

Appendix A

State of New York

Court of Appeals

*Decided and Entered on the
ninth day of February, 2023*

Present, Hon. Anthony Cannataro, *Acting Chief Judge,*
presiding.

Mo. No. 2022-813
Siyu Yang et al.,
Appellants,
v.
University of Rochester/Eastman School of
Music, et al.,
Respondents.

Appellants having appealed and moved for leave to
appeal to the Court of Appeals and ancillary relief in the
above cause;

Upon the papers filed and due deliberation, it is
ORDERED, on the Court's own motion, that the appeal

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is dismissed, without costs, upon the ground that the order appealed from does not finally determine the action within the meaning of the Constitution; and it is further

ORDERED, that the motion for leave to appeal is dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution; and it is further

ORDERED, that the motion for ancillary relief is dismissed upon the ground that this Court does not have jurisdiction to entertain it (see NY Const, art VI § 3).



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Clerk of the Court

**SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial
Department**

CA 21-01792

PRESENT: WHALEN, P.J., SMITH, CENTRA,
PERADOTTO, AND LINDLEY, JJ.

SIYU YANG AND LU YANG, PLAINTIFFS-
APPELLANTS,

V

UNIVERSITY OF ROCHESTER/EASTMAN SCHOOL
OF MUSIC,
SARAH C. MANGELSDORF, MATTHEW
ARDIZZONE,
JAMAL J. ROSSI AND MERCEDES R. FERNANDEZ,
DEFENDANTS-RESPONDENTS.

Appellants having moved for an order settling the
record on an appeal having been taken herein from an
order of the Supreme Court, Monroe County, entered
November 12, 2021, and for other relief,

Now, upon reading and filing the papers with respect
to the motion, and due deliberation having been had

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thereon,

It is hereby ORDERED that the motion insofar as it seeks an order settling or certifying the record on appeal is dismissed (see 22 NYCRR 1250.7 [g]; 1000.7 [b]), and

It is further ORDERED that the motion insofar as it seeks other relief is denied.

MEMORANDUM: Plaintiffs' remedy is a motion in Supreme Court to settle the record on appeal.

Entered: October 18, 2022

Ann Dillon Flynn
Clerk of the Court

**SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial
Department**

CA 21-01792

PRESENT: WHALEN, P.J., SMITH, CENTRA,
PERADOTTO, AND LINDLEY, JJ.

SIYU YANG AND LU YANG, PLAINTIFFS-
APPELLANTS,

V

UNIVERSITY OF ROCHESTER/EASTMAN SCHOOL
OF MUSIC,
SARAH C. MANGELSDORF, MATTHEW
ARDIZZONE,
JAMAL J. ROSSI AND MERCEDES R. FERNANDEZ,
DEFENDANTS-RESPONDENTS.

Appellants having moved for an extension of time to
perfect the appeal taken herein from an order of the
Supreme Court, Monroe County, entered November 12,
2021, and for other relief,

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Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is hereby ORDERED that the motion insofar as it seeks an extension of time to perfect is granted, the time to perfect the appeal is extended to October 3, 2022, and, in the event of failure to so perfect, the appeal is hereby dismissed without further order,

It is further ORDERED that the motion insofar as it seeks an order settling the record is dismissed (see 22 NYCRR 1250.7 [g];1000.7 [b]).

Entered: August 1, 2022

Ann Dillon Flynn
Clerk of the Court

**SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial
Department**

CA 21-01792

PRESENT: WHALEN, P.J., SMITH, CENTRA,
PERADOTTO, AND LINDLEY, JJ.

SIYU YANG AND LU YANG, PLAINTIFFS-
APPELLANTS,

V

UNIVERSITY OF ROCHESTER/EASTMAN SCHOOL
OF MUSIC,
SARAH C. MANGELSDORF, MATTHEW
ARDIZZONE,
JAMAL J. ROSSI AND MERCEDES R. FERNANDEZ,
DEFENDANTS-RESPONDENTS.

Appellants having moved for an order waiving this
Court's requirements with respect to certification of the
record on appeal pursuant to 22 NYCRR 1250.7 (g) and
1000.7 [b], in the appeal taken herein from an order of the
Supreme Court, Monroe County, entered November 12,

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2021.

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is hereby ORDERED that the motion is denied without prejudice to a motion in Supreme Court to settle the record on appeal (see Stewart v Soda, 239 AD2d 966 [4th Dept 1997]; 22 NYCRR 1250.7 [g] [3]; 1000.7 [b]).

Entered: June 13, 2022

Ann Dillon Flynn
Clerk of the Court

Appendix B

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NYSCEF DOC. NO. 68

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Index #: E2021005417

Date: 11/12/2021

YANG, SIYU

Time: 11:59:26 AM

Yang, Lu

University of Rochester/Eastman School of Music

Mangelsdorf, Sarah C

Ardizzone, Matthew

Rossi, Jamal J

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Fernandez, Mercedes R

Total Fees Paid: \$0.00

Employee: CW

State of New York

MONROE COUNTY CLERK'S OFFICE

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JAMIE ROMEO

MONROE COUNTY CLERK



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NYSCEF DOC. NO. 68

RECEIVED NYSCEF: 11/12/2021

**SUPREME COURT OF THE STATE OF NEW
YORK COUNTY OF MONROE**

**SIYU YANG,
LU YANG,**

Plaintiffs,

**Index No. E2021005417
DECISION AND ORDER**

**UNIVERSITY OF ROCHESTER/EASTMAN
SCHOOL OF MUSIC, SARAH C.
MANGELSDORF, MATTHEW ARDIZZONE,
JAMAL J. ROSSI, MERCEDES R. FERNANDEZ,**

Defendants

Hon. Ann Marie Taddeo, J.S.C.,

**Upon Defendants' Motion for Summary Judgment, an
Affirmation in Support and a Reply Affirmation from
Lauren H. Harshbarger, Esq., an Affidavit in Support
from Matthew Ardizzone, an Affidavit in Support from**

Jamal Rossi, an Affidavit in Support from Sarah Mangelsdorf, and a Memorandum of Law in Support from Ms. Harshbarger and Mara D. Afzali, Esq.; and upon "Rebuttal Affidavits" from Plaintiffs Siyu Yang and Lu Yang; and upon consideration of all exhibits attached to the Parties' papers, the Court renders the following Decision:

On or about March 31, 2020, Pro se Plaintiff Siyu Yang (SY) was accepted as a piano student at the University of Rochester's Eastman School of Music (Eastman); Co-Plaintiff Lu Yang (LY) is SY's father.

On or about July 6, 2020, SY received a letter from Eastman rescinding their offer of admission. It is not contested that Eastman based their decision as a result of social media postings made by SY. Eastman claims that these posts were racially biased; SY disputes this interpretation. Plaintiffs believe that as a result of LY's

involvement in the democracy movement in China, he and his family have become targets of the Chinese government. Plaintiffs further believe that the University and Eastman has a history of "cozying up" to China in an effort to entice more Chinese students to enroll at Eastman.

Plaintiffs claim that SY's admission was rescinded for reasons that violate the University's code of conduct. In brief, they assert that the University has been "brainwashed" by the Chinese Communist Party (CCP) into doing their political bidding. Plaintiffs seek reinstatement of SY at Eastman as well as punitive damages. Defendants refute Plaintiffs' claims and state that SY's offer was rescinded only after SY posted a "racially offensive essay" on social media. Defendants claim that SY was given an opportunity to be heard before a final decision was reached.

The Court questions whether Plaintiff Lu Yang has standing to proceed in this case, but as Defendant has not raised the issue of standing, the Court will not rule on that issue at this time.

Defendants now move for Summary Judgment.

Defendants argue that Plaintiffs' claims are defective, specifically as follows:

1. Defamation. Defendants deny that any allegedly defamatory statements were ever published by them. Defendants further assert that Plaintiffs have utterly failed to establish any proof to the contrary. Defendants maintain that even if Plaintiffs disagree with the University's determination that the post was racist, it is well-established that denoting another's statement as "racist" is an opinion, which cannot form the basis of a defamation action. Defendants further argue that as Plaintiffs do not specify what was

supposedly said, by whom, or to whom, they have failed to establish their *prima facie* case of Defamation.

2. Breach of Contract. Defendants argue that a plenary action is not available in circumstances such as the ones at bar. Instead, a special proceeding pursuant to CPLR Article 78 is the exclusive procedural vehicle to challenge a University's failure to follow policy or to challenge the rationality of a university's decision. Accordingly, Defendants argue that Plaintiffs' cause of action claiming Breach of Contract cause of action must be dismissed.

Further, Plaintiffs' Affidavits rebutting the Affidavits of Defendants Ardizzone, Rossi and Mangeldorf to fail to address Defendants' arguments. The Court finds that rather than distinguish Defendants' various arguments, Plaintiffs offer conclusory allegations, suspicions and unsupported theories of collusion between Defendants and the CCP.

It is well established that to defeat a motion for summary judgment, the opposing party must "lay bare his evidence establishing the existence of genuine triable issue of fact." *Spencer v. Christ Church Day Care Ctr.Inc.*, 280 AD2d 817,818(3d Dept 2001).

Affidavits that either fail to rebut the defendant's evidence, or consist of conclusory statements or unsubstantiated allegations are insufficient to defeat a summary judgment motion. Accordingly, Plaintiffs have failed to meet their burden.

3. The University's Code of Conduct. Plaintiffs argue that by allegedly abridging SY's right to free expression, the University violated Section 4 of the section titled "Student Policy Against Discrimination and Harassment" its own "Standards of Student Conduct" (Policy). The Court agrees with Defendants that Plaintiffs fail to rebut Defendants' assertion that the Policy did not apply to SY

since, even though he was an admitted to the university, he was not yet enrolled. The Court has examined the language of the Policy and agrees that it clearly applies only to "students" which the policy defines as "any person who is or was in attendance during an academic period in which misconduct occurred ... "Plaintiffs have not offered evidence to dispute this definition of "student" under the Policy. For this reason, the Court finds that as SY was not yet enrolled or "in attendance" at the University or Eastman, the dictates of the Policy did not apply to him.

Notwithstanding the above, it is not disputed that, before revoking SY's offer of admission, the University convened an advisory group consisting of: Eastman Associate Dean of Admissions and Enrollment Management, Matthew Ardizzone; Eastman Senior Associate Dean for Academic and Student Affairs, Donna Brink Fox; Eastman Associate Dean of Academic &

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International Affairs ,John Hain; Director of the Paul J.Burgett Intercultural Center, Jessica Guzman-Rea; Dean for Diversity of the School of Arts, Sciences and Engineering, Beth Olivares; Dean of Admissions, Financial Aid, and Enrollment Management for the School of Arts, Science,& Engineering, Robert Alexander; and School of Arts, Science,& Engineering Dean of Students, Matthew Burns.

On June 12, 2020, the above committee invited SY to respond to the University's concerns that SY's social media post titled "The Shock of Freedom" was racially biased. SY responded that he did not believe his posts to be racially biased. On June 15, 2020,SY was informed that his response did not specifically address those statements that the University cited as racially offensive, and invited him to submit a follow-up. On June 16, 2020,LY responded for his son, stating that the family

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had been persecuted in China, provided his personal opinions on the death of George Floyd, and stated that SY's posts were not racist. LY again suggested a conspiracy emanating from the CCP. On or about June 17, 2020, the University unanimously recommended to rescind SY's offer of admission

On or about July 9, 2020, SY submitted a letter of appeal requesting a formal hearing. SY was informed that while Eastman did not have a formal appeal process for rescinded admissions, they were willing to discuss the matter with SY and LY via telephone or Zoom. A telephonic meeting was conducted on July 16, 2020. At the meeting, LY repeated his belief that SY's posts were not racist and that he had only been quoting statements that other people had made. LY also opined that the CCP were somehow to blame for his son's situation.

The Court finds that while neither the University or

Eastman were required by the Policy to go through the above steps, they offered both SY and LY numerous opportunities to explain and clarify the opinions SY set forth in his posts, but Plaintiff's failed to do so, preferring instead to stick by their argument that the CCP was somehow responsible for SY's situation. The evidence supports the view that due to SY's failure to properly address the University and Eastman's concerns, the Defendants were left with no choice but to confirm the committee's recommendation and rescind SY's offer of admission.

Accordingly, it is

ORDERED, that Defendants' motion for Summary Judgment is granted.