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State of New York Court of Appeals
Decided and Entered on the
eighteenth day of April, 2024

Present, Hon. Rowan D. Wilson, Chief Judge, presiding.

SSD &
Siyu Yang et al.,
Appellants,

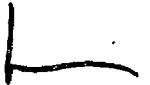
v.

University of Rochester/Eastman School of
Music, et al.,

Respondents.

Appellants having appealed to the Court of

Appeals in the above title; Upon the papers filed
and due deliberation, it is ORDERED, that the
appeal is dismissed without costs, by the Court
sua sponte, upon the ground that the order
appealed from does not finally determine the
action within the meaning of the Constitution.



Lisa LeCours
Clerk of the Court

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State of New York
Court of Appeals

Lisa Le Cours Clerk's Office
Chief Clerk and 20 Eagle Street
Legal Counsel to the Court Albany, New York 12207
-1095

Siyu Yang , Lu Yang 320 Southwood Circle Syosset
,NY 11791

December 22,2023

Re: Yang v. University of Rochester APL-2023-00209

Dear Siyu Yang and Lu yang:

This letter acknowledges receipt of a copy of your notice of appeal dated . Please forward an original and a copy of a preliminary appeal statement, each with all required attachments, plus proof of service of one copy on opposing parties , as required by section 500.9 of the Court's Rules of Practice. You may direct questions to the undersigned at 518-455-7702 or Edward Ohanian at 518-455-7701 .

Very truly yours,

Margaret N. Wood

Margaret N. Wood
Assistant Deputy Clerk

MNW/co

cc: Laura H. Harshbarger,
Esq.

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NYSCEF DOC. NO. 108 RECEIVED NYSCEF: 09/25/2023

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

CA 21-01792

PRESENT: WHALEN, P.J., SMITH,
LINDLEY, CURRAN, AND BANNISTER,
JJ.

SIYU YANG AND LU
YANG, PLAINTIFFS-
APPELLANTS,
v.

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

RESPONDENTS.

Appellants having moved to vacate the
dismissal of the appeal (denominated motion
to allow the appeal to "continue as
normal") taken herein from an order of the
Supreme Court, Monroe County, entered

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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 thereon, It is hereby
ORDERED that the motion is granted on the
condition that the appeal is perfected on or
before November 24, 2023, and It is further
ORDERED that the motion insofar as it
seeks other
relief is denied.

Entered: September 25, 2023

Ann Dillon Flynn

Clerk of the Court

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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

V.

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

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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. Ine.*, 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

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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 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

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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 & 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

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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 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

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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

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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.

Dated: November 12,2021

Rochester, New York /s/ Ann Mafie Taddeo
Hon. Ann Mafie Taddeo , J.S.C.