

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

Charles O. Ogindo,

Plaintiff,

v.

07-CV-1322

Lois DeFleur, Individually and in her official capacity as President of Binghamton University; John J. Eisch, Individually and in his official capacity as Professor of Chemistry at Binghamton University and Plaintiff's advisor; David Doetschman, Individually and in his official capacity as the Chemistry Chair person; Alistair Lees, Individually and in his official capacity as the Chemistry chair that succeeded David Doetschman; and Wayne Jones, Individually and in his official capacity as the Director of the Graduate Program Committee,

Defendants.

THOMAS J. McAVOY
Senior United States District Judge

DECISION and ORDER

Plaintiff Charles Ogindo commenced the instant asserting various claims including discrimination, violation of his constitutional right, copyright infringement, and patent infringement, breach of contract, promissory estoppel, and fraud, arising out of his constructive discharge from the Binghamton University doctoral program and dismissal from Binghamton University. Presently before the Court is Defendants' motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and (6).

I. FACTS

The following facts are taken from Plaintiff's Amended Complaint and, for purposes of the instant motion, are assumed to be true.

In January 2002, Plaintiff was accepted into Binghamton University's doctoral program in the Department of Chemistry. In December 2002, Plaintiff was invited by Defendant John Eisch to join a research group for doctoral dissertation research. Eisch verbally assured Plaintiff that he "would be able to defend his dissertation in December of 2005" and that "obtaining publications would not be difficult." Am. Compl. at ¶ 15.

Plaintiff received positive appraisals towards his May 2006 graduation date. Plaintiff "passed his coursework, cumulative examinations and oral examinations, and was admitted to doctoral candidacy as an ABD (All But Dissertation) when he submitted his dissertation prospectus" in March 2004. Id. at ¶ 16. Thereafter, Eisch assigned Plaintiff to duplicate certain experiments. Plaintiff followed Eisch's direction, but was unable to obtain the same results as the prior student experimenter. Id. at ¶ 17. According to Plaintiff, his experiments "disproved Eisch's hypotheis as written up in Jane Sohng's Honors thesis as well as disproving numerous other experiments along the same lines previously published by Defendant Eisch." Id. Plaintiff alleges that "Eischs encouraged [Plaintiff] to forge data, which [Plaintiff] refused to do."

"[I]n the course of his experimentation, [Plaintiff] discovered a novel route to metal carbene complexes and a novel catalyst, trinuclear nickel carbene species, with . . . a combined possible market value of over \$200 million. . . ." Id. at ¶ 18. In April 2005, Plaintiff completed his doctoral research proposals. Plaintiff "presented to Eisch by interpretation a proposed experiment which would be a route to the Grubbs catalyst." Id. at ¶ 19. Eisch

would not allow Plaintiff to perform the experiment. Shortly thereafter, Eisch removed Plaintiff from the project and assigned him to a different project. In the new experiments, Plaintiff did not get the same results as others had. By letter dated December 14, 2005, Eisch terminated Plaintiff's doctoral dissertation research "on the . . . ground that [Plaintiff] . . . lacked aptitude." Id. at ¶ 21. Plaintiff was, thereafter, returned to the laboratory in a probationary status.

In January 2006, Plaintiff was prevented from taking a position at SUNY-Oneonta because Eisch threatened "that Plaintiff would not complete his degree if he took the position." Id. at ¶ 23. Nevertheless, by letter dated February 19, 2006, Eisch praised Plaintiff's work and promised to expedite Plaintiff's doctoral studies "as expeditiously as possible." Id. at ¶ 24.

In June 2006, Eisch "abruptly terminated [Plaintiff], citing his performance on the cleavage experiment. The Defendant removed the Plaintiff from the laboratory and confiscated his laboratory notebooks et al." Id. at ¶ 25. "Eisch went on to block all publications by Plaintiff, as well as any presentations in professional seminars. . . . In addition, Eisch himself published a corrective paper on the cleavage experiments without including Plaintiff as a co-author or giving him any credit. . . ." Id. at ¶ 26.

In August 2006, Plaintiff was "for all intent and purposes dismissed from the doctoral program. On or about March 26, 2008, [Plaintiff] was officially dismissed and/or disenrolled from Binghamton University." Id. at ¶ 30.

As a result of the foregoing, Plaintiff commenced the instant action asserting claims of: race-based discrimination (First Cause of Action); discrimination on account of national origin (First Cause of Action); retaliation in violation of 42 U.S.C. §§ 1981 and 1982 and 20

U.S.C. § 1681(a) (Second Cause of Action); substantive and procedural due process violations (Third Cause of Action); copyright infringement (Fourth Cause of Action); patent infringement (Fifth Cause of Action); breach of implied contract (Sixth Cause of Action); promissory estoppel (Seventh Cause of Action); educational malpractice (Eighth Cause of Action); and fraud (Ninth Cause of Action). Presently before the Court is Defendants' motion pursuant to Fed. R. Civ. P. 12(b)(1) and/or (6) seeking dismissal of the Complaint in its entirety.

II. STANDARD OF REVIEW

A motion brought under Fed. R. Civ. P. 12(b)(6) tests the legal sufficiency of the claims pleaded in a case. On a motion to dismiss, all factual allegations in the complaint are accepted as true, Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit, 507 U.S. 163, 164, 113 S. Ct. 1160, 122 L. Ed.2d 517 (1993), and the Court must determine whether Plaintiff has pleaded "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, --- U.S. ----, ----, 127 S. Ct. 1955, 167 L. Ed.2d 929 (2007). As such, the Court must determine whether the "[f]actual allegations . . . raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." Id., at 1965; see Barkley v. Olympia Mortgage Co., 2007 WL 2437810, at * 9 (E.D.N.Y. Aug. 22, 2007).

III. DISCUSSION

a. Discrimination on Account of Race and/or National Origin

Defendants move to dismiss the discrimination claims on the grounds that: (1) the Complaint lacks sufficient facts alleging that other students were similarly situated to Plaintiff in all material aspects to sustain a claim of selective treatment; (2) the Complaint fails to set

forth any facts upon which it could be found that Defendants acted with an impermissible motive; and (3) there are no allegations of personal involvement by Defendant DeFleur.

Although Defendants' contentions may prove to be true, their arguments impose too high of a standard on a motion to dismiss. To survive a motion to dismiss, Plaintiff "need not allege 'specific facts establishing a prima facie case of discrimination.'" Boykin v. Keycorp, 521 F.3d 202, 212 (2d Cir. 2008) (quoting Swierkiewicz v. Sorema N.A., 534 U.S. 506, 508, 122 S. Ct. 992 (2002)). Similarly, Plaintiff need not allege facts demonstrating discriminatory animus. Boykin, 521 F.3d at 215. "[I]t is sufficient that [Plaintiff's] complaint states that . . . [he is Nigerian], describes [Defendants'] actions with respect to [his dismissal from Binghamton University] and alleges that [he] was treated differently from similarly situated . . . [students] because of [his] race [and national origin]." Id. Plaintiff's Complaint sufficiently alleges facts that put Defendants on notice of the basis for his claim and the grounds upon which it rests and render the discrimination claim plausible. See Boykin, 521 F.3d at 213. Plaintiff's Amended Complaint alleges that Plaintiff was the victim of adverse treatment by Defendants (terminated from the doctoral program), points to instances where other non-Nigerian students appear to have been treated more favorably,¹ and further attributes statements to certain Defendants that could be found to evidence a discriminatory motive. This is sufficient to state a plausible claim of discrimination on account of race or national origin. Whether Plaintiff's allegations have any evidentiary support, whether the

¹ Plaintiff contends that white students received summer stipends, whereas he did not; Eisch stopped Plaintiff from publishing and making presentations while Eisch engaged in co-authorship with white students; Eisch prevented Plaintiff from obtaining a teaching position, whereas a white student received a teaching position; and Plaintiff's dissertation was sent for outside expert review, whereas no white students had their dissertations sent out for outside review.

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