IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

FREDERICK FAWRA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**C.A. Number: CPU4-10-006047**
	)	
WILMINGTON UNIVERSITY,	)	
	)	
Defendant.	)	

Frederick Fawra
110 Stone Hurst Court
New Castle, Delaware 19720
Pro Se Plaintiff

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MEMORANDUM OPINION AND ORDER ON MOTION FOR SUMMARY JUDGMENT OF DEFENDANT WILMINGTON UNIVERSITY

Submitted: May 27, 2011
Decided: July 8, 2011

DAVIS, J.

I. General Background

On October 8, 2010, Plaintiff Frederick Fawra filed a civil action for breach of contract against Defendant Wilmington University (the "University"). The University answered Mr. Fawra's complaint on December 21, 2010.

The University deposed (the "Deposition") Mr. Fawra on April 6, 2011. After the Deposition, Mr. Fawra moved to amend his complaint. This Court granted that motion on April 29, 2011. In his amended complaint (the "Complaint"), Mr. Fawra contends that the University breached a contract with him and, therefore, he is entitled to damages and/or the conferral of his degree from the University. The University answered the amended complaint on May 12, 2011.

On May 9, 2011, the University moved for summary judgment on all claims of Mr. Fawra. The Court held a hearing on the Motion on May 27, 2011. At the hearing, this Court granted partial summary judgment in favor of the University as to Mr. Fawra's request for an order requiring the University to confer a degree. As set forth more fully on the record at the hearing, this Court granted partial summary judgment because the Court of Common Pleas, as a court of law, does not have the power to grant equitable affirmative relief – *i.e.*, this Court has no jurisdiction to issue an injunction compelling the University to issue a degree to Mr. Fawra.[1] This Court reserved decision on whether the University was also entitled to summary judgment on Mr. Fawra's claim for damages.

This is the Court's Final Opinion and Order on Defendant's Motion for Summary Judgment (the "Motion").

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[1] Mr. Fawra's request of this Court to confer upon him a degree is equitable in nature. *See, e.g., DeMarco v. University of Health Sciences*, 352 N.E.2d 356 (Ill. App. Ct. 1976) ("Since the withholding of a diploma is a unique injury, it justifies equitable relief."). This Court is a court of law and, therefore, cannot order affirmative equitable relief. 10 *Del. C.* §1322 (a). The Court could, in the interest of justice and judicial economy, transfer the matter to the Chancery Court of Delaware but, for the reasons set forth in this Opinion, such a transfer would not be appropriate here. 10 *Del. C.* §1902.

II. Material and Uncontested Facts

The University is a private educational institution incorporated in Delaware.

Mr. Fawra was a student at the University over a period of years – between 1982-2010. At one point in time, Mr. Fawra ceased his activities as a student at the University but subsequently applied for re-entry to the University in late 2006. As part of this re-admission process, on December 25, 2006, Mr. Fawra executed and submitted an application for undergraduate admission (the "Application"). (Motion, Ex. 1) The Application expressly provided that the applicant understands "that [the University] has the authority to withdraw my privilege of admission, enrollment, and/or graduation for academic, disciplinary, legal or other reasons deemed sufficient." (Motion, Ex. 1 at 3)

The University annually publishes the Student Handbook. The Student Handbook contains a code of conduct (the "Code"). (Motion, Exs. 4 and 5) The Code provided, at all times relevant here, that a student accused of a felony must report it to the University's vice president of student affairs within, at least, seventy-two (72) hours of arrest or being charged.[2] (Motion, Ex. 4 at 74; Ex. 5 at 83) The Code also provides that it is within the sole discretion of the University, after review, to suspend or otherwise limit the student's attendance and/or participation at the University. (*Id.*) If there is a suspension, the University then also refers the matter to the student discipline committee. (*Id.*)

In May of 2008, Mr. Fawra was indicted on felony criminal charges in the United States District Court for the Eastern District of Pennsylvania (the "District Court Proceeding"). (Motion, Ex. 3) It is uncontested that Mr. Fawra did not inform the University within at least

[2] In the 2007-08 Student Handbook, a student had forty-eight (48) hours to report such an indictment. In the 2010-11 Student Handbook, a student had seventy-two (72) hours to report such an indictment. The twenty-four (24) hour difference is not relevant here as the facts demonstrate that Mr. Fawra did not report his indictment within seventy-two (72) hours.

seventy-two (72) hours of his indictment. Subsequently, Mr. Fawra completed the requisite numerical requirements for a bachelor's degree in criminal justice by the conclusion of the fall 2009 semester and was subsequently graduated by the University. For reasons unrelated to the indictment, the University did not issue a degree to Mr. Fawra.

In the spring of 2010, Mr. Fawra began taking graduate level courses at the University. A fellow student became suspicious of Mr. Fawra due to comments allegedly made in a classroom setting. The student, a police officer, contacted a colleague with the Federal Bureau of Investigation's Philadelphia Field Office. The Federal Bureau of Investigation agent advised that Mr. Fawra was known to the field office due to a pending indictment. The student informed the University of the indictment of Mr. Fawra. The University then took action to indefinitely suspend Mr. Fawra on March 18, 2010. (Motion, Ex. 2)

At the Deposition, the University learned that Mr. Fawra had pled guilty to felony criminal charges in the District Court Proceeding. The University then conducted an internal hearing regarding Mr. Fawra's conduct and the possibility of disciplinary action as a result of such conduct. The University sent correspondence to Mr. Fawra at the conclusion of the disciplinary hearing, informing him that he had been permanently expelled from the University. The expulsion applied retroactively to 2008 for his failure to comply with the requirements of the Code, specifically to advise the University of any such arrest, charge and/or conviction. At the hearing, the University informed this Court that the internal administrative review process, including appeals, had not yet been exhausted or otherwise become final.

III. Applicable Law and Analysis

In order to prevail on a motion for summary judgment, the moving party must show that there are no genuine issues of material fact in dispute and that the party is entitled to judgment as

a matter of law.[3] In reviewing the record, the Court must analyze all facts and reasonable inferences therefrom in the light most favorable to the non-moving party.[4]

The University moves this Court to grant summary judgment in its favor. In support, the University argues that (i) the University has not breached any agreement with Mr. Fawra, and/or (ii) this Court should not judicially intervene in a process -- the decision to issue an academic degree -- that is, absent extraordinary circumstances not present here, reserved to the particular academic institution. Mr. Fawra contends that he is entitled to conferral of his degree because he completed the requisite number of credits for the award of a degree.

As was determined at the hearing, neither party can direct this Court to any controlling case law in Delaware addressing this issue. While this may be a case of first impression in Delaware, a review of the decisions from other jurisdictions indicates that the issue of whether a private institution may deny an individual the award of a degree is well-settled and is based upon public policy grounds.[5]

The courts that have considered the issue presently before the Court have consistently concluded that the relationship between the student and the academic institution is a contractual relationship. However, those same courts, including the United States Supreme Court, have held that the judiciary is not to interfere into uniquely academic affairs of an institution (whether contractual in nature or not) unless it can be demonstrated that the institution is acting in bad faith or arbitrarily.[6]

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[3] *Browning-Ferris, Inc. v. Rockford Enterprises, Inc.*, 642 A.2d 820, 823 (Del. Super. Ct. 1993).
[4] *Stein v. Griffith*, 2002 WL 32072578 at *1 (Del. Com. Pl. Dec. 12, 2002).
[5] The vast majority of the cases reviewed are cases involving claims for equitable relief. As is clear from a reading of the cases, however, the reasoning and holdings of those decisions are as applicable in cases involving requests solely for damages.
[6] *See Paulsen v. Golden Gate University*, 602 P.2d 778, 781 (Cal. 1979); *See also Sweezy v. New Hampshire*, 354 U.S. 234, 263 (1957) ("Because of the important of a degree, educational institutions, both public and private, have the right and responsibility to set standards for its award."); W*aliga v. Board of Trustees of Kent State University*, 488 N.E.2d 850, 852 (Ohio 1986) ("A degree serves as an institution's certification to the world at large of the

