

State of New York  
Supreme Court, Appellate Division  
Third Judicial Department

Decided and Entered: February 2, 2012

512204

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WILLIAM R. JONES,  
Appellant,

v

TRUSTEES OF UNION COLLEGE,  
Respondent,  
et al.,  
Defendants.

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MEMORANDUM AND ORDER

Calendar Date: November 18, 2011

Before: Mercure, Acting P.J., Lahtinen, Spain, Malone Jr. and  
Kavanagh, JJ.

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Grasso, Rodriguez & Grasso, Schenectady (Christopher R.  
Burke of counsel), for appellant.

Pennock Law Firm, P.L.L.C., Clifton Park (John H. Pennock  
Jr. of counsel), for Trustees of Union College, respondent.

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Malone Jr., J.

Appeal from an order of the Supreme Court (Reilly Jr., J.),  
entered December 28, 2010 in Schenectady County, which, among  
other things, granted a motion by certain defendants to dismiss  
the complaint against them.

In March 2007, plaintiff was questioned about a possible  
arson on the campus of Union College in the City of Schenectady,  
Schenectady County where he was then a student. Plaintiff  
thereafter took a medical leave of absence, returning to campus  
that fall. In September 2007, plaintiff was investigated in  
connection with another possible arson on campus and, under

interrogation, he admitted that he had started that fire. He was arrested, charged with arson in the second degree and expelled from the College.<sup>1</sup>

Alleging that he falsely confessed to setting the fire and that, as a result, his expulsion from the College was unwarranted, plaintiff thereafter commenced this action against, among others, defendants Trustees of Union College, Stephen Ainlay, Steven Leavitt, Kathleen Schurick, Phillip Wajda and Michael Hilton, asserting, among other things, a breach of contract cause of action against the Trustees of Union College. In lieu of answering, defendants moved to dismiss the complaint for failure to state a cause of action, and plaintiff cross-moved to amend the complaint. Supreme Court denied defendants' motion, but allowed plaintiff to amend the complaint. Following joinder of issue by defendants, they moved to dismiss the amended complaint for failure to state a cause of action. Plaintiff opposed the motion and cross-moved to file a second amended complaint. The court granted defendants' motion and denied the cross motion. Plaintiff appeals.<sup>2</sup>

As limited by his brief, plaintiff contends that Supreme Court erred in finding that the amended complaint failed to state a cause of action for breach of contract. In the context of a motion to dismiss for failure to state a cause of action, "court[s] must afford the pleadings a liberal construction, take the allegations of the complaint as true and provide plaintiff the benefit of every possible inference" (EBC I, Inc. v Goldman, Sachs & Co., 5 NY3d 11, 19 [2005]). Here, plaintiff alleges that a contract exists between plaintiff and the College pursuant to which plaintiff agreed to pay tuition in exchange for the College's provision of educational services. Plaintiff alleges that he performed under the contract by paying tuition and the contract was breached by the College when he was expelled.

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<sup>1</sup> The criminal case was apparently adjourned in contemplation of dismissal in January 2008.

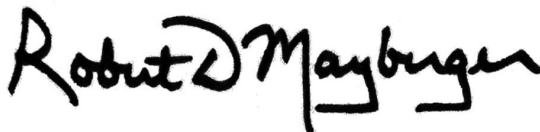
<sup>2</sup> Of the moving defendants, only Trustees of Union College appears as a respondent to this appeal.

When a student is admitted to an academic institution, an implied contract arises between the institution and the student "such that 'if [the student] complies with the terms prescribed by the [institution], he [or she] will obtain the degree which he [or she] sought'" (Matter of Olsson v Board of Higher Educ. of the City of N.Y., 49 NY2d 408, 414 [1980], quoting Matter of Carr v St. John's Univ, N.Y., 17 AD2d 632, 633 [1962], affd 12 NY2d 802 [1962]; see Sweeney v Columbia Univ., 270 AD2d 335, 336 [2000]). However, when a disciplinary dispute arises between the student and the institution, judicial review of the institution's actions is limited "to whether the [institution] acted arbitrarily or whether it substantially complied with its own rules and regulations" (Cavanagh v Cathedral Preparatory Seminary, 284 AD2d 360, 361 [2001]; see Maas v Cornell Univ., 94 NY2d 87 [1999]; Tedeschi v Wagner Coll., 49 NY2d 652 [1980]). Thus, under the circumstances here, Supreme Court properly determined that plaintiff's failure to identify the specific terms of the implied contract that he claims were violated by the College – such as an internal rule, regulation or code – is fatal to his claim (see Cavanagh v Cathedral Preparatory Seminary, 284 AD2d at 361; compare Tedeschi v Wagner College, supra).

Mercure, Acting P.J., Lahtinen, Spain and Kavanagh, JJ.,  
concur.

ORDERED that the order is affirmed, with costs.

ENTER:



Robert D. Mayberger  
Clerk of the Court