



Rizzo v. St. Lawrence University

24 A.D.3d 983 (2005) | Cited 0 times | New York Supreme Court | December 15, 2005

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MEMORANDUM AND ORDER

Calendar Date: October 17, 2005

Before: Cardona, P.J., Mercure, Carpinello, Mugglin and Lahtinen, JJ.

Appeal from an order of the Supreme Court (Sise, J.), entered August 20, 2004 in Fulton County, which, inter alia, denied plaintiff's motion to vacate a prior order dismissing his complaint.

We previously affirmed both Supreme Court's dismissal of plaintiff's complaint, which alleged that defendant breached an implied contract to award him a valuable degree, and the denial of his motion to renew (305 AD2d 706 [2003], lv denied 100 NY2d 509 [2003]). Thereafter, plaintiff moved pursuant to CPLR 5015 (a) (3) to vacate Supreme Court's orders on the ground of fraud. The motion was denied and plaintiff now appeals, asserting that defendant committed fraud by issuing him a Master's degree despite his graduation with a grade point average of only 2.791. Plaintiff claims that state law and defendant's policies require a 3.0 grade point average for issuance of that degree. Given plaintiff's delay of more than two years in making his motion despite awareness of all relevant facts surrounding the issue, we conclude that he failed to seek vacatur within a reasonable time (see *Matter of DiFiore v Scott*, 2 AD3d 1417, 1418 [2003]; *Weimer v Weimer*, 281 AD2d 989, 989 [2001]; *City of Albany Indus. Dev. Agency v Garg*, 250 AD2d 991, 993 [1998]). In any event, plaintiff's claim is unsubstantiated by the evidence and patently meritless. Thus, Supreme Court did not abuse its discretion in denying plaintiff's motion (see *Clapp v LeBoeuf, Lamb, Leiby & MacRae*, 286 AD2d 643, 644 [2001]; see also *Miller v Lanzisera*, 273 AD2d 866, 868 [2000], appeal dismissed 95 NY2d 887 [2000]).

Cardona, P.J., Mercure, Carpinello, Mugglin and Lahtinen, JJ., concur.

ORDERED that the order is affirmed, without costs.