In *Matter of Carr v. St. John's Univ., N.Y.*,[7] the Appellate Division of the Supreme Court of New York held that "when a university, in expelling a student, acts within its jurisdiction, not arbitrarily but in the exercise of an honest discretion based upon facts within its knowledge that justify the exercise of discretion, a court may not review the exercise of its discretion."[8] The court in *Matter of Carr* went on to note that:

> When a student is duly admitted by a private university, secular or religious, there is an implied contract between the student and the university that if he complies with the terms prescribed by the university he will obtain the degree which he seeks.[9]

In *Swartley v. Hoffner*,[10] the Superior Court of Pennsylvania held that the relationship between a private educational institutional and a current student is contractual in nature.[11] The court stated:

> …in *Boehm v. University of Pennsylvania School of Veterinary Medicine*,[12] our Court opened the door to the notion of a breach of contract claim against a private institution when we noted that '[a] majority of the courts have characterized the relationship between a private college and its students as contractual in nature. Therefore, students who are being disciplined are entitled only to those procedural safeguards which the school specifically provides.'[13]

Further, the *Swartley* court concluded that "the contract between a private institution and a student is comprised of the written guidelines, policies and procedures as contained in the written materials distributed to the student over the course of their enrollment in the institution."[14]

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recipient's educational achievement and fulfillment of the institution's standards."); *Susan M. v. New York Law School*, 556 N.E.2d 1104 (N.Y. 1990) ("The determination as to whether an individual has met the standards for a degree is a determination to be made by the educational institution.").

[7] *Matter of Carr v. St. John's Univ., N.Y.*, 17 A.D.2d 632 (N.Y. App. Div. 2d Dep't 1962).

[8] *Id*. at 634 (internal citations omitted).

[9] *Matter of Carr*, 17 A.D.2d at 633.

[10] *Swartley v. Hoffner*, 734 A.2d 915 (Pa. Super. Ct. 1999).

[11] *Id*. at 919; *See also Paulsen v. Golden Gate University*, 602 P.2d 778, 783 (Cal. 1979) ("(t)he basic legal relation between a student and a private university or college is contractual in nature.").

[12] *Boehm v. University of Pennsylvania School of Veterinary Medicine*, 573 A.2d 575 (Pa. 1990).

[13] *Swartley*, 734 A.2d at 919 citing *Boehm*, 573 A.2d at 579.

[14] *Id*. citing *See, e.g., Merrow v. Goldberg*, 672 F .Supp 766, 774 (D. Vt. 1987)("The terms of the contract are contained in the brochures, course offering bulletins, and other official statements, policies and publications of the institution.").

Similarly, the Appellate Court of Illinois in *Wilson v. Illinois Benedictine College*[15] concluded that "a college or university and its students have a contractual relationship; the relevant terms of the contract are set forth in the university's catalogs."[16] However, *Wilson* went on to state that "a university may not act maliciously or in bad faith by arbitrarily and capriciously refusing to award a degree to a student who fulfills its degree requirements."[17] The *Wilson* court found that the reason for action taken by the college was clearly stated in the student materials and concluded that the college nor its agents acted in violation of the regulations or acted in an arbitrary or capricious manner because "where their conduct complied with the contractual relationship and was not discretionary, it cannot be said that [the college] and its agents acted arbitrarily or capriciously."[18]

The United States District Court for the District of Massachusetts has also addressed this precise issue in *Dinu v. President and Fellows of Harvard College*.[19] The plaintiffs in *Dinu*, students who had been suspended by the college, brought action against the college requesting the conferral of their degrees. The plaintiffs alleged that the college breached the contract which was based upon a handbook for students, published by the college and distributed to each enrolled student.[20] The *Dinu* court stated "that the relationship between a university and its students has a strong, albeit flexible, contractual flavor is an idea pretty well accepted in modern case law."[21] That court went on to note -- "so too, is the proposition that a student handbook,

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[15] *Wilson v. Illinois Benedictine College*, 445 N.E.2d 901 (Ill. App. Ct. 1983).
[16] *Id*. at 906 (internal citations omitted); *See also Lexington Theological Seminary, Inc. v. Vance*, 596 S.W.2d 11, 12 (Ky. Ct. App. 1979) ("The terms and conditions for graduation from a private college or university are those offered by the publications of the college at the time of enrollment, and as such, have some characteristics of a contract.").
[17] *Id*. (internal citations omitted).
[18] *Id*. at 908 (internal citations omitted).
[19] *Dinu v. President and Fellows of Harvard College*, 56 F .Supp2d 129 (D. Mass. 1999).
[20] *Id*. at 130.
[21] *Id*. (internal citations omitted).

like the occasional employee handbook, can be a source of the terms defining the reciprocal rights and obligations of a school and its students."[22]

In *Dinu*, the court concluded that the student handbook set forth a structure of increasing penalties which the administration of the college could impose in disciplinary cases, ranging from a warning to dismissal or expulsion.[23] The plaintiffs argued that the student handbook failed to expressly state that a student must be in good standing in order to graduate and that, because they had completed the formal requirements for a degree, their right to a degree had vested.[24] The defendant college in *Dinu* prevailed on a motion for summary judgment against plaintiffs because "a school has an inherent, if circumscribed, right to regulate student conduct" and as such, the plaintiffs were not entitled to the award of degrees.[25]

The *Swartley* court discussed the public policy of employing judicial restraint involving the academic decisions of a private university. The Court specifically stated that:

> It is not the place of this Court to second-guess academic decisions and judgments made in colleges and universities of this Commonwealth. We are not now and will never be experts in each and every academic field open to scholarly pursuit. We are extremely cognizant that '[a]cademic freedom thrives not only on the independent and uninhibited exchange of ideas among teachers and students, but also, and somewhat inconsistently, on autonomous decisionmaking by the academy itself.[26] As a result, our Court abides by a general policy of nonintervention in purely academic matters.[27]

The *Swartley* court then cited and relied upon authority from the United States Supreme Court, stating that:

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[22] *Id*.
[23] *Id*. at 131.
[24] *Id.* at 132.
[25] *Id*. at 132-133; *Cf. Coveney v. President & Trustees of the College of the Holy Cross*, 445 N.E.2d 136 (Mass. 1983) ("Violations of reasonable rules and regulations of a school are a recognized ground for dismissal of a student.").
[26] *Swartley*, 734 A.2d at 921 citing *Regents of the Univ. of Mich. v. Ewing*, 474 U.S. 214, 226 n. 12 (1985).
[27] *Id*. citing *See Schulman v. Franklin and Marshall College*, 538 A.2d 49, 52 (Pa. 1988) (*en banc*) ("A college is a unique institution which, to the degree possible, must be self-governing and the courts should not become involved in that process unless the process itself has been found to be biased, prejudicial or lacking in due process.").

> When presented with cases involving essentially academic decisions, such as the present case, our standard of review is well established. As the United States Supreme Court stated 'When judges are asked to review the substance of a genuinely academic decision … they should show great respect for the faculty's professional judgment. Plainly, they may not override it unless it is such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment.'"[28]

Similarly, the Court of Appeals of Kentucky in *Lexington Theological Seminary, Inc. v. Vance*[29] articulated nearly identical reasoning as the Court in *Swartley*. The Court in *Lexington* stated "the courts will not generally interfere in the operations of colleges and universities, especially in actions challenging the institution's academic regulations, since the courts possess minimum expertise in this area."[30] Further, the court cited to American Jurisprudence Colleges and Universities[31] regarding the conferral of degrees by a university which states:

> Universities and colleges are usually vested with the power to graduate and to confer degrees and diplomas on students who have complied with the requirements imposed by the regulations of such institutions. Where a student matriculates at a college or university, a contractual relationship is established under which, upon compliance with all the requirements for graduation, he is entitled to a degree or diploma. However, the faculty or other governing board of a college or university, which is authorized to examine the students and to determine whether they have performed all the conditions prescribed to entitle them to a degree or diploma, exercises quasi-judicial functions, in which capacity its decisions are conclusive, except that a degree or diploma may not be refused arbitrarily.[32]

The Supreme Court of California has also addressed the role of judicial intervention into decisions made by a university involving student conduct. The Court has stated that "there is a widely accepted role of judicial non-intervention into the academic affairs of schools."[33] Further, "however, some courts, including those of California on occasion, have carved out an

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[28] *Swartley*, 734 A.2d at 921 citing *Regents of the Univ. of Mich. v. Ewing*, 474 U.S. 214, 225 (1985).
[29] *Lexington Theological Seminary, Inc. v. Vance*, 596 S.W.2d 11 (Ky. Ct. App. 1979).
[30] *Id*. at 14 (internal citation omitted).
[31] 15A Am. Jur.2d Colleges and Universities s 31, at pgs. 292-293.
[32] *Lexington*, 596 S.W.2d at 14 citing 15A Am. Jur.2d Colleges and Universities s 31, at pgs. 292-293.
[33] *Paulsen v. Golden Gate University*, 602 P.2d 778, 781 (Cal. 1979) (citations omitted).

exception to this rule by permitting limited intervention whenever it is alleged that a university or college has acted arbitrarily or in bad faith."[34]

This Court concludes that the cases discussed above are well-founded, persuasive and should be used in ruling on the Motion. Accordingly, Mr. Fawra should only be able to proceed in this Court on his breach of contract claim against the University if he can establish that the University acted in bad faith or arbitrarily when refusing to confer its degree on Mr. Fawra. From the record in this proceeding, Mr. Fawra cannot satisfy his burden and, therefore, the University is entitled to summary judgment on the remaining claims.

The relationship between Mr. Fawra and the University is a contractual relationship. The University has taken a number of steps to define that contractual relationship – *e.g.*, the Application, the Student Handbook and the Code. In the Application, Mr. Fawra acknowledged, by signature, that he understood that the University had the authority to withdraw his privilege of admission, enrollment, and/or graduation for academic, disciplinary, legal or other reasons deemed sufficient. The Student Handbook and the Code provide that any student who is accused of a felony must, within seventy-two (72) hours of arrest or being charged, report it to the University.

Mr. Fawra argues that he has a valid breach of contract claim because, on January 31, 2010, he had completed the requisite numerical courses and been graduated by the University. At this point, Mr. Fawra contends the University was contractually obligated to, but never did, confer upon him a degree. The University acknowledges that Mr. Fawra completed the requisite number of credits for the course of study he chose; however, the University claims that it has the discretion to withhold, or even withdraw, the degree because Mr. Fawra violated the terms of the contract by being indicted and failing to report the indictment. Alternatively, the University

[34] *Id*. (citations omitted).

contends that this Court should not intervene here because this is an academic matter best handled by the University.

The Court finds merit in the University's arguments. The University is a private educational institution that set forth the regulations for its students' conduct. There is no evidence that the University acted arbitrarily or in bad faith when it decided to suspend Mr. Fawra and to withhold from him a degree. Quite the opposite is true. Here, the uncontested facts show that Mr. Fawra was indicted on felony criminal charges, failed to report the indictment, was suspended for that failure and later pled guilty to the charges. The University has made it clear that it has the discretion in such circumstances to take the types of actions it took with respect to Mr. Fawra – suspension and/or withdrawal of graduation. (Motion, Exs. 1, 4 and 5) The reasons for the action taken by the University were clearly stated in the Application, the Code and the Student Handbooks and thus the University did not act in violation of its regulations or act in an arbitrary or capricious manner. Absent facts supporting a claim that the University acted arbitrarily or in bad faith, this Court will not intervene in a matter best suited for the province and expertise of a private educational institution like the University.

Based upon the record in this matter, the Court concludes that no genuine issue of material fact exists. The Court further concludes, based upon well-settled law, that the University is entitled to judgment as a matter of law.

IV. Conclusion

For the reasons stated above, Wilmington University's Motion for Summary Judgment is **GRANTED** in full.

IT IS SO ORDERED this 8th day of July, 2011.

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Eric M. Davis
Judge