service of

a certified copy of this order and payment of the appropriate fee, if any; and it is further

ORDERED that the Clerk of the Supreme Court, New York County, upon receipt of a copy of this order with notice of entry, shall assign a Supreme Court, New York County, index number to the files transferred pursuant to this order; and it is further

ORDERED that Nasir Rashid's motion for leave to amend the complaint is granted, and the amended complaint in the proposed form annexed to the moving papers (Exhibit 9) shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED that New York Institute of Technology shall serve an answer to the amended complaint within 20 days from the date of said service.

Dated: September 3, 2009

ENTER:
MARILYN STAFER
J.S.C.

J.S.C.

FILED
SEP 09 2009
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NEW YORK