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5-4-2021

**Anthony Temeliescu v. Board of Regents, Order on Motion to Dismiss**

Wesley B. Taylor  
*Judge State Court of Fulton County*

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IN THE STATE COURT OF FULTON COUNTY  
STATE OF GEORGIA

ANTHONY TEMELIESCU, on behalf of	)	
himself and all others similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
	)	CIVIL ACTION FILE
v.	)	NO. 2020CV343087
	)	
BOARD OF REGENTS OF THE	)	
UNIVERSITY SYSTEM OF GEORGIA,	)	
STEVE WRIGLEY, and ANGEL CABRERA,	)	
	)	
Defendants.	)	

**ORDER**

Before the court is the motion to dismiss filed by Defendants. The court held a hearing on May 4, 2021. Having considered the entire record and oral argument of the parties, the court finds as follows:

Plaintiff Anthony Temeliescu, a graduate student at Georgia Technical Institute (“Georgia Tech”), filed this putative class action in the Superior Court of Fulton County on December 2, 2020. This case was transferred to this court by Order entered on February 19, 2021. Temeliescu brings this suit for “disgorgement and return of the prorated portion of the tuition and Mandatory Fees paid, proportionate to the reduced bargained for benefit provided for the amount of time in the respective semesters when the University closed and switched to online only learning.”

Per the complaint, “Defendant Board of Regents of the University System of Georgia (“BOR”) is an agency created by the State of Georgia vested with the governance, control, and management of state funded post-secondary educational institutions.” Defendant Steve Wrigley is the Chancellor of the University System of Georgia. Defendant Angel Cabrera is the president of Georgia Tech.

Temeliescu sets out two theories of recovery. First, Temeliescu alleges that a contract existed whereby tuition and mandatory fees were paid in exchange for a “first-rate classroom based education and on-campus, in person educational collegiate experiences,” which the Defendants breached by providing “substantially reduced service and benefits” to Temeliescu and the putative class members. Second, Temeliescu alleges a violation of the takings clauses of the United States and Georgia constitutions.

Defendants filed their motion to dismiss on January 8, 2021. Defendants argue Temeliescu’s claims are barred by sovereign immunity and constitute non-cognizable

“educational malpractice” claims. Defendants also contend that Temeliescu’s claims brought pursuant to the takings clause fail as a matter of law. Temeliescu opposes Defendants’ motion.

“Both the 1983 Constitution and 1990 amendment provide for the waiver of sovereign immunity in contract actions.” *Wilson v. Bd. of Regents of Univ. Sys.*, 262 Ga. 413, 414 (1992) (affirming dismissal of plaintiff’s contract claim because a medical treatment “consent form and other hospital records lacking the essential terms of a contract are not a written contract to which the waiver of sovereign immunity applies”); *accord Patrick v. Bd. of Regents of the Univ. Sys. of Ga.*, 2021 Ga. App. LEXIS 91, \*3 (Feb. 23, 2021) (“Sovereign immunity applies to the Board. However, the State has waived sovereign immunity for breach of a written contract.”); *see also* Ga. Const. Art. I, § II, ¶ IX(c) (“The state's defense of sovereign immunity is hereby waived as to any action ex contractu for the breach of any written contract now existing or hereafter entered into by the state or its departments and agencies.”).

Therefore, a crucial question is whether Temeliescu can demonstrate the existence of a written contract between himself and Defendants so as to bring himself under the constitutional waiver provision. Temeliescu has requested limited discovery on this issue.

For reasons addressed by the court at the hearing, and on the basis of the allegations pled in the complaint, the court agrees that Temeliescu shall have certain limited discovery. Accordingly, it is hereby **ORDERED** that the parties shall conduct written discovery concerning the jurisdictional issues raised by Defendants’ motion to dismiss, namely, (i) whether there exists between the parties any written contract and (ii) whether Defendants hold in account(s) on behalf of Temeliescu any funds Temeliescu paid to Defendants. Except as to the foregoing, this case and all other discovery is hereby **STAYED** until further Order of this court.

As directed by the court at the hearing, counsel for the parties shall seasonably confer on the manner, scope, and timing of the jurisdictional discovery and, if they are able to reach an agreement, submit a proposed Scheduling Order with respect to same. Should the parties be unable to reach an accord on the matters set out herein, the court shall set this matter down for a conference.

**SO ORDERED**, this 4<sup>th</sup> day of May, 2021.

*/s/ Wesley B. Taylor*

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Wesley B. Taylor, Judge  
State Court of Fulton County