

**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 MOTION FOR LEAVE TO AMEND
DEFENDANT’S ANSWER AND AFFIRMATIVE DEFENSES TO THE
FIRST AMENDED COMPLAINT, AND MEMORANDUM OF LAW IN SUPPORT**

I. MOTION

Defendant, FLORIDA COLLEGE INC. (“Defendant”), by and through its undersigned counsel and pursuant to Rule 1.190, Fla. R. Civ. P., hereby moves for leave of court to amend its Answer and Affirmative Defenses to the First Amended Complaint of Plaintiff, ROY BYERS (“Plaintiff”). Defendant seeks to add affirmative defenses based on the First Amendment to the U.S. Constitution. In support of this Motion, Defendant states as follows:

1. Defendant is a Christian religious school which “integrat[es] ... the Bible into the total curriculum.” It requires that its professors conduct themselves in a Christian manner, and that its tenured professors be committed to the Christian goals and ideals of Florida College.

2. On July 11, 2016, Plaintiff, a former tenured professor employed by Defendant, filed a First Amended Complaint in which he asserted a single claim for breach of contract. Plaintiff alleged that Defendant wrongfully terminated him in violation of its Tenure Policy, contained in Defendant’s personnel manual. See Complaint, at ¶¶ 27-31.

3. The Tenure Policy, attached to the First Amended Complaint, allows a tenured professor to be terminated for immoral conduct. Id. at Exh. B, § 7.04.1.

4. On May 26, 2021, Defendant's counsel deposed Plaintiff. During the deposition, Plaintiff conceded that immorality, for purposes of Defendant's Tenure Policy, is a Christian religious standard, although he denied that his conduct, thereby defined, constituted immorality. A copy of the pertinent deposition transcript excerpt is attached as Exhibit A.

5. Because resolution of this case therefore will require the Court to determine whether Plaintiff was immoral in a Christian sense, Defendant seeks to amend its Answer and Affirmative Defenses to include the affirmative defense that adjudication of this case would violate the the First Amendment to the U.S. Constitution, by excessively entangling the Court in a religious matter, thereby depriving the Court of subject-matter jurisdiction. A copy of the proposed Amended Answer and Affirmative Defenses is attached to this Motion as Exhibit B.

6. Further, Defendant seeks to amend its Answer and Affirmative Defenses to add a First Amendment defense based on the ecclesiastical abstention doctrine, in which a court is precluded from exercising subject-matter jurisdiction in a dispute between a religious organization and an employee occupying a ministerial position.

7. This matter is not set for trial and neither party has a pending motion for summary judgment.

II. MEMORANDUM OF LAW

The Florida Rules of Civil Procedure direct that leave to amend a pleading "shall be given freely when justice so requires." Rule 1.190(a), Fla. R. Civ. P.; Cobbum v. CitiMortgage, Inc., 158 So. 3d 755, 757 (Fla. 2d DCA 2015). Florida's appellate courts interpret the Rule generously, holding that trial courts are to be "especially liberal" when a party seeks leave to

amend at or before a hearing on a motion for summary judgment. Cobbum, 158 So. 3d at 757; see also Laurencio v. Deutsche Bank Nat'l Trust Co., 65 So. 3d 1190, 1193 (Fla. 2d DCA 2011). More specifically, refusal to allow an amendment is an abuse of discretion “unless it is clear that (1) the amendment would prejudice the opposing party, (2) the privilege to amend has been abused, or (3) the amendment would be futile.” Laurencio, 65 So. 3d at 1193.

In the instant action, amending Defendant’s Answer will not prejudice the Plaintiff, particularly given the status of the case, in which no summary judgment motion has been filed, nor a trial date set. Further, as this is Defendant’s initial amendment request, Defendant has not abused the privilege to amend. Finally, the amendment would not be futile. Defendant is a religious school governed by Christian principles, with continued employment of a tenured professor subject, by Plaintiff’s own admission, to religious criteria. Defendant should be allowed to argue that inquiry into whether Defendant permissibly terminated Plaintiff under the terms of its Tenure Policy would involve an exploration of Christian doctrine, and would require a determination of whether Plaintiff’s actions constituted immorality according to that doctrine. Under the First Amendment, this inquiry would be improper for the Court to undertake. See, e.g., Kond v. Mudryk, 769 So. 2d 1073, 1076-77 (Fla. 4th DCA 2000). Similarly, Defendant should be permitted to demonstrate that, as a tenured professor required to commit to Defendant’s goals and ideals, Plaintiff was a ministerial employee for First Amendment purposes, and that the Court, as a result, is precluded from intervening in the parties’ employment dispute. See Archdiocese of Miami, Inc. v. Miñagorri, 954 So. 2d 640, 641-44 (Fla. 3d DCA 2007); Goodman v. Temple Shir Ami, Inc., 712 So. 2d 775, 777 (Fla. 3d DCA 1998).

III. CONCLUSION

WHEREFORE, for all the foregoing reasons, Defendant, FLORIDA COLLEGE INC., requests that this Court grant Defendant leave to amend its Answer and Affirmative Defenses to the Amended Complaint as set forth herein, granting Defendant such other and further relief as the Court finds just and proper.

Dated this 6th day of July, 2021.

Respectfully submitted,

/s/ Charles J. Thomas

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Attorneys for Defendant

CERTIFICATE OF GOOD FAITH CONFERRAL

I HEREBY CERTIFY that counsel for Defendant contacted counsel for Plaintiff via electronic mail on July 6, 2021, and that, as of this writing, counsel has not indicated whether he opposes the relief sought by this Motion.

Charles J. Thomas

Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of July, 2021, 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:

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/s/ Charles J. Thomas

Attorney

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OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CASE NO. 16-CA-001986

ROY BYERS,
Plaintiff,

-vs-

FLORIDA COLLEGE, INC.,
Defendant.

