**STATE OF NEW YORK**
**SUPREME COURT** **COUNTY OF TOMPKINS**

**AKINWALE ADEBAYO,**

**Plaintiff,**

**vs.** **Index No. 2014-0176**

**CORNELL UNIVERSITY,**

**Defendant**

**BEFORE: HON. ROBERT C. MULVEY**
**Supreme Court Justice**

**APPEARANCES:**

**DAVID M. FISH, ESQ.**
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**OFFICE OF UNIVERSITY COUNSEL**
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**D E C I S I O N & O R D E R**

**Mulvey, Robert C., J.**

The defendant, Cornell University, has brought this motion pursuant to CPLR 3211 [a] [1] and [7] seeking dismissal of the plaintiff's complaint herein on grounds that Cornell has a defense founded on documentary evidence and/or that the plaintiff's complaint fails to state a viable cause of action. Alternatively, the defendant requests that the Court treat the motion as on for summary judgment under CPLR 3211 [c]. The plaintiff has submitted papers in opposition to the defendant's motion. The defendant has submitted reply papers.

The record reflects that the plaintiff was accepted into an MBA program at the Johnson School of Cornell University and that in March of 2010 he was selected to become a Roy H. Park Leadership Fellow at the Johnson School. The Fellowship included full tuition plus a stipend of $5,000. The plaintiff executed an Acceptance Agreement on or about March 10, 2010 which outlined the expectations placed upon each Park Fellow by Cornell and included a provision indicating that failure to meet the expectations will result in a formal review of the Fellow's status in the program and could result in loss of the Fellowship.

The record indicates that the plaintiff commenced participation in the Park Fellowship program in the Fall of 2010. Thereafter, on or about March 3, 2011, the plaintiff was involved in an incident with two other Johnson School students which resulted in charges being brought against the plaintiff for violations of the Campus Code of Conduct at Cornell. The plaintiff was temporarily suspended from Cornell pending a determination of the charges filed against him. Following a hearing that was conducted by the Cornell University Hearing Board on various dates in April and May of 2013, the Hearing Board issued a written decision on May 22, 2013 which found that the plaintiff had violated the Campus Code of Conduct with respect to charges that had been brought against him for harassment, assault, property damage and disorderly conduct and found that the plaintiff had not violated the Code with respect to a charge of sexual harassment and stealing. As sanctions for the violations, the Hearing Board issued a written reprimand to the plaintiff regarding his conduct and directed that the plaintiff be suspended from Cornell for the period from March 3, 2011 to August 15, 2014, that he be placed on disciplinary probation until graduation and that he complete 100 hours of community work by August 15, 2014.

Upon an appeal by all parties of the Hearing Board's decision, the University Review Board issued a decision on July 30, 2013 which reversed the Hearing Board's finding that the plaintiff was not guilty of the charge of sexual harassment and found him guilty of that charge and the Review Board otherwise affirmed the Hearing Board's decision and the sanctions it imposed. Thereafter, following a request made under the appeal procedures set forth in the Campus Code of Conduct, Cornell President, David J.

Skorton, reviewed the decision made by the University Review Board. By his decision issued on November 26, 2013, President Skorton affirmed the penalties imposed by the Hearing Board and upheld by the Review Board.

The record shows that in December of 2013 the plaintiff contacted Amanda Shaw, Executive Director of Student Services at the Johnson School, about returning to the MBA program at Cornell. In response thereto, on or about January 8, 2014, Ms. Shaw sent a letter to the plaintiff which indicated the number of course credits he had completed within the Johnson School and described the additional credits he would need to complete in order to graduate. The letter also reiterated that upon his return to the Johnson School he would be on disciplinary probation until the time of his graduation. Lastly, the letter informed the plaintiff that his prior award of the Roy H. Park Leadership Fellowship had been canceled due to his violations of the Campus Code of Conduct and he was advised that he could apply again for the Park Fellowship but that his future eligibility for the fellowship would be determined through a new application made with the pool of applicants for the 2014-15 academic year. The letter also indicated that his prior conduct would be considered in connection with any new application and suggested that it would be highly unlikely that he would be awarded a fellowship again.

Following his receipt of Ms. Shaw's letter of January 8, 2014, the plaintiff did not reapply. The plaintiff then commenced this action against Cornell University on or about February 26, 2014 by the filing of his summons and verified complaint herein. The plaintiff's complaint seeks reinstatement of his Park Fellowship award as well as compensatory and liquidated damages based upon causes of action for breach of contract, detrimental reliance and fraudulent inducement.

Cornell has now brought this pre-answer motion seeking dismissal of the plaintiff's complaint pursuant to CPLR 3211 [a] [1] and [7]. The defendant argues that, through the complaint filed herein, the plaintiff is effectively seeking to challenge Cornell's academic and administrative decision to terminate the plaintiff's Park Fellowship and that such a challenge should be made by way of an Article 78 proceeding rather than a plenary action alleging contract and tort claims. As a result, the defendant is requesting that the plaintiff's cause of action for breach of contract be dismissed. Further, the defendant contends that the plaintiff' complaint fails to adequately state a cause of action for detrimental reliance or fraudulent inducement and that those causes of action should also be dismissed.

In opposition to the defendant's motion, the plaintiff asserts that his complaint should be afforded liberal construction, that the allegations contained therein should be accepted as true and that when viewed in that light the Court must conclude that the complaint adequately sets forth contract and tort claims against the defendant. Further, the plaintiff contends that the documentary evidence offered by the defendant is not sufficient to refute the factual allegations raised by the plaintiff.

Upon review and consideration of the papers submitted, the Court has determined that the defendant's motion should be granted in part and otherwise denied.

When deciding a motion to dismiss a complaint pursuant to CPLR 3211 (a) (7), the pleading should be afforded liberal construction and the reviewing court must accept the facts alleged in the complaint as true, accord the plaintiff the benefit of all favorable inferences and determine only whether the facts as alleged fit within any cognizable legal theory. Leon v. Martinez, 84 N.Y.2d 83, 87-88.

The first cause of action contained in the plaintiff's complaint sounds in breach of contract and specifically refers to the Acceptance Agreement that the plaintiff executed on or about March 10, 2010 in connection with the Park Fellowship that was offered to him. The Plaintiff has alleged that the Acceptance Agreement outlined the expectations and obligations of the parties, that he fulfilled those expectations completely and that Cornell failed to fulfill its obligations. Further, the plaintiff has alleged that Cornell did not conduct a formal review of his status in the fellowship program as required by the Acceptance Agreement prior to notifying the plaintiff on or about January 8, 2014 that his Park Fellowship had been terminated. Based upon those allegations, the Court finds that the plaintiff has sufficiently stated a cause of action for breach of contract against the defendant. Further, although challenges to academic and administrative decisions made by colleges and universities are often required to be brought in the form of Article 78 proceedings, the Court is not persuaded that this action should be converted to an Article 78 proceeding since, in this instance, there is a specific agreement or contract that outlines the obligations of the parties. (compare, Keles v. The Trustees of Columbia University in the City of New York, 2009 WL 1106535, Supreme Court, New York County).

Moreover, the Court finds that the documentary evidence offered by the defendant is not sufficient to refute the factual allegations raised by the plaintiff or establish a complete defense to the action since compliance with the Campus Code of Conduct is not specifically mentioned as an expectation in the Acceptance Agreement.

However, with respect to the plaintiff's second and third causes of action for detrimental reliance and fraudulent inducement, respectively, the Court finds that the complaint fails to adequately state a cause of action. To the extent that the second cause of action contained in the complaint is separate and distinct from the first cause of action and is based upon a quasi-contract or implied contract claim, it must be dismissed since a plaintiff may not rely upon on an implied contract or quasi-contact where an express contract governs the subject matter. (see Clark-Fitzpatrick, Inc. v. Long Island R.R. Co., 70 N.Y.2d 382, 388-389). Also, in order to state a claim for fraudulent representation, the complaint must allege several elements including a material representation, that is known to be false and that was made with the intent of inducing reliance. (see Channel Master Corp. v. Aluminum Ltd. Sales, 4 N.Y.2d 406-407). Here, the third cause of action must be dismissed since there are no allegations that the defendant made any representations to the plaintiff between March of 2011 and January of 2014, either false or otherwise.

Lastly, the Court declines to treat the defendant's motion as a motion for summary judgment.

Accordingly, for the reasons set forth above, the defendant's motion to dismiss pursuant to CPLR 3211 is granted to the extent that the second and third causes of action contained in the plaintiff's complaint are hereby dismissed pursuant to CPLR 3211 [a] [7] on the ground that they fail to state a cause of action and the defendant's motion is otherwise denied.

This shall constitute the Decision and Order of the Court. No costs are awarded on the motion.

Signed this 1st day of October, 2014 at Ithaca, New York.

Hon. Robert C. Mulvey

Digitally signed by Hon. Robert C. Mulvey
DN: cn=Hon. Robert C. Mulvey, o=Tompkins County Supreme Court, ou=NYS Supreme Judge, email=tpkmulvey_chambers@nycourts.gov, c=US
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