

STATE OF MICHIGAN
COURT OF APPEALS

WAHEED HAIDER,

Plaintiff-Appellant,

v

MICHIGAN TECHNOLOGICAL UNIVERSITY,
SUNG M. LEE, BARRY A. KUNZ, JON A.
SOPER, ASKOK K. AMBARDAR, PAUL H.
LEWIS, ESTHER T. OSOSANYA, RALPH S.
HORWATH, WARREN F. PERGER, and MARTHA
E. SLOAN,

Defendants-Appellees.

UNPUBLISHED

June 13, 1997

No. 183350

Court of Claims

LC No. 94-015482-CM

Before: Jansen, P.J., and Reilly and E. Sosnick*, JJ.

PER CURIAM.

Plaintiff appeals as of right from a January 30, 1995 order of the Court of Claims granting defendants summary disposition pursuant to MCR 2.116(C)(4) (court lacks jurisdiction over the subject matter) as to the individual defendants, and MCR 2.116(C)(8) (failure to state a claim upon which relief can be granted) as to Michigan Technological University (MTU). We affirm.

This is a breach of contract action. Plaintiff, a graduate student in electrical engineering at MTU, alleged that defendants breached a contract to confer a master's degree when they dismissed him from the graduate program. At a meeting held on August 1, 1991, plaintiff's thesis committee determined that plaintiff had not made satisfactory progress in his thesis research. Jon A. Soper, the department head of electrical engineering, recommended that plaintiff be dismissed from the program. On August 5, 1991, Sung M. Lee notified plaintiff that he was dismissed from the graduate school due to unsatisfactory progress toward his degree.

* Circuit judge, sitting on the Court of Appeals by assignment.

On July 27, 1994, plaintiff filed his complaint in the Court of Claims¹. He alleged that defendants breached a contract to confer a degree upon him. On December 6, 1994, defendants filed a motion for summary disposition asserting that (1) the Court of Claims lacked jurisdiction over plaintiff's claims against the individual defendants because they were not state officials; (2) plaintiff's claims were barred by collateral estoppel because the underlying factual issues were determined in a prior federal court action; (3) plaintiff failed to state a claim for breach of contract because his enrollment in graduate school did not create a binding contract; and (4) plaintiff's claims were barred because he falsified information in his application for admission to graduate school. The Court of Claims ruled that it did not have jurisdiction over the claims against the individual defendants because they were not state officials, and that plaintiff failed to plead facts in support of a claim premised on an implied contract, thus dismissing the claim against MTU.

On appeal, plaintiff first claims that the Court of Claims erred in granting summary disposition in favor of the individual defendants on the ground that it did not have jurisdiction over them because they were not state officials. We review the motion for summary disposition de novo. *Bitar v Wakim*, 211 Mich App 617, 619; 536 NW2d 583 (1995), lv gtd 453 Mich 925 (1996). When reviewing a motion for summary disposition under MCR 2.116(C)(4), this Court must determine whether the pleadings demonstrate that the defendants were entitled to judgment as a matter of law, or whether the documentary evidence submitted by the parties shows that there was no genuine issue of material fact. *Id.*, pp 619-620.

The Court of Claims has exclusive jurisdiction to hear claims against the state and any of its departments, commissions, boards, agencies, institutions, or arms. MCL 600.6419; MSA 27A.6419. The jurisdiction of the Court of Claims extends to suits against state officers when the officer was acting in an official capacity when the acts at issue were committed. *Steele v Dep't of Corrections*, 215 Mich App 710, 715; 546 NW2d 725 (1996). State officers are the executive officers of state departments or commissions. *Id.*, pp 715-716. In determining whether an individual qualifies as a state officer, the primary focus is on the degree of discretion and independence associated with the position. *Id.*, p 716.

We find that the Court of Claims correctly concluded that the individual defendants were not state officers for jurisdictional purposes. This Court has held that the Secretary of State, Attorney General, and Insurance Commissioner are state officials for purposes of the Court of Claims' jurisdiction. *Burnett v Moore*, 111 Mich App 646, 648; 314 NW2d 458 (1981). Likewise, the director of a state mental health facility is a state official, *Hamilton v Reynolds*, 129 Mich App 375, 379; 341 NW2d 152 (1983), as is the director of the Department of Corrections and the warden of a prison. *Carlton v Dep't of Corrections*, 215 Mich App 490, 501; 546 NW2d 671 (1996). On the other hand, the supervisor of a renovation project at a state prison facility is not a state official, *Steele, supra*, p 716, prison guards are not state officials, *Lowery v Dep't of Corrections*, 146 Mich App 342, 349; 380 NW2d 99 (1985); a state police trooper is not a state official, *Burnett, supra*, p 649, the supervisor of a prison camp is not a state official, *Bandfield v Wood*, 104 Mich App 279, 282; 304 NW2d 551 (1981), and lifeguards at a state operated recreation facility are not state officials, *Feliciano v Dep't of Natural Resources*, 97 Mich App 101, 109-110; 293 NW2d 732 (1980).

Defendants Ososanya, Ambardar, Lewis, Horwath, Perger, and Sloan were all professors at MTU. Because college professors are not executive officers of a state department or commission, they are not state officers subject to the jurisdiction of the Court of Claims. See *Steele, supra*, p 716. Kunz was the Dean of the College of Electrical Engineering, Soper was the department head of electrical engineering, and Lee was the Vice Provost and Dean of the graduate school. Although these are administrative posts within the university, they are not equivalent to executive officers of a state department or commission. Rather, the board of control and the president are the positions authorized to administer the university. Const 1963, art 8, § 6; MCL 390.352; MSA 15.1312; MCL 390.356; MSA 15.1316.

The professors and the three other individual defendants holding administrative positions are not state officers for purposes of jurisdiction of the Court of Claims because they are not executive officers of a state department or commission. The fact that they may have had a considerable amount of discretion in their roles is not dispositive. Because the individual defendants are not executive officers, the Court of Claims did not have subject-matter jurisdiction over them. The Court of Claims properly granted summary disposition in favor of the individual defendants pursuant to MCR 2.116(C)(4).

Next, plaintiff argues that the Court of Claims erred when it granted summary disposition in favor of MTU with respect to the breach of contract claim. The Court of Claims ruled that plaintiff had failed to plead a claim for breach of contract and granted summary disposition under MCR 2.116(C)(8). A motion brought under MCR 2.116(C)(8) tests the legal sufficiency of the pleadings alone and determines whether the opposing party has properly alleged a prima facie case. *Radtke v Everett*, 442 Mich 368, 373-374; 501 NW2d 155 (1993). The well-pleaded facts are accepted as true and only if the allegations fail to state a legal claim will summary disposition under MCR 2.116(C)(8) be valid. *Id.*

Plaintiff alleged in this complaint that MTU breached its contract when it dismissed him from the graduate studies program. The Court of Claims ruled that plaintiff had failed to allege sufficient facts in the complaint to establish an implied contract and that the documents he attached to his complaint did not meet the legal criteria of a written contract.

The essential elements of a contract are: parties competent to contract, a proper subject matter, legal consideration, mutuality of agreement, and mutuality of obligation. *Mallory v Detroit*, 181 Mich App 121, 127; 449 NW2d 115 (1989). An implied contract must also satisfy the elements of mutual assent and consideration. *Id.* After a careful review of plaintiff's complaint, we must agree with the Court of Claims that plaintiff failed to allege the elements of an implied contract. In his complaint, plaintiff alleges that the defendants made a contract with him by admitting him to the graduate school, and that, if plaintiff completed the degree requirements, then a degree would be awarded. It is plaintiff's contention that the fact that defendants dismissed him from the graduate program constitutes a breach of the contract.

Plaintiff's complaint simply does not state a claim for which relief can be granted. Plaintiff failed to allege sufficient facts to show that there was an implied contract in this case that defendants breached.

Further, we are unaware of any contractual claim that plaintiff may have to have a degree conferred upon him. See *In re Johnston*, 365 Mich 509, 510; 114 NW2d 255 (1962) (the plaintiff, a medical student, had no claim that he was deprived of a contractual right to have a medical degree conferred upon him where he had failed his oral examinations). The mere fact that defendants dismissed plaintiff from the graduate studies program does not constitute a breach of contract. Plaintiff has failed to allege the existence of an implied contract and has, therefore, failed to state a claim upon which relief can be granted.

Accordingly, the Court of Claims did not err in granting MTU summary disposition pursuant to MCR 2.116(C)(8).

Affirmed.

/s/ Kathleen Jansen
/s/ Maureen Pulte Reilly
/s/ Edward Sosnick

¹ We note that plaintiff also filed a complaint in the federal district court asserting claims under 42 USC 1983. On June 29, 1994, the federal district court dismissed all of plaintiff's claims except for his claim of a violation of procedural due process. The district court later granted summary judgment in favor of defendants regarding plaintiff's claim for violation of procedural due process.