_____ /

DEPOSITION OF: ROY BYERS
DATE TAKEN: Wednesday, May 26, 2021
TIME: 10:02 a.m. to 4:02 p.m.
PLACE: Via Zoom
REPORTED BY: Niki Noojin, Professional
Court Reporter
Notary Public
State of Florida at Large

EXHIBIT A

1 APPEARANCES:

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5
6 Appearing remotely on behalf of the Plaintiff

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11
12 Appearing on behalf of the Defendant

13 ALSO PRESENT:

14 Dr. Buddy Payne
15

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25

1 I N D E X

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1 A Okay.

2 Q And I am going to talk about the "Tenure
3 Policy," which is policy 7.04.1?

4 A Okay.

5 Q I want to discuss the first sentence there,
6 and I want you to just read it. If you've already read
7 it, let me know, but I want you to read it closely.

8 A Okay.

9 Q The first sentence reads, "The granting of
10 tenure allows a faculty member to continue teaching at
11 Florida College unless disqualified due to immoral
12 conduct, gross inability, or insubordination, or unless
13 the program or curriculum in which the faculty member
14 teaches is eliminated from the class schedule."

15 What do you understand the definition of
16 "immoral conduct" to be there?

17 A Immoral conduct. I mean, probably cheating on
18 your wife would be a good one, going out and getting
19 drunk.

20 Q Florida College is a Christian school;
21 correct?

22 A That's what they claim.

23 Q Do you disagree with that?

24 A Yeah, pretty much.

25 Q Well, we'll explore that a little bit later.

1 But for now, would you agree with me that immorality,
2 for purposes of the Tenure Policy, is a Christian
3 religious standard?

4 MR. MITCHELL: Object to form.

5 BY MR. THOMAS:

6 Q You still have to answer the question. He's
7 objecting for the record. You still have to answer the
8 question.

9 A Okay. I don't know those terms. So I'm --

10 Q Sure. I'll repeat it.

11 A What was the question again?

12 Q Would you agree with me that immorality, for
13 purposes of the "Tenure Policy," is a Christian
14 religious standard?

15 A Yes.

16 Q Under your understanding of the policy, is
17 dishonesty immoral conduct?

18 A Sure.

19 Q Looking a couple words down, where it says
20 "insubordination," what do you understand
21 insubordination for purposes of the policy to mean?

22 A That if they tell to you do something or not
23 do something and you just snub your nose at them and do
24 it any way.

25 Q When you say someone, that means someone

1 Q In the second paragraph of the termination
2 letter, it refers to the academic dean of the college.

3 Who was the academic dean at that time?

4 A Dan Petty.

5 Q Was Dr. Petty present at any of the meetings
6 between you and Dr. Payne?

7 A The last one.

8 Q Do you recall what he had to say about the
9 incident, if anything?

10 A Yes. Yes. So when the meeting started, it
11 was just me, Dr. Payne, and Dr. Petty in the room. And
12 Dr. Petty came over to me and said, "Roy," he says, "I
13 don't know what's going on. I'm just here to take
14 notes."

15 And during the meeting that I did notice that
16 he was taking notes.

17 Q What did you understand that you were being
18 terminated for?

19 A Lying.

20 Q And you disagree with that reason, obviously?

21 A Well, yes. Absolutely.

22 Q In your opinion, did you in any way conduct
23 yourself immorally with respect to the basketball
24 incident involving the ineligible Faith Baptist player?

25 MR. MITCHELL: Object to form.

1 A No, I did not.

2 BY MR. THOMAS:

3 Q In the last paragraph of this letter that's
4 Exhibit Number 7, it says that "The appeals procedure
5 for a tenured faculty member who feels that he has been
6 dismissed unfairly, as described in Section 7.04.1 of
7 the Personnel Manual, was fully explained to you."

8 Is that true?

9 MR. MITCHELL: Object to form.

10 A Yes.

11 BY MR. THOMAS:

12 Q And you did, in fact, invoke an appeal;
13 correct?

14 A Yes.

15 MR. THOMAS: I would like to attach Exhibit
16 Number 7 to the deposition as an exhibit.

17 (Exhibit Number 7 marked for identification.)

18 BY MR. THOMAS:

19 Q Mr. Byers, if you'll turn in your binder to
20 Exhibit Number 4 and tell me if you recognize what that
21 is.

22 A Um-hum. It's a letter of appeal that I was
23 supposed to turn in to them saying that I wanted to
24 appeal the firing.

25 Q It says on the very top next to the address in

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

Defendant, FLORIDA COLLEGE INC. (“Defendant”), pursuant to Rules 1.110 and 1.140, Fla. R. Civ. P., hereby answers the 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 renewed its Motion to Dismiss Plaintiff’s claim for attorney’s fees under § 448.08, Fla. Stat.

EXHIBIT B

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.
4. The Court lacks subject matter jurisdiction pursuant to the First Amendment to the U.S. Constitution, as follows: resolution of Plaintiff's claim would excessively entangle the Court in religion by requiring it to determine whether the Plaintiff's conduct was immoral as measured by Christian religious standards.
5. The Court lacks subject matter jurisdiction pursuant to the First Amendment to the U.S. Constitution, as follows: the ecclesiastical abstention doctrine precludes the Court from adjudicating an employment dispute between a religious organization and an employee occupying a ministerial position with that organization.

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 ____ day of July, 2021.

Respectfully submitted,

/s/**Gregory A. Hearing**

GREGORY A. HEARING

Florida Bar No. 0817790

CHARLES J. THOMAS

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ____ day of July, 2021, 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:

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/s/**Gregory A. Hearing**

Attorