

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

ROY BYERS,

Plaintiff,

v.

FLORIDA COLLEGE INC.

Defendant.

Case No. 16-CA-001986

Division: J

**DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES
TO FIRST FIRST AMENDED COMPLAINT**

Defendant, FLORIDA COLLEGE INC. ("Defendant"), pursuant to Rules 1.110 and 1.140, Fla. R. Civ. P., hereby answers the First First Amended Complaint filed by Plaintiff, ROY BYERS ("Plaintiff"), as set forth below:¹

I. PARTIES

1. Defendant is without knowledge as to the truth of the allegations contained in Paragraph 1 of the First Amended Complaint and therefore denies same.

2. Defendant admits the allegations contained in Paragraph 2 of the First Amended Complaint.

II. JURISDICTION AND VENUE

3. With respect to those allegations contained in Paragraph 3 of the First Amended Complaint, Defendant admits that venue is proper in this Court, and that, 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.

¹Pursuant to the Court's Order of June 14, 2016, Defendant today by separate filing has renewed its Motion to Dismiss Plaintiff's claim for attorney's fees under § 448.08, Fla. Stat.

4. Defendant admits the jurisdiction of the Court, and that it is a corporation organized and existing under the laws of the State of Florida. Defendant further admits that Plaintiff is seeking damages in excess of \$15,000.00. Defendant denies that Plaintiff has stated a cause of action on any of his claims.

III. FACTUAL BASIS FOR CLAIMS

5. Defendant admits that Plaintiff joined its faculty in the Fall of 2006, with responsibility for teaching business courses, and that Plaintiff has at least one Master's Degree. Defendant further admits that, after the 2006-07 academic year had begun, Plaintiff was given responsibility for organizing and directing Defendant's intramural sports program. Defendant denies the remaining allegations contained in Paragraph 5 of the First Amended Complaint.

6. Defendant admits the allegations contained in first two sentences of Paragraph 6 of the First Amended Complaint. Defendant denies the remaining allegations contained in Paragraph 6 of the First Amended Complaint.

7. Defendant admits that Plaintiff's employment for the 2006-07 academic year was subject to a contract for that term, and that the contract was renewable on an academic-year-to-academic-year basis. Defendant admits that Plaintiff's 2006-07 contract was renewed, on or about May 3, 2007, for the 2007-08 academic year, and that both Plaintiff and Defendant signed the renewed contract. Defendant further admits that Plaintiff, during his employment, was required to support the principles, policies and procedures governing Defendant's operation, as found in Defendant's Personnel Manual, although Defendant denies that the Personnel Manual formed a contract between it and Plaintiff. Defendant denies the remaining allegations contained in Paragraph 7 of the First Amended Complaint.

8. Defendant admits the allegations contained in the first sentence of Paragraph 8 of the First Amended Complaint. Defendant denies the remaining allegations contained in Paragraph 8 of the First Amended Complaint.

9. Defendant admits that it granted Plaintiff tenure as a faculty member in 2012, in his first year of eligibility, and that it announced Plaintiff's tenure at a public ceremony. Defendant admits that, during that ceremony, its Vice President Dan Petty, among other remarks, made the quoted remarks alleged in Paragraph 9 of the First Amended Complaint, or remarks similar in substance. Defendant admits that it employed Plaintiff as a tenured faculty member during the 2012-13 and 2013-14 academic years. Defendant denies the remaining allegations contained in Paragraph 9 of the First Amended Complaint.

10. Defendant denies the allegations contained in Paragraph 10 of the First Amended Complaint.

11. Defendant admits the allegations contained in Paragraph 11 of the First Amended Complaint.

12. Defendant admits that, during the 2014 TBCAL junior-varsity basketball playoffs, an issue arose with a member team using an ineligible player in a semifinal game with the Academy; that the Academy lost the game; and that, after objections were raised to the player's participation, Plaintiff filed a protest with TBCAL on the Academy's behalf. Defendant further admits that Plaintiff recused himself from ruling on the protest. Continuing, Defendant admits that athletic directors from two other TBCAL schools ruled on the protest; that these two directors excluded the team using the ineligible player from further participation in the playoffs; and that, as part of the ruling, the Academy did not replace the excluded team and advance to the

championship game. Defendant denies the remaining allegations contained in Paragraph 12 of the First Amended Complaint.

13. Defendant admits that Plaintiff met with Academy Principal Lynn Wade and others so that Plaintiff could explain TBCAL's ruling on the protest. Defendant further admits that that Mr. Wade subsequently contacted Defendant's President, Dr. Harry Payne, Jr., to discuss Plaintiff's conduct arising out of and related to the protest, including Plaintiff's explanation. Defendant denies the remaining allegations contained in Paragraph 13 of the Complaint.

14. Defendant admits that Plaintiff had several meetings with Dr. Payne, one of which included Mr. Wade, Mr. Petty, and Defendant's Athletic Director Pat Todd. Defendant further admits that Dr. Payne terminated Plaintiff's employment. Continuing, Defendant admits that Plaintiff appealed his termination, and that a hearing was conducted on July 10, 2014, before a three-person panel. Defendant states that the audio recording of the hearing speaks for itself as to what was said by those in attendance. Defendant denies the remaining allegations contained in Paragraph 14 of the Complaint.

15. With respect to the allegations appearing in Paragraph 15 of the First Amended Complaint, Defendant states that the audio recording of the hearing speaks for itself as to what was said by those in attendance. Defendant denies the remaining allegations contained in Paragraph 15 of the First Amended Complaint.

16. Defendant admits that it called Mr. Petty as a witness during the appeal hearing. Defendant states that the audio recording of the hearing speaks for itself as to what was said by those in attendance. Defendant denies the remaining allegations contained in Paragraph 16 of the First Amended Complaint.

17. With respect to the allegations appearing in Paragraph 17 of the First Amended Complaint, Defendant states that the audio recording of the hearing speaks for itself as to what was said by those in attendance. Defendant denies the remaining allegations contained in Paragraph 17 of the First Amended Complaint.

18. With respect to the allegations appearing in Paragraph 18 of the First Amended Complaint, Defendant states that the audio recording of the hearing speaks for itself as to what was said by those in attendance. Defendant admits that the panel ruled on the merits of Plaintiff's appeal. Defendant denies the remaining allegations contained in Paragraph 18 of the First Amended Complaint.

19. Defendant admits that Plaintiff, as a tenured faculty member, appealed his discharge pursuant to the appeal policy contained in Defendant's Personnel Manual. Defendant denies the remaining allegations contained in Paragraph 19 of the First Amended Complaint.

20. Defendant admits that, on July 10, 2014, a panel consisting of Thaxter Dickey, Doy Moyer, and Tommy Peeler heard Plaintiff's appeal of his termination, beginning at 1:00 p.m. Defendant admits that, pursuant to its appeal policy, Plaintiff was not permitted to have legal counsel at the appeal hearing. Defendant further admits that, during the hearing, Plaintiff represented himself, with the aid of his brother, and Dr. Payne represented Defendant. Defendant denies the remaining allegations contained in Paragraph 20 of the First Amended Complaint.

21. With respect to the allegations appearing in Paragraph 21 of the First Amended Complaint, Defendant states that the policies and procedures in its Personnel Manual speak for themselves as to their contents and applicability to Plaintiff's termination and appeal of same.

Defendant denies the remaining allegations contained in Paragraph 21 of the First Amended Complaint.

22. With respect to the allegations appearing in Paragraph 22 of the First Amended Complaint, Defendant states that the policies and procedures in its Personnel Manual speak for themselves as to their contents and applicability to Plaintiff's termination. Defendant denies the remaining allegations contained in Paragraph 22 of the First Amended Complaint.

23. With respect to the allegations appearing in Paragraph 23 of the First Amended Complaint, Defendant states that the provisions in its Personnel Manual speak for themselves as to their contents and applicability to Plaintiff's termination. Defendant denies the remaining allegations contained in Paragraph 23 of the First Amended Complaint.

24. Defendant admits that both it and Plaintiff presented evidence at Plaintiff's appeal hearing, and that the hearing was audio-recorded and lasted until 6:00 p.m. Defendant admits that the panel, on July 11, 2014, issued a written ruling reinstating Plaintiff on a probationary basis, which ruling speaks for itself as to its contents and the precise terms of Plaintiff's reinstatement. Defendant denies the remaining allegations contained in Paragraph 24 of the First Amended Complaint.

25. Defendant admits that, on August 18, 2014, it and Plaintiff renewed Plaintiff's employment contract for the 2014-15 academic year, subject to the terms of the probationary reinstatement ruling by the appeal panel. Defendant admits that its representative added the handwritten notations to the section of Exhibit A entitled "Explanation of Salary." Defendant denies the remaining allegations contained in Paragraph 25 of the First Amended Complaint.

26. With respect to the allegations appearing in Paragraph 26 of the First Amended Complaint, Defendant states that the audio recording of the hearing speaks for itself as to what

was said by those in attendance. Defendant admits that, on February 20, 2015, Mr. Petty delivered a letter to Plaintiff, which letter non-renewed Plaintiff's contract for the 2015-16 academic year and otherwise speaks to itself as to its contents. Defendant denies the remaining allegations contained in Paragraph 26 of the First Amended Complaint.

IV. CAUSE OF ACTION

27. Defendant incorporates and re-asserts its answers to the allegations contained in Sections I, II and III of the First Amended Complaint as though fully set forth herein.

28. Defendant denies the allegations contained in Paragraph 28 of the First Amended Complaint.

29. Defendant admits that a true and correct copy of Sections 3 and 7 of its 2013 Personnel Manual is attached to the First Amended Complaint as Exhibit B. Defendant states that those Sections speak for themselves as to their contents. Defendant denies the remaining allegations contained in Paragraph 29 of the First Amended Complaint.

30. Defendant denies the allegations contained in Paragraph 30 of the First Amended Complaint.

31. Defendant denies the allegations contained in Paragraph 31 of the First Amended Complaint and answers further that it has moved contemporaneously to dismiss with prejudice Plaintiff's claim for attorney's fees under § 448.08, Fla. Stat.

V. CONCLUSION

Defendant denies Plaintiff's entitlement to any of the relief set forth in Section V of the First Amended Complaint, as well as any substantive allegations contained in Section V.

GENERAL DENIAL

Defendant hereby denies each and every allegation not expressly admitted in the foregoing Answer.

AFFIRMATIVE DEFENSES

1. Plaintiff has failed to state a cause of action.
2. Plaintiff has failed to mitigate his damages.
3. Defendant at all times acted in good faith and with reasonable grounds to believe that its conduct was not wrongful.

WHEREFORE, having answered the First Amended Complaint, Defendant, FLORIDA COLLEGE INC., requests that this Court dismiss the First Amended Complaint with prejudice and at the cost of Plaintiff, granting Defendant such other and further relief as the Court finds just and proper. While Defendant denies the applicability of § 448.08, Fla. Stat., to Plaintiff's claim(s), Defendant pleads that, if the Court determines otherwise, Defendant will be entitled to its reasonable attorney's fees under that statute as the "prevailing party" in this action.

Dated this 26th day of July, 2016.

Respectfully submitted,

/s/Gregory A. Hearing

GREGORY A. HEARING

Florida Bar No. 0817790

CHARLES J. THOMAS

Florida Bar No. 0986860

THOMPSON, SIZEMORE, GONZALEZ

& HEARING, P.A.

201 North Franklin Street, Suite 1600

Tampa, Florida 33602

(813) 273-0050

Fax: (813) 273-0072

Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of July, 2016, I electronically filed the foregoing with the Clerk of the Court by using the Florida Courts E-Filing Portal, which will send a notice of electronic filing to the following:

Michael C. Addison, Esq.
Addison & Howard, P.A.
400 North Tampa Street, Suite 1100
Tampa, Florida 33602

Benjamin C. Wilson, Esq.
Law Office of Benjamin C. Wilson
2603 Augusta Drive, Suite 1270
Houston, Texas 77057

Attorneys for Plaintiff

/s/Gregory A. Hearing

Attorney