

IN THE SUPERIOR COURT OF FULTON COUNTY, GEORGIA

136 PRYOR STREET, ROOM C-103, ATLANTA, GEORGIA 30303

SUMMONS

Thomas Hayden Barnes	)	Case No.: <u>2012 CW 212 942</u>
	)	
<b>Plaintiff,</b>	)	
vs.	)	
The Board of Regents of the	)	
University System of Georgia	)	
	)	
<b>Defendant</b>	)	
	)	
	)	

TO THE ABOVE NAMED DEFENDANT(S):

Your are hereby summoned and required to file with the Clerk of said Court and serve upon plaintiff's attorney, whose name and address is:

Cary S. Wiggins, Wiggins Law Group  
 Suite 401  
 260 Peachtree Street, NW  
 Atlanta, GA 30303  
 (404) 659-2880; cary@wigginslawgroup.com

An answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service. **IF YOU FAIL TO DO SO, JUDGMENT BY DEFAULT WILL BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT.**

This 20 day of March, 2012

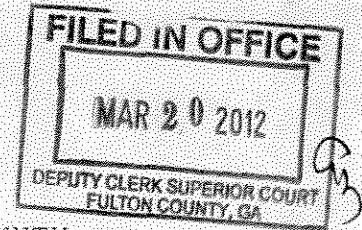
Honorable Cathelene "Tina" Robinson  
Clerk of Superior Court

By A. Betty  
Deputy Clerk

To defendant upon whom this petition is served:

This copy of complaint and summons was served upon you \_\_\_\_\_, 20\_\_\_\_

Deputy Sherriff



IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

THOMAS HAYDEN BARNES,

Plaintiff,

-vs-

THE BOARD OF REGENTS OF THE  
UNIVERSITY SYSTEM OF GEORGIA,

Defendant.

CIVIL ACTION FILE

NO. *2012-CV-212942*

**COMPLAINT FOR DAMAGES  
AND ATTORNEY'S FEES**

NATURE OF THE CASE

1.

This is a breach of contract action. See O.C.G.A. § 13-6-1. Plaintiff Thomas Hayden Barnes, as a student at Valdosta State University ("VSU"), had a contract with Defendant Board of Regents and VSU, the terms of which were set forth in the Board of Regents' and VSU's published catalogs and bulletins. Barnes was expelled from VSU in a manner (and for reasons) that violated established university policies on confidentiality and student discipline set forth in those catalogs and bulletins and other written contracts with students. With this complaint, Barnes seeks damages in the amount of approximately \$35,000, plus interest, for his economic

losses and injuries resulting from the Board's breach of contract. Barnes also seeks consequential damages to be determined by an impartial jury, plus attorneys' fees and costs.

#### THE PARTIES

2.

Plaintiff THOMAS HAYDEN BARNES ("Barnes") is a Maryland resident and, at all times relevant to this complaint, was enrolled as a student at VSU in Valdosta, Georgia. VSU is a regional university within the University System of Georgia.

3.

Defendant BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA ("the Board") is a political subdivision of the State of Georgia with the capacity to sue or be sued. The Board operates and supervises university and college institutions throughout the State of Georgia and is headquartered in Atlanta, Georgia. The Board is subject to the jurisdiction of this Court and may be served with a copy of the Summons and Complaint through its registered agent, J. Burns Newsome, at 270 Washington Street, S.W., Suite 7038, Atlanta, Georgia 30334.

JURISDICTION

4.

This Court has jurisdiction of this breach of contract matter under O.C.G.A. § 50-21-1(a) because the Board is a department of the State of Georgia.

VENUE

5.

This Court is the proper venue for this action. See O.C.G.A. § 50-21-1(b).

FACTUAL AND PROCEDURAL BACKGROUND

6.

In January 2007, Barnes enrolled at VSU.

7.

When enrolling at VSU, Barnes registered with the Access Office in order to receive educational accommodations pursuant to VSU policies and the Americans With Disabilities Act, 42 U.S.C. §§ 12131, et seq. ("ADA"). To obtain these benefits, Barnes was required to submit confidential medical information to the Access Office, including the fact that he had previously been treated for anxiety and agoraphobia. VSU policies require that the confidentiality of this information be protected.

8.

Once enrolled at VSU, Barnes began using VSU's counseling services by working with the counselor Leah McMillan at the VSU Counseling Center.

9.

Barnes, like all students who avail themselves of the services provided by the VSU Counseling Center, was required to sign an intake form during his first session at the center. The intake form functions as a contract between the VSU Counseling Center and the student and outlines the center's policies regarding, among other things, confidentiality. The intake policy guarantees students that:

[a]ll written and verbal information you give is confidential within the Center. Your counselor/therapist may consult with other Center staff only to ensure that you receive the best help possible. Information will not be released outside the Center without your written consent, except when required by law-i.e., reasonable suspicion of current child abuse or elder abuse, imminent danger to self or others.

10.

On March 22, 2007, VSU's student newspaper, the Spectator, ran a story regarding VSU's proposed plans to construct a large parking deck on campus.

11.

Barnes was concerned about the environmental implications of this plan, and particularly about the availability of more sustainable, less car-dependent, transportation planning options for the University and community. Consequently, Barnes posted a series of fliers around the VSU campus expressing his opposition to the planned parking deck during the three or four days following the publication of the Spectator article. The fliers noted the millions of dollars to be spent on the construction and listed other humanitarian and environmental uses to which those dollars could be put.

12.

Barnes also e-mailed his concerns to VSU President Ronald M. Zaccari, the student government association, the VSU Faculty Environmental Committee, and others on March 24, 2007.

13.

On or about March 26, 2007, Barnes was informed by

classmates involved with a campus environmental advocacy organization called Students Against Violating the Environment ("S.A.V.E.") that President Zaccari was upset with Barnes's speech activities and had contacted the group to express his displeasure, particularly with the fliers.

14.

Barnes took down the flyers to avoid causing problems for S.A.V.E., but continued his advocacy regarding the proposed parking garage. When Zaccari learned that Barnes was continuing his expressive activities, he summoned Barnes to his office for a personal meeting. Afterwards, upon concluding he had not convinced Barnes of the merits of the construction project, Zaccari actively looked for ways to expel Barnes from VSU. This included collecting confidential information on Barnes from the VSU Access Office and Counseling Center.

15.

Zaccari first investigated whether Barnes could be academically withdrawn, but learned that the student's grades would not justify such action. He suggested that the student's communications on the parking garage should be considered a personal threat, but was informed that no one in the Counseling Center agreed that Barnes represented

any kind of threat.

16.

Zaccari looked for ways to expel Barnes without using established disciplinary procedures or the VSU policy for mental health withdrawals, but was informed by university counsel that Barnes was entitled to due process, including a hearing, before any such expulsion could be imposed.

17.

Notwithstanding the advice he received from his staff, Zaccari decided to expel Barnes without notice or hearing. On May 7, 2007, Zaccari expelled Barnes from VSU via letter. Barnes was informed of his expulsion when he discovered a copy of the letter slipped under the door to his dorm room. The letter stated in part:

Dear Mr. Barnes:

As a result of recent activities directed towards me by you, included [sic], but not limited to the attached threatening document [(a satiric Facebook collage about the parking deck project)], you are considered to present a clear and present danger to this campus. Therefore, pursuant to Board of Regents' Policy 1902, you are hereby notified that you have been



administratively withdrawn from Valdosta State University effective May 7, 2007.

18.

The letter also informed Barnes that he would be reinstated at VSU after providing: (1) correspondence from a psychiatrist indicating that Barnes posed no danger to self or others; and (2) documentation from a "certified mental health professional" indicating that during his tenure at VSU, Barnes would receive ongoing therapy.

19.

Board of Regents Policy 1902 states that any student "who clearly obstructs, disrupts, or attempts to obstruct or disrupt" campus activities "shall be subject to disciplinary procedures, possibly resulting in dismissal" from VSU. This same policy is listed in the VSU student handbook under the title "Disorderly Assembly."

20.

At no time had Barnes ever obstructed, disrupted, or attempted to obstruct or disrupt any campus activities.

21.

VSU policies for student disciplinary procedures, including Board Policy 1902, are set forth in the VSU student handbook. The handbook declares that student

discipline has been delegated by the President to the Vice President for Student Affairs and the Dean of Students Office. These procedures include: (1) a "judicial committee" composed of either eleven VSU students or five faculty members and two students which will be assigned to hear a given case; (2) five days' prior notice in writing of the charges made against the student and the date, time and place of a hearing to be held regarding those charges; (3) the right to have an advisor accompany the student to the hearing; (4) the right to question any and all witnesses and to submit his or her own witnesses; (5) the right to open proceedings; and (6) the right to have the proceedings recorded. None of these requirements were followed by VSU when Barnes was expelled from the university.

22.

In a separate section of the student handbook, VSU provides for "mental health withdrawal." The procedure for such withdrawal includes: (1) a determination by a mental health professional (not an administrator) that a student may be of danger to himself or others; (2) recommendation by such a mental health professional that a hearing be held concerning the student; and (3) a hearing conducted by the

office of the Dean of Students, at which the student may present witnesses and evidence. VSU followed none of these policies when Barnes was expelled from the university.

23.

No provision exists in either the VSU student handbook or the Board's policies for a unilateral "administrative withdrawal."

24.

Within a day of receiving the expulsion notice, Barnes satisfied the requirements that Zaccari imposed for reinstatement. He provided: (1) correspondence from his personal psychiatrist indicating that Barnes posed no danger to self or others; and (2) documentation from Leah McMillan, his counselor at VSU, indicating that during his tenure at VSU, Barnes would receive ongoing therapy. VSU ignored these documents and refused to reinstate Barnes.

25.

On May 8, 2007, McMillan, in a letter to the Board of Regents and Zaccari confirmed her professional opinion that, like the opinion of Barnes's personal psychiatrist, she did not believe Barnes was a "threat, indirectly or directly to anyone on the VSU Campus (i.e. President, staff, faculty, students, others or self)." That same day,

Dr. Kevin Winders, Barnes's personal psychiatrist, submitted a similar letter, reiterating his view that Barnes posed no threat of violence to self or others. He noted, "I am surprised that this action was taken with a good report from me and no further evaluation to contradict my findings."

26.

On May 21, Barnes appealed his expulsion to the Board.

27.

On or about August 7 and 8, 2007, the Board heard Barnes's appeal and referred the matter to an Administrative Law Judge at the Office of State Administrative Hearings.

28.

On or about December 17, 2007, the Board moved in the administrative proceedings for a continuation of the scheduled hearings so that it could reevaluate Barnes's appeal in a closed executive session.

29.

On January 8, 2008, Barnes filed a complaint in the U.S. District Court for the Northern District of Georgia against the Board, Zaccari and others alleging violations

of his rights protected by the First and Fourteenth Amendments of the United States Constitution, as well as rights protected by the Americans With Disabilities Act, 42 U.S.C. §§ 12131 et seq., the Rehabilitation Act of 1973, 29 U.S.C. §§ 701 et seq., the Georgia Constitution, the Health Insurance Portability Accountability Act ("HIPAA"), Pub. L. 104-191, 110 Stat. 1936 (codified as amended in scattered sections of 42 U.S.C.) and a breach of contract under Georgia law.

30.

In the spring of 2008, Barnes enrolled at Kennesaw State University in Kennesaw, Georgia.

31.

On September 3, 2010, U.S. District Court Judge Charles Pannell granted Barnes's motion for summary judgment on his breach of contract and procedural due process claims.

32.

On October 1, 2010, Zaccari and the Board filed an interlocutory appeal to the United States Court of Appeals for the Eleventh Circuit, seeking review of the procedural due process claim on grounds that qualified immunity protected Zaccari from suit. The Board also asked the

court of appeals to exercise pendant jurisdiction over the breach of contract (i.e., state-law) claim, alleging that Georgia had not waived its sovereign immunity against suit in federal court.

33.

On February 7, 2012, the Eleventh Circuit found that because Georgia had not waived its Eleventh Amendment immunity against suit in state court, the district court lacked jurisdiction to decide Barnes's breach of contract claim against the Board. The Court of Appeals did not reach the merits of the contract claim or discuss the district court's finding of a contract breach. The Court reversed the district court's denial of the Board's motion for summary judgment on the breach of contract claim on jurisdictional grounds and remanded the case to the district court with instructions to dismiss the claim.

34.

The Eleventh Circuit affirmed the district court's holding with respect to Barnes's right to procedural process.

COUNT 1: BREACH OF CONTRACT

(Expulsion Without Notice or Hearing)

35.

Barnes realleges each fact set forth in paragraphs 1 through 34 of this complaint and incorporates them herein by reference.

36.

The Board's policies and provisions in the VSU student handbook and the contracts for student housing establish a binding agreement between the Board and Barnes.

37.

Under these contracts, the Board and VSU must follow the procedures they have established for student discipline and expulsion.

38.

The Board failed to follow these binding policies and procedures.

39.

By breaching these contracts, the Board caused Barnes to suffer the following special damages, which include, but are not limited to: (a) lost wages, (b) moving costs, and (c) increased cost of living between Valdosta and Kennesaw.

40.

By breaching these contracts, the Board caused Barnes to suffer general and compensatory (or consequential) damages, which include, but are not limited to: (a) loss of academic benefits of the classes he was unable to complete, (b) lost wages, (c) emotional harm and (d) medical bills.

41.

The Board's actions constitute breach of contract, and Barnes is entitled to compensatory and consequential damages in an amount to be determined by a jury.

COUNT 2: BREACH OF CONTRACT

(Disclosure of VSU Access Office and  
Counseling Center Records)

42.

Barnes realleges each fact set forth in paragraphs 1 through 34 of this complaint and incorporates them herein by reference.

43.

The policies regarding the confidentiality of student information kept by the VSU Access Office and the Counseling Center also constitute binding contractual commitments.



44.

Under these contracts, the Board and VSU must follow the procedures they have established for the retention of confidential student information.

45.

The Board and VSU failed to follow these binding policies and procedures.

46.

By breaching these contracts, the Board caused Barnes to suffer the following special damages, which include, but are not limited to: (a) lost wages, (b) moving costs, and (c) increased cost of living between Valdosta and Kennessaw.

47.

By breaching these contracts, the Board caused Barnes to suffer general and compensatory (or consequential) damages, which include, but are not limited to: (a) loss of academic benefits of the classes he was unable to complete, (b) lost wages, (c) emotional harm and (d) medical bills.

48.

The Board's actions constitute breach of contract, and

Barnes is entitled to compensatory and consequential damages in an amount to be determined by a jury.

ATTORNEY'S FEES

49.

Barnes realleges each fact set forth in paragraphs 1 through 34 of this complaint and incorporates them herein by reference.

50.

Barnes has incurred legal fees and costs in order to collect payment that is due as a result of the Board's bad faith.

51.

Barnes is entitled to receive an award of attorneys' fees and costs of litigation from the Board.

WHEREFORE, Barnes prays:

- (a) That Barnes be granted a trial by jury on all issues so triable;
- (b) That the Court award Barnes his reasonable costs and attorney's fees in bringing this action in an amount to be determined at trial; and

(c) That Barnes be granted such other and further relief as the Court deems just and proper.

Respectfully submitted,

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