

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

PRESENT: HON. KATHLEEN WATERMAN-MARSHALL PART 31

Justice

-----X

KHYMANI JAMES

Plaintiff,

- v -

COLUMBIA UNIVERSITY,

Defendant.

-----X

INDEX NO. 655038/2024

MOTION DATE 12/04/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, defendants’ motion for an order, pursuant to CPLR 3211(a)(1) and (7), is granted and the complaint is dismissed.

Background

This action arises from certain disciplinary actions by defendant Columbia University (“Columbia”), including Columbia’s decision to place plaintiff Khymani James (“James”), a third-year undergraduate student who identifies as a black, Caribbean-American, on a one-year suspension. Prior to the suspension, James was expected to graduate in May 2025.

James was studying abroad in London during the fall semester of 2023 when they began posting social media content in support of Palestine. According to James, they subsequently received berating, insulting, and physically threatening social media messages as a result thereof (NYSCEF Doc. No. 24). In an alleged effort to dissuade the individuals behind these messages from engaging with James or causing them any physical harm, James posted public messages including one stating:

Zionists in my dm wanting to meet up and fight lol. I don’t fight to injure or for there to be a “winner” / “loser”. I fight to k***[.] See yall in New York [] January 2024 [].

(Defendant’s Affirmation in Support, NYSCEF Doc. No. 10 ¶ 3).

In response to alleged complaints regarding James’ posts, Columbia’s Center for Student Success and Intervention (“CSSI”), the office responsible for administering academic and behavioral discipline, scheduled a virtual meeting with James on January 9, 2024. Without Columbia’s knowledge or consent, James livestreamed the CSSI meeting, at which James compared Zionists to Nazis and stated, *inter alia*, that “the world is better without them” (*id.* ¶ 9;

Plaintiff's Affirmation in Opposition, NYSCEF Doc. No. 24 ¶ 4). After the meeting with CSSI, James continued the livestream and told their online audience to "be grateful" that he was not "murdering Zionists" (Defendant's Affirmation in Support, NYSCEF Doc. No. 10 ¶ 12).

CSSI's policies and procedures prohibit: any unauthorized copying or distribution of any Columbia record, which includes audio or video recording or streaming; and any student from engaging in conduct that is inconsistent with Columbia's Non-Discrimination Statement and Policy (NYSCEF Doc. No. 13). Specifically, CSSI's policies state:

The installation, use, and/or threatening the use of any device for listening to, observing, photographing, recording, amplifying, transmitting, or broadcasting sounds or events in any place where the individual(s) involved has a reasonable expectation of being free from unwanted surveillance, eavesdropping, recording, or observation, without the consent of all persons involved, is prohibited.

(*id.*).

In March 2024, CSSI notified James that they may have violated Columbia's policies by: (1) livestreaming the January 9 meeting with CSSI, and (2) using language denigrating or showing hostility or aversion toward members of a protected class during the meeting. Following a disciplinary hearing, CSSI determined that James engaged in unauthorized surveillance/ photography and copying and/or distribution in violation of CSSI's policies and procedures, and violated Columbia's non-discrimination policy. Consequently, CSSI placed James on disciplinary probation through and including September 3, 2024; and advised that additional violations could result in more disciplinary consequences, but James' good academic standing would be restored if no further violations occurred during the probation period (NYSCEF Doc. No. 15). The probation did not prohibit James from continuing their academic studies at Columbia (*id.*).

On or about April 18, 2024, Columbia students set up an encampment on Columbia's Morningside Heights campus. Days later, while James and other students were protesting inside Columbia's gates, James contends that several Columbia students approached the encampment carrying an Israeli flag and accosted several other students participating in the protest. According to James, a shouting match ensued but the students carrying the flag subsequently walked away. James admits that they took a picture of such students and posted a message on social media stating: "Zionists just attempted to harass us and bring their terrorist flag over. We told them to get the hell out!" (the "April 20, 2024 Social Media Post") (Plaintiff's Affirmation in Opposition, NYSCEF Doc. No. 24 ¶ 9).

On April 21, 2024, James participated and encouraged students to form a "human chain" after several other students allegedly physically attempted to enter the encampment while recording others without their consent and despite requests that such students cease recording. James admits that they announced to the entire encampment that "Zionists have entered the encampment," and asked that students link arms to prevent the students from getting further into

the encampment (Plaintiff's Affirmation in Opposition, NYSCEF Doc. No. 24 ¶ 11). James asserts that this was merely a "non-violent safety measure" not intended to threaten, cause harm to, or prevent these students from leaving as there was sufficient space behind them to retreat (*id.*).

On April 26, 2024, CSSI placed James on immediate interim suspension for "disruptive behavior by participating in an unapproved encampment on the West Lawn", engaging "in behavior that was threatening and" making "discriminatory remarks about other students during this unapproved protest" (NYSCEF Doc. No. 17). The interim suspension restricted James from all Columbia campuses, facilities, and properties, and prohibited James from participating in any Columbia classes or exams in-person or remotely or submitting assignments, as well as from any academic or extracurricular activities.

On April 26, 2024, Columbia leaders issued the following statement:

The antisemitism being expressed by some individuals is intolerable and the safety situation has become concerning, particularly with the involvement of individuals not associated with Columbia.

Chants, signs, taunts, and social media posts from our own students that mock and threaten to "kill" Jewish people are totally unacceptable, and Columbia students who are involved in such incidents will be held accountable. We can report that one individual whose vile videos have surfaced in recent days is now banned from campus.

(NYSCEF Doc. No. 21).

CSSI held a hearing in July 2024, and determined that James engaged in disruptive behavior and violated Columbia's non-discrimination policy based upon the April 20, 2024 Social Media Post and the April 21, 2024 human chain incident. On August 7, 2024, CSSI suspended James from Columbia through September 1, 2025, since James was on probation at the time of the violations (NYSCEF Doc. No. 18). CSSI's notice to James stated that they would be eligible to return to Columbia in the Fall 2025 semester. James appealed CSSI's decision, but the suspension was upheld.

The Complaint

James commenced this action against Columbia to recover alleged damages resulting from his suspension. The complaint alleges a "*Tedeschi* rights" claim (first cause of action); discrimination under New York Human Rights Law § 291 (second cause of action); discrimination under New York City Admin. Code § 8-107(4) (third cause of action); and seeks a declaratory judgment "as to the respective rights, responsibilities and liabilities of the parties" (fourth cause of action).

The complaint states that Columbia violated James' rights by: claiming to have jurisdiction over James' private, off campus speech; charging and suspending James for matters that had already been decided – namely, their speech during the January 9 livestream; and

making public statements allegedly in response to external influence and media attention. The complaint also alleges that James should have received a hearing before Columbia's Judicial Board, which would have treated them more fairly, rather than CSSI; and any disclosure of information of James to the U.S. House of Representatives Committee on Education and the Workforce by Columbia would violate their rights. Additionally, James alleges that Columbia discriminated against them based upon their race, support for the Palestinian people, and not being a Jewish Zionist.

I. Tedeschi Rights

The complaint cites to *Tedeschi v Wagner College*, 49 NY2d 652 (1980) for the proposition that “a private university is held responsible to strictly observe and grant the procedural and substantive rights it promises its faculty in its manuals and codes” (NYSCEF Doc. No. 1 ¶ 131). According to the complaint, Columbia: (1) “has an implied obligation of good faith and fair dealing in its relations with James,” (2) “promises its students due process, equal protection and academic freedom in its Student Manual, as well as the confidentiality of their records, including disciplinary files,” and (3) “undertakes not to retaliate against students for their First Amendment protected personal opinions stated in academic or nonacademic environments” (*id.* ¶ 132-34). The complaint further alleges that:

Columbia's violation of James' Tedeschi Rights include the interim suspension; speech about him by its President and others; subjecting him to the unfair CSI process; succumbing to outside pressure to sanction him; characterization of speech as antisemitic that was not; the “double jeopardy” of sanctioning him a second time in a matter which had already been resolved; issuing a sanction of suspension for his reasonable, peaceful self-help in forming the human chain; and disclosure of any information about him to the Committee.

Instead of protecting James, as his Tedeschi rights mandated, Columbia enthusiastically and willfully punished him for his criticism of Israel and support for the Palestinian people.

Columbia's malicious and willful actions have violated James' Tedeschi Rights and inflicted severe damage on his education and on his personal well-being.

(NYSCEF Doc. No. 1 ¶ 135-37).

II. Discrimination Under the New York Human Rights Law

In support of the discrimination claim under the New York Human Rights Law, the complaint alleges that James' race and that their support of the people of Palestine, which has subjected them to discrimination, brings them within the scope of the law's protections (NYSCEF Doc. No. 1 ¶ 140-41). The complaint also alleges that Columbia committed “reverse discrimination” in violation of the New York Human Rights Law by “privileging a subset of Jewish people proclaiming that Zionism is a feature of their religious belief over all others” (*id.* ¶ 142). Additionally, the complaint states that:

Columbia's acts and omissions have subjected, and continue to subject, James to discrimination and harassment.

Columbia had actual notice that such discrimination and harassment, over which they had substantial control and the authority to remediate, was and continues to be so severe, pervasive, and objectively offensive that it created and continues to create a hostile environment that deprives James of full access to Columbia's educational programs, activities, and opportunities.

Columbia continues to grossly fail to take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment, and prevent the harassment from recurring. Such unlawful deliberate indifference causes James to be subjected to a hostile environment.

The environment at Columbia, which has been rendered hostile for James, is sufficiently severe, pervasive, persistent, and offensive such that it deprives James of equal access to the opportunities and benefits that Columbia provides to other students.

(*id.* ¶ 142-46).

III. Discrimination Under the New York City Human Rights Law

In support of this claim, the complaint alleges that Columbia's acts and omission, including those by its administrators and employees, have subjected James to "severe and pervasive" discrimination, such that "James has suffered, and continues to suffer, substantial damages, including emotional pain, suffering, inconvenience, loss of enjoyment of life, and other non-pecuniary losses" (*id.* ¶ 150-51).

The Instant Motion

Columbia now moves to dismiss the complaint, pursuant to CPLR pursuant to CPLR 3211(a)(1) and CPLR 3211(a)(7). In support of the motion, Columbia submits an attorney affirmation and exhibits thereto, including copies of James' social media posts, various policies and procedures, and its letters and notices to James regarding its disciplinary determinations.

Columbia argues that the *Tedeschi* rights claim should be dismissed because there is no recognized cause of action for *Tedeschi* rights, and the requirement of substantial compliance with university policies under *Tedeschi v Wagner College*, 49 NY2d 652, 656-58 (1980), is relevant to special proceedings under Article 78 of the CPLR, through which students may challenge a university's disciplinary actions. Columbia contends that James' claims would nevertheless fail under Article 78 because: James seeks damages and no other specific relief, whereas Article 78 allows damages only insofar as they are incidental to the primary relief sought; and, given Article 78 proceedings must be brought within four months after a final and binding decision, James could only challenge the one-year suspension, which James could not satisfy the high burden of showing that Columbia disciplined them in an arbitrary and capricious

manner, failed to substantially abide by its own policies, or imposed a penalty that shocks the conscience.

Columbia also contends that James has failed to establish his claims that Columbia has discriminated against them based on James' race, support of the rights of Palestinian people, and not being a Jewish Zionist – namely, James fails to plead direct discrimination in connection with the discipline they received, as well as deliberate indifference to peer harassment. Finally, Columbia asserts that the declaratory judgment cause of action should be dismissed because James has an adequate, alternative remedy to challenge its decisions via an Article 78 proceeding and the court's resolution of the second and third causes of action seek the same relief.

James opposes. James argues that the motion should be denied because: none of the documents referenced to in support of the motion are considered documentary evidence for the purposes of CPLR 3211(a)(1); and there are several fact issues which would be improper to dispose of on a motion to dismiss. James submits a 23-page affirmation, recounting the events and Columbia's disciplinary decisions, contending that the suspension "threw [their] life into disarray" and expressing concern about their ability to secure housing and a job during the suspension period, as well as postponing their post-graduate plans for an entire year (NYSCEF Doc. No. 24 ¶ 15). James also asserts that their face and name have been widely distributed because of the events discussed herein such that finding gainful employment has been difficult, and their mental health has suffered as a result thereof (*id.*). James believes that they are being re-punished for livestreaming the meeting with CSSI because the video went viral.

Discussion

On a motion to dismiss based upon documentary evidence, the complaint should be liberally construed, the facts presumed to be true, and the pleading accorded the benefit of every possible favorable inference (*see e.g. Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). Dismissal under CPLR 3211(a)(1) is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law (*id.*; citing *Heaney v Purdy*, 29 NY2d 157 [1971]; *see also Alden Glob. Value Recovery Master Fund, L.P. v KeyBank Nat'l Ass'n*, 159 AD3d 618, 621 [1st Dept 2018]). Documentary evidence is "unambiguous, authentic, and undeniable"; however, affidavits, deposition testimony, and letters are not considered documentary evidence for the purposes of a motion to dismiss under CPLR 3211(a)(1) (*Granada Condominium III Assn. v Palomino*, 78 AD3d 996, 996-97 [2d Dept 2010]; *see also GEM Holdco, LLC v Changing World Technologies, L.P.*, 127 AD3d 598, 599 [1st Dept 2015]).

On a motion to dismiss for failure to state a cause of action pursuant to CPLR § 3211(a)(7), the complaint is likewise afforded the benefits of liberal construction, a presumption of truth, and any favorable inference (*see e.g. M & E 73-75, LLC v 57 Fusion LLC*, 189 AD3d 1, 5 [1st Dept 2020]). The motion must be denied if, from the four corners of the pleadings, "factual allegations are discerned which taken together manifest any cause of action cognizable at law" (*Polonetsky v Better Homes Depot*, 97 NY2d 46, 54 [2001] [internal quotation omitted]). A complaint should not be dismissed provided that, "when the plaintiff's allegations are given the benefit of every possible inference, a cause of action exists," and a plaintiff may cure potential deficiencies in its pleading through affidavits and other evidence (*R.H. Sanbar Projects v Gruzen Partnership*, 148 AD2d 316, 318 [1st Dept 1989]). However, bare legal conclusions

and factual allegations which are inherently incredible or contradicted by documentary evidence are not presumed to be true (*Mark Hampton, Inc. v Bergreen*, 173 AD2d 220 [1st Dept 1991]).

The *Tedeschi* rights claim (first cause of action) must be dismissed. At the outset, James fails to address Columbia's argument that there is no such thing as a *Tedeschi* rights claim for damages. Nonetheless, *Tedeschi v Wagner College*, 49 NY2d 652 (1980) stands for the proposition that universities that adopt rules or guidelines regarding the procedures relating to suspensions or expulsions must substantially comply with such procedures (*id.* at 660; *see also Maas v Cornell Univ.*, 94 NY2d 87, 94-95 [1999]). Challenges to a university's procedures are typically pursued via an Article 78 proceeding (*id.* at 92 ["when litigants fail to avail themselves of the CPLR article 78 avenue, courts may justifiably dismiss plenary claims premised upon alleged failures to follow applicable principles"]; *see generally Monaco v New York Univ.*, 145 AD3d 567, 568 [1st Dept 2016] ["university's academic and administrative decisions require professional judgment and may only be reviewed by way of an article 78 proceeding to ensure that such decisions are not violative of the institution's own rules and neither arbitrary nor irrational"]).

The discrimination claim under New York City Human Rights Law (third cause of action) must also be dismissed. James alleges that Columbia, its administrators, and employees have subjected them to ongoing discrimination and harassment based upon their race and support of the Palestinian people. To sufficiently plead that alleged discrimination was based upon membership in a protected class under the New York City Human Rights Law, a plaintiff must allege "circumstances supporting an inference of discrimination" (*see generally Pelepelin v City of New York*, 189 AD3d 450, 451-52 [1st Dept 2020] [references to similarly situated individuals who do not share plaintiff's protected class status and are treated more favorably support inference of discrimination]; *see also Rollins v Fencers Club, Inc.*, 128 AD3d 401, 402 [1st Dept 2015] [comments showing discriminatory animus by those who engaged in or exercised authority over alleged mistreatment support inference of discrimination]).

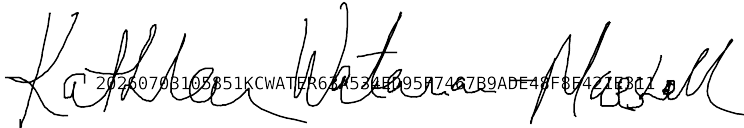
The complaint highlights certain public statements by Columbia; however, it does not allege that a Columbia employee made comments reflecting discriminatory animus toward James – such as during the January 9 CSSI meeting or the CSSI hearings, or in any of its written communications to James. Additionally, the public statement made by Columbia leadership regarding the encampment does not specifically name James. The complaint also fails to allege that any student who was similarly situated to James, but did not share their protected-class status, was treated better than they were. James, who was on disciplinary probation leading up to the suspension, admits that Columbia suspended students involved in the encampment and fails to identify another student, who was also on disciplinary probation, whom Columbia declined to discipline (*Pelepelin*, 189 AD3d at 451).

The discrimination claim under the New State Human Rights Law (third cause of action) and the declaratory judgment (fourth cause of action) must be dismissed as abandoned. James has failed to address defendants' arguments with respect to these claims in their opposition, which constitutes a waiver (*Ferdous v Hasan*, 236 AD3d 992, 994 [2d Dept 2025] [lower court should have granted defendants' motion to dismiss pursuant to CPLR 3211(a)(7) because

plaintiffs abandoned causes of by failing to address them in opposition to the defendants' motions]).

Accordingly, it is hereby

ORDERED that defendants' motion is granted and the complaint is dismissed.



7/3/2026
DATE

KATHLEEN WATERMAN-MARSHALL,
J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION		
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APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE