

STATE OF MICHIGAN
COURT OF APPEALS

RENEE JULIENNE JUBERT,

Plaintiff-Appellant/Cross Appellee,

v

CENTRAL MICHIGAN UNIVERSITY,

Defendant-Appellee/Cross
Appellant.

UNPUBLISHED

February 7, 2003

No. 228850

Kent Circuit Court

LC No. 99-007350-CZ

Before: Owens, P.J., and Murphy and Cavanagh, JJ.

PER CURIAM.

Plaintiff appeals as of right the summary dismissal of her discrimination claims premised on the Persons With Disabilities Civil Rights Act (PWDCRA), MCL 37.1101 *et seq.*, and the Elliott-Larsen Civil Rights Act (ELCRA), MCL 37.2101 *et seq.* We reverse and remand.

On appeal, plaintiff argues that the trial court erred in dismissing her claims on collateral estoppel grounds, MCR 2.116(C)(7), after holding that the ad hoc appeal proceeding that was conducted by defendant in regard to plaintiff's dematriculation appeal constituted a binding arbitration. We agree. This Court reviews the grant or denial of a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

Arbitration is a matter of contract. *Amtower v William C Roney & Co (On Remand)*, 232 Mich App 226, 234; 590 NW2d 580 (1998). Therefore, "[t]he first inquiry into the arbitrability of a dispute is to determine whether an arbitration agreement has been reached by the parties." *Madison Dist Public Schools v Myers*, 247 Mich App 583, 590-591; 637 NW2d 526 (2001), quoting *Horn v Cooke*, 118 Mich App 740, 744-745, 746; 325 NW2d 558 (1982). In order for parties to be bound by an arbitration agreement, such agreement must exist and must constitute a valid, binding contract. See *Heurtebise v Reliable Business Computers, Inc*, 452 Mich 405, 413; 550 NW2d 243 (1996). Whether such agreement exists is governed by legal principles applicable to the interpretation and construction of contracts, including the requirement of mutual assent—a meeting of the minds on all essential terms. See *Columbia Associates, LP v Dep't of Treasury*, 250 Mich App 656, 668; 649 NW2d 760 (2002); *Kamalath v Mercy Memorial Hosp Corp*, 194 Mich App 543, 548-549; 487 NW2d 499 (1992).

In this case, the trial court apparently concluded that defendant and plaintiff entered into an arbitration contract because plaintiff submitted a letter of appeal in response to defendant's correspondence notifying her that she was being removed from a graduate program of study. However, neither plaintiff's letter nor defendant's decision to conduct an appeal hearing were sufficient to establish that the parties entered into a valid, binding agreement to arbitrate any and all claims regarding plaintiff's dematriculation. There simply was no "offer"¹ to enter into an arbitration contract. See *Pakideh v Franklin Commercial Mortgage Group, Inc*, 213 Mich App 636, 640; 540 NW2d 777 (1995). As indicated by defendant's correspondence to plaintiff, plaintiff did not have a right to appeal the dematriculation decision ("[a]lthough we do not normally allow appeals of dematriculation decisions . . . "). She was, therefore, without bargaining power to make such an offer nor did her request evidence the "willingness to enter into a bargain." See *Eerdmans v Maki*, 226 Mich App 360, 364; 573 NW2d 329 (1997). Further, defendant's decision to conduct a hearing was unilateral as evidenced by its letter which stated "we have decided to conduct a hearing" and, likewise, did not evidence the "willingness to enter into a bargain."

Further, as with any contract, an arbitration agreement is the product of informed understanding; therefore, there must be a meeting of the minds on the essential terms. See *Kamalath, supra* at 548. "No contract to arbitrate can arise except upon the expressed mutual assent of the parties. A party cannot be required to arbitrate an issue he has not agreed to submit to arbitration." *Horn, supra* at 744 (citations omitted.) Here, there is no indication in the record below that plaintiff was required to or agreed to submit any and all of her claims, including claims of discrimination, to arbitration or that such arbitration would be her exclusive remedy. Further, the policy that governed the appeal, "Ad Hoc Procedures for Handling Appeal of Dematriculation," did not put plaintiff on notice that by submitting to defendant's appeal hearing she was conclusively waiving her right to litigate her discrimination claims in a judicial forum. See *F J Siller & Co v City of Hart*, 400 Mich 578, 581; 255 NW2d 347 (1977). In sum, the trial court erred in summarily dismissing plaintiff's claims on collateral estoppel grounds because the appeal hearing did not constitute a binding arbitration.

On cross-appeal, defendant argues that the trial court erred in holding that the appeal hearing did not constitute an administrative hearing entitled to preclusive effect in a subsequent judicial proceeding. We disagree.

Defendant claims that it is entitled, as an institution of higher education pursuant to Const 1963, art 8, § 6, MCL 390.551, and MCL 390.554, to be considered an administrative agency and to benefit from Const 1963, art 6, § 28, which provides:

All final decisions, findings, rulings and order of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law.

¹ An offer is defined as "the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it." *Eerdmans v Maki*, 226 Mich App 360, 364; 573 NW2d 329 (1997), quoting Restatement Contracts, 2d, § 24.

However, defendant fails to cite any authority in support of its contention that it is an administrative agency within the contemplation of Const 1963, art 6, § 28. Defendant clearly is not an administrative agency that is judicial or quasi-judicial in nature—it is an educational institution.

Defendant relies primarily on *Maitland v Wayne State Univ*, 76 Mich App 631; 257 NW2d 195 (1977) in support of its position that the hearing held with regard to plaintiff's dematriculation should be accorded preclusive effect. However, defendant's reliance is misplaced because that case does not support defendant's contention that it is an administrative agency within the contemplation of Const 1963, art 6, § 28 or that its decisions are entitled to preclusive effect in a judicial forum. In fact, this Court affirmed the trial court's holding that the defendant's decision to dematriculate the plaintiff was arbitrary. *Maitland, supra* at 638-639. However, this Court held that the proper remedy would be to refer the matter back to the academic body for a proper academic hearing on the matter in light of the deference to be accorded to an educational institution's academic decisions regarding a student's qualifications. *Id.* at 639-640. The present case, however, does not involve an issue of judicial intervention into the academic affairs of defendant; rather, the issue here is whether the ad hoc appeal panel decision should be given preclusive effect with regard to plaintiff's discrimination claims filed in a judicial forum pursuant to her constitutional and statutory rights.

Similarly, defendant's reliance on *Nummer v Dep't of Treasury*, 448 Mich 534; 533 NW2d 250 (1995), is also misplaced. In that case the issue was "whether a formal and final decision by the Civil Service Commission rejecting a discrimination claim precludes relitigation of that issue in a subsequently filed action in circuit court." *Id.* at 539. Our Supreme Court held that collateral estoppel barred such relitigation. *Id.* However, it is undisputed that the Civil Service Commission is an administrative agency that has been specifically granted quasi-judicial powers. See *Viculin v Dep't of Civil Service*, 386 Mich 375, 385-386; 192 NW2d 449 (1971). Defendant is not an administrative agency with quasi-judicial powers. As an educational institution, defendant is entitled to deference with regard to its academic decisions. However, defendant has failed to establish that such deference translates into plenary authority regarding any and all disputes that may arise in the course of a student's matriculation. Accordingly, the trial court properly rejected defendant's arguments that it was an administrative agency under Const 1963, art 6, § 28 and that its decision on plaintiff's claims was entitled to preclusive effect in a subsequent judicial proceeding.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Donald S. Owens
/s/ William B. Murphy
/s/ Mark J. Cavanagh