

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
GENERAL CIVIL DIVISION

ROY BYERS,

Plaintiff,

v.

Case No. 16-CA-001986

Division J

FLORIDA COLLEGE INC.,

Defendant. _____/

FIRST AMENDED COMPLAINT

Roy Byers (“Byers”) is the Plaintiff in this proceeding, and files this his first amended complaint as to Defendant, Florida College Inc. (“Florida College” or the “School”), and in support of his claims set forth herein, alleges the following:

I. PARTIES

1. Byers is an individual who at all times pertinent to the events giving rise to his claims asserted in this proceeding was a resident of Hillsborough County, Florida.

2. Florida College is a non-profit corporation organized and existing under the laws of the State of Florida, with its principal place of business located at 119 North Glen Arven Avenue, Temple Terrace, Florida 33617. The registered agent of Florida College is H. E. Payne, Jr., and he can be served with process at 119 North Glen Arven Avenue, Temple Terrace, Florida 33617.

II. JURISDICTION & VENUE

3. Venue is proper in this court in that all or substantially all of the events giving rise to the claims asserted by Byers in this proceeding occurred in Hillsborough County, Florida. In addition, at all times relevant to the claims asserted by Byers in this proceeding, Florida College was and continues to be located and conducting business in Hillsborough County, Florida.

4. This court has personal jurisdiction over Florida College as a corporation organized and existing under the laws of the state of Florida. The court also has jurisdiction over each of the claims asserted by Byers in this proceeding. This action pursued by Byers is for damages exceeding \$15,000, excluding interest, costs, expenses and attorneys' fees.

III. FACTUAL BASIS FOR CLAIMS

Byers' Employment at Florida College.

5. In 2006, while working and teaching at another college, Byers was contacted by Harry Payne, Jr., the president of Florida College, and asked to join the faculty of Florida College. Byers, who has masters' degrees in physical education and business administration, joined the faculty of Florida College in the Fall of 2006. Byers was responsible for teaching business courses and physical education courses. In addition to his teaching responsibilities, Byers was also responsible for organizing and directing the entire intramural program for Florida College and its students.

6. At the beginning of the 2010-2011 academic year, Byers was given the additional responsibility of serving as the athletic director for the Florida College

Academy (the “Academy”). The Academy is owned and operated by Florida College, and provides educational opportunities for pre-kindergarten through middle school students. Until a single elementary basketball game took place in May 2014, which is described hereafter, Byers never had any significant complaints, issues, or disciplinary problems relating to his employment at Florida College.

Byers’ Employment Contracts With The School.

7. When Byers’ joined the faculty of Florida College for the 2006-2007 academic year, he signed a one-year contract with the school. The term of the employment contract for each academic year generally ran from August 1 through July 31 of the following year, and covered one academic term. In addition to the terms of the employment contract, Byers’ employment with the School was subject to the terms of the Florida College Personnel Manual. Around May 2007, while his first employment contract was still in effect, Florida College provided Byers’ a copy of his proposed second contract, for the 2007-2008 academic year. That contract was signed by Byers and the school, and went into effect on August 1, 2007.

8. The practice of the School was to include figures for the Byers’ base compensation. If certain student registration figures and related targets were achieved, Byers’ compensation was adjusted upward, and the school would write those adjusted figures on the contract. This continued to be the practice of the School for the entire period Byers was employed by Florida College. For the 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, and 2011-2012 academic years, Byers received

outstanding reviews for his performance as a professor for Florida College, as the director of intramural activities for Florida College, and as the athletic director for the Academy.

9. In 2012, the first year in which Byers was eligible, he was granted tenure as a professor at Florida College. At the public ceremony and announcement of tenure being granted to Byers, Dr. Daniel Petty, Vice-President of Florida College, stated on behalf of the School:

“The awarding of tenure to a faculty member at Florida College represents an acknowledgment and mutual commitment. Tenure recognizes the commitment of the faculty member to the mission and ideals of the College, and it demonstrates the College’s permanent commitment to the faculty member.”

* * *

“During his time at Florida College he has taught courses in both the Business and Physical Education departments. In addition to his teaching responsibilities, Mr. Byers also serves as the Director of Intramurals for the college and as the Athletic Director for the Florida College Academy. I regard Mr. Byers to be a valuable asset to the college and an important member of the faculty. Congratulations Mr. Byers on being granted tenure and for your continued service to the students of Florida College.”

Byers served as a tenured professor at Florida College for the 2012-2013 and 2013-2014 academic years, and continued to receive positive reviews as an employee of the school.

10. In May 2014, in accordance with its customary practices, Florida College provided Byers his proposed contract for the 2014-2015 academic year. Around that same time, Byers learned that he was being accused of some form of misconduct with regard to his work at the Academy. The charges related to, and arose out of, his handling

of a protest by the Academy of an allegedly ineligible basketball player being used by an opponent school in a sixth grade junior varsity basketball playoff game. This lawsuit, and the smearing of Byers' good name and reputation, arises from that single incident.

The 2014 Sixth Grade Playoff Game Involving the Academy.

11. The Academy provides athletic activities for its students, and competes as part of the Tampa Bay Christian Athletic League. The members of that league are a number of private Christian schools in the Tampa Bay and surrounding area. The Academy is one of the member schools of the Tampa Bay Christian Athletic League. In addition to being the athletic director of the Academy, in 2014 Byers also served as the director for the Tampa Bay Christian Athletic League.

12. When the game in question was played, Byers had already been responsible for or involved with approximately 1,700 games for the Academy and Florida College intramurals, and was successful in handling those responsibilities. During the Tampa Bay Christian Athletic League's 2014 basketball playoffs, an issue arose regarding a member team using an ineligible player in a junior varsity sixth grade playoff game with the Academy. The Academy lost the game and Byers filed an appeal with the league on behalf of the Academy based on the ineligible player participating in the game. Because he was a representative of the school pursuing the appeal, Byers recused himself from ruling on the appeal. The two remaining members of the Tampa Bay Christian Athletic League board ruled that the team using the ineligible player was excluded from further participation in the tournament, and also that the Academy would still play in the third and fourth place game, and not replace the ineligible team in the championship game.

13. From that sixth grade junior varsity basketball playoff game, and the decision of the Tampa Bay Christian Athletic League board on the Academy's appeal, and also the vocal unhappiness and discontent of parents with children on the Academy team, arose communication by Byers with the principal of the Academy and the administration of Florida College. As the result of those events and the resulting conversations, Mr. Lynn Wade, the principal of the Academy, contacted Harry Payne, Jr., his longtime friend and the president of Florida College, and charged Byers with lying to him about the events surrounding the basketball game, the appeal and the ruling by the Tampa Bay Christian Athletic League board.

14. At no time prior to his termination on May 30, 2014 was Byers ever told by Mr. Wade, the Academy or Florida College, orally or in writing, any specific lie that he was allegedly guilty of telling, or the specific information that he was accused of withholding. In addition, Byers was never provided any written charge of his alleged misconduct. Byers was never provided with or informed of purported evidence or the results of any investigation conducted by the School that supported the charges originated by Wade and pursued by the School as grounds for his termination. Byers was called into several meetings with the president of Florida College, Harry Payne, Jr., which at various times included Florida College Vice-President Dan Petty, Florida College Athletic Director Pat Todd and Academy Principal Lynn Wade. In each of the meetings Byers was accused of lying and withholding information about the incident, and called on to confess his wrongdoing and repent. In each instance Byers asked what he allegedly lied about, and what information he had supposedly withheld. None of the

representatives of Florida College or the Academy ever answered those questions, nor was an investigation ever conducted by Florida College. Based on the accusations of his friend, Principal Wade, against Byers, Payne terminated Byers as a tenured professor of Florida College on May 29, 2014. The charge against Byers was that he had been deceitful. At Byers' subsequent appeal hearing on July 10, 2014, Payne also used the following words to characterize and slander Byers:

“Misleading;” “Misrepresenting;” “Cover-up;” “Stonewall response;” “Stubborn refusals;” “Deceitful” and “Deceitfulness” [2 times]; “Withholding information” [3 times]; and “Wrongdoing” [6 times].

It is important to note, in the context of such accusations by Payne against Byers at the hearing, that Payne, during the same hearing, acknowledged that he had no personal knowledge of the incident, and only “knew” what he was told by Wade. At the same hearing, Principal Wade stated that Byers was possibly the “greatest liar in the world.” Again, these comments all related to Byers' handling of one sixth grade junior varsity playoff basketball game for the Academy.

15. At the hearing, Florida College Athletic Director Pat Todd, who at the time had only worked at the School for a few months, smeared Byers' reputation and good name by introducing gossip-based slander that had absolutely nothing to do with the matters at issue in the hearing. One such statement by Todd was that “Roy struggles with colleague relationships and that's documented on this campus.” Someone interjected, “It's documented?” Pat Todd continued, “It's documented by conversation, it absolutely is and I don't mind sharing that because it's come to me four-fold.”

16. Vice-President Daniel Petty was also called as a witness for the School at the hearing. In his testimony, Perry admitted that he had judged Byers' guilty of being deceitful based primarily on his confidence in President Payne's certitude of Byers' alleged deceitfulness, and not on his own knowledge of the incident. One of the members of the hearing panel asked Petty, "Is it possible that there is a misunderstanding at the foundational level that led to this?" Petty responded, "I just don't know that I am in a position to say one way or another on that. I don't know that I know enough because so much of what I know about the case is what has been relayed to me and it happened so quickly I didn't have time to process it to the point where I really felt like I knew exactly what had happened." Petty continued, "I don't know that I can say that. I did and continue to put a great deal of confidence in Buddy's [President Payne's] conclusions and the research he had done and listening to him." So Petty, one of the five men relied on by the School and Payne to support the school's decision to terminate Byers, by his own testimony established that he had no personal knowledge or opinion as to whether Byers had violated any code of conduct established by the School. He was simply adopting the opinion of Payne.

17. At no time during the hearing did President Payne claim to have conducted "research" on this very serious matter regarding Byers in the very short period of time between the allegations being presented to him on May 12, and when he fired Byers on May 30th. By Payne's own admission he was out-of-town part of the time, and also preparing for an upcoming board meeting.

18. Near the conclusion of the hearing, and after protracted testimony from witnesses called by President Payne in an effort to justify the action taken by the school, a telling exchange took place between the hearing panel and Payne. One of the panel members inquired of Payne, “You’re absolutely convinced he’s not telling the truth, is that still correct?” Payne responded, “No, I’m having doubts.” He went on to say, “I think in this instance I allowed my effort to get to the spiritual depths of this for Roy’s sake, to cloud my vision somewhat.” Even with this admission Payne did not withdraw his charges against Byers, and the hearing panel was still required to rule on the merits of Byers’ appeal. At no time did Payne, or any of the other men bringing the charges against Byers, ever apologize to Byers for the false charges, or notify others who knew of the charges that they were false and baseless..

19. At all times Byers denied and continues to deny that he ever lied, was deceitful, misled, or withheld information from Dr. Payne, Principal Wade or any other person concerning any fact or circumstance relating to the sixth grade basketball playoff game, the use of an ineligible player by another school, the Academy’s appeal, the ruling on that appeal by the Tampa Bay Christian Athletic League board (minus Byers because of his recusal), or any other issue relating to these events. At no time was Byers ever informed by Florida College of the specific facts concerning which he allegedly lied, or information he possessed and withheld from Principal Wade and Florida College. Given these circumstances and the action taken by Florida College that Byers believed to be unfair and unjust, he appealed his dismissal as a tenured professor pursuant to the rules of the 2013 Florida College Personnel Manual.

Byers' Appeal Of His Termination by Florida College.

20. The hearing on Byers' appeal of his termination by Florida College was heard by a panel of Florida College professors consisting of Messrs. Thaxter Dickey, Doy Moyer and Tommy Peeler. The hearing was conducted before that panel at 1:00 p.m. on July 10, 2014. According to the rules of the 2013 Florida College Personnel Manual, Byers was not permitted to have counsel present at the hearing, and he represented himself at the hearing. Dr. Payne represented the School.

21. Several provisions of the 2013 Florida College Personnel Manual were pertinent to the hearing and the charges made by Florida College as justification for its action. First is Section 3.08, Corrective Action Policy. That provision identifies certain conduct that constitutes a major incident or infraction. Item 13 of that list identifies "knowingly or willfully making false statements" as a major incident. Section 3.08.1 deals with the separation or dismissal of an employee, and that provision references Section 7.04.1 for additional specific regulations relative to tenured faculty members. The latter portion of Section 7.04.1 deals with Violation Procedure for Florida College and Tenured Faculty Members.

22. In this case an accusation of lying was made against Byers by Academy Principal Lynn Wade, and the charge was reported to President Payne. The subject of the alleged lying by Byers was the events surrounding one sixth grade playoff basketball game involving the Academy. Once the accusation of such a *major incident* was made, the president and/or dean (which dean is not specified by the rule) was required by Section 7.04.1 of the Personnel Manual to determine (1) *if the alleged conduct violated*

the school's tenure policy; and (2) *if the evidence is sufficient to require additional action*. President Payne apparently concluded that the answer was “yes” to both questions with regard to Wade’s accusation against Byers. He was required to do so in order to conclude that Byers should and would be terminated by Florida College.

23. In apparently reaching that conclusion, per the requirements of its own employee manual, neither Payne nor any other representative of Florida College or the Academy contacted either of the two individuals on the Tampa Bay Christian Athletic League Board who ruled on the Academy’s appeal. Yet it was the action of those two members of the league board, and also information Byers supposedly obtained from them concerning their decision, about which Byers allegedly lied and withheld from the Academy and Florida College. In fact, one of the individuals was never contacted by Florida College, and the second, the Assistant League Director of Tampa Bay Christian Athletic League, only had one conversation with one of the School’s witnesses after Byers listed her as a witness in his pre-hearing submission. Florida College Athletic Director Pat Todd’s one telephone conversation with the Assistant League Director appears to have been in early July 2014, in preparation for the July 10 hearing and more than 30 days after Byers was terminated by Florida College.

The Ruling By The Panel.

24. Evidence was presented by Byers and Florida College at the hearing. The hearing was recorded and lasted until around 6:00 p.m. The panel issued its written ruling on Byers’ appeal the following day, July 11, 2014. Concerning the single charge of lying made against Byers, the panel characterized the accusation as follows:

‘The basis given for Roy’s termination was a single incident at the Florida College Academy, where he worked part time as the Athletic Director. He was accused of “misleading,” “withholding information,” “not being straightforward,” “being deceitful” or “lying” as it was variously characterized in the evidence presented to the committee.’

The committee resorted to such terms used in testimony by witnesses for Florida College, including Principal Wade, to characterize the charge against Byers because there was never any specific, cogent charge against Byers at any point in the process. No written charge was ever provided to Byers prior to or during the hearing. No specific fact or non-fact concerning which Byers allegedly lied was ever identified. Specific information and facts that Byers allegedly withheld were also never identified. Only broad, conclusory, and unfounded accusations were presented. And it was against such nebulous accusations that Byers was forced to defend himself. Fortunately, the panel saw that there was no evidence to support the charge. It concluded and stated:

“Based on the evidence provided to it, the committee finds insufficient evidence that Roy lied.”

The panel made the further finding:

“Based on the evidence presented to it, the committee does not find Roy guilty of any wrongdoing that rises to the level of terminating a tenured professor. . .”

Pursuant to the express language of the violation procedure set forth in Section 7.04.1 of the Personnel Manual, that was the conclusion of the matter. According to the rules, the sole issue to be addressed and decided by the panel, based on the evidence presented to it, was “whether the tenure policy has been violated.” The panel clearly and unequivocally found that Byers had not violated the tenure policy, as charged. Based on the finding of

the panel, Byers was to be reinstated as a tenured professor, and his employment with Florida College was to continue. And that is what occurred.

25. In the employment agreement dated May 22, 2014, and executed by Byers and Florida College on August 18, 2014, subsequent to the ruling by the hearing panel, Byers was employed for the 2014-2015 academic year as a tenured professor. A true and correct copy of the contract is attached as **Exhibit A**. The handwritten notations were added by representatives of Florida College following execution of the contract, reflecting increases in compensation for Byers based on enrollment figures for the 2014-2015 academic year. The contract identified Byers as a tenured professor, without qualification or restriction, and Byers was compensated by Florida College as a tenured professor. During the fall semester of that same academic year, Byers was publicly announced and identified by the school in a school-wide ceremony as a tenured member of the Florida College faculty.

26. Near the end of the hearing, a member of the hearing panel commented that some the school's witnesses were "... obviously upset, really upset, even today." Since Payne never publicly acknowledged that the charges against Byers were baseless, and never took action to clear Byers' good name, those "very upset" feelings were allowed to continue and negatively influenced others in the School's administration and their attitudes toward Byers. Consequently, following the ruling by the hearing panel, the Florida College administration immediately and repeatedly engaged in hostile action against Byers. Actions by Byers that had been praised and approved by the School for the preceding eight years, were now the subject of constant disapproval and criticism.

Such action by the School, and in particular Principal Wade, Dean Brian Crispell, and Vice-President Daniel Petty, continued until February 20, 2015, at which time Petty delivered to Byers a letter setting forth a number of accusations and alleged shortcomings in his performance as a professor for Florida College, and informing Byers that based on the July 11, 2014, decision of the hearing panel, his contract for the 2015-2016 academic year would not be renewed. In that letter, and in subsequent interactions, the School has assumed and presumed, contrary to the express terms of its employment contract with Byers and its own conduct holding Byers out as a tenured professor, that Byers was not a tenured professor following the July 10, 2014, hearing, and the ruling of the hearing panel dated July 11, 2014. Because Byers continued to be a tenured professor, he was entitled, as a matter of law, to have his employment with the School renewed and extended. The action taken by Florida College is in breach of its own contract and in direct violation of its own Personnel Manual.

IV. CAUSE OF ACTION

27. Byers incorporates, by reference and for all purposes, the factual recitation and allegations set forth in the preceding sections I, II and III as though fully set forth herein.

28. Byers, as a tenured professor of Florida College, had contractual rights under the terms of his employment contract with Florida College, and also pursuant to the applicable provisions of the Florida College Personnel Manual. See Exhibit A, Byers' 2014-2015 employment contract with Florida College. That contract expressly incorporates by reference the terms and conditions of the Florida College Personnel

Manual. The action of Florida College in terminating Byers was wrongful. Florida College breached the express terms of Byers' employment contract, and also the terms and provisions of its own personnel manual, and is liable to Byers for breach of contract.

29. The May 22, 2014 employment contract identifies, and incorporates by reference, the terms of the personnel manual as setting forth "the policies and procedures that govern the operation of the College." Those policies and procedures include the rights and contractual protections of tenured professors. A true and correct copy of sections 3 and 7 of the personnel manual are attached hereto as **Exhibit B**. In wrongfully terminating Byers as a tenured professor, Florida College violated its own policies and procedures, and also breached its contractual obligations and commitments to Byers.

30. As a result of its violation and breach of Byers' contractual rights, Florida College is liable to Byers for all benefits he was entitled to under the terms of the employment contract, including but not limited to his salary, bonuses, stipends and benefits. In addition, Byers possessed and had contractual rights as a tenured professor of the School, which itself had a value separate from, and in addition to, his salary and employment benefits. In wrongfully terminating Byers and acting in violation of Byers' employment agreement and the Personnel Manual, Florida College has wrongfully deprived Byers of his contractual rights as a tenured professor at the school. Florida College is also liable to Byers for the loss of his position as a tenured professor, caused by its breach of contract.

31. Byers also seeks recovery for his reasonable and necessary attorneys' fees incurred in pursuing this claim, as permitted by § 448.08, Fla. Stat., or other applicable

law or rule of court. Byers also seeks recovery for costs of court and expenses incurred in pursuing his claims against Florida College.

V. CONCLUSION

WHEREFORE, Plaintiff Roy Byers requests that at the conclusion of the trial of this case, the court enter judgment in favor of Byers and against Defendant Florida College for the entire amount of damages requested by Byers as the result of Florida College's wrongful conduct as set forth above, and also for the reasonable and necessary attorneys' fees and expenses incurred by Byers in pursuing this claim, for prejudgment and post-judgment interest at the maximum amount authorized by law, for court costs, and for such other and further relief, both at law and in equity, to which Byers may show himself to be entitled.

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ROY BYERS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by Email or United States mail or telecopier or hand delivery to the person listed below on July 11, 2016.

/s/Michael C. Addison
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