



IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

THOMAS HAYDEN BARNES,

Plaintiff,

vs.

THE BOARD OF REGENTS OF THE
UNIVERSITY OF GEORGIA SYSTEM,

Defendant.

CIVIL ACTION FILE NO. 2012CV212942

JUDGE KIMBERLY M. ESMOND ADAMS

ORDER DENYING DEFENDANT'S MOTION TO DISMISS

The above-styled action is before the Court on Defendant The Board of Regents of the University System of Georgia's ("Defendant") Motion to Dismiss. Having considered the motion, response, the record and the applicable law, the Court hereby **DENIES** Defendant's motion for the reasons more fully set forth below.

Plaintiff filed a breach of contract claim against Defendant for expelling him from Valdosta State University ("VSU") in a manner that allegedly violates university policies and for disclosing Plaintiff's VSU Access Office and Counselling Center records. Defendant filed a Motion to Dismiss for lack of subject matter jurisdiction pursuant to O.C.G.A. § 9-11-12(b)(1) on grounds of sovereign immunity under O.C.G.A. § 50-21-1. Defendant argues that sovereign immunity bars Plaintiff's breach of contract claims because the claims are not based on a written contract.

A claim of sovereign immunity of a state government entity raises the issue of the trial court's subject matter jurisdiction to hear the case, and a waiver of sovereign immunity must be established by the party seeking to benefit from the waiver. See Coosa Valley Technical College v. West, et. al, 299 Ga. App. 171, 174 (2009); see also Ambati v. Board of Regents, 313 Ga. App. 282, 283 (2011). State government entities are immune from suit unless the immunity is specifically

waived in the Georgia Constitution or as provided by an act of the General Assembly. See Ga. Const., Art. I, Sec. IX, Par. IX(e). The defense of sovereign immunity is waived in contract actions involving the breach of a written contract. See O.C.G.A. § 50-21-1. The Court finds that Plaintiff has established a waiver of Defendant's sovereign immunity defense by demonstrating that his claims are based on a breach of a written contract.

O.C.G.A. § 13-3-1 provides that a contract is valid when "there are parties able to contract, a consideration moving to the contract, the assent of the parties to the terms of the contract, and a subject matter upon which the contract can operate." See O.C.G.A. § 13-3-1. A valid written contract may be formed when multiple signed agreements by the parties demonstrate their intent to enter into a binding contract and the individual documents together include all necessary terms of the contract. See Board of Regents v. Doe, 278 Ga. App. 878, 881 (2006); see also Board of Regents v. Tyson, 261 Ga. 368, 369 (1991); Board of Regents v. Ruff, 2012 WL 851514 (Ga. Ct. App. Mar. 13, 2012); Georgia Dept. of Cmty. Health v. Data Inquiry, LLC, 313 Ga. App. 683, 686 (2012).

Plaintiff's claim is based on a violation of university policies and procedures on confidentiality and student discipline as stated in VSU Student Code of Conduct and other written agreements. Plaintiff asserts that the VSU Student Code of Conduct and the VSU Access Office and Counseling Center document establish written contracts upon which his claim is based. The VSU Student Code of Conduct contains disciplinary policies and procedures and expressly provides that "this statement and any additional rules and regulations are binding on both the student and the Valdosta State University administration." The Court finds the document demonstrates an intent to enter into a binding agreement. The Court further finds Plaintiff and VSU manifested their intent to be bound when Plaintiff paid tuition and VSU issued to Plaintiff the Student Code of Conduct. See Morehouse College, Inc. v. McGaha, 277 Ga. App. 529, 535 (2005); see also Barnes v. Zaccari, 757

F. Supp. 2d 1313, 1335 (N.D. Ga. 2010), aff'd in part, rev'd in part and remanded, 669 F.3d 1295 (11th Cir. 2012). In addition to stating the terms of counseling service provided, the VSU Access Office and Counseling Center document contains a confidentiality provision which expressly states "information will not be released outside the Center without written consent except when required by law." The VSU Access Office and Counseling Center document was signed by Plaintiff, demonstrating his agreement to receive services according to the terms and provisions contained therein.

Accordingly, the Court finds that Plaintiff has established the existence of valid written contracts which form the basis of the breach of contract claims and Defendant's defense of sovereign immunity is waived. Therefore, Defendant's Motion to Dismiss is hereby **DENIED**.

SO ORDERED this 23rd day of July, 2012.


HONORABLE KIMBERLY M. ESMOND ADAMS
SUPERIOR COURT OF FULTON COUNTY
ATLANTA JUDICIAL CIRCUIT

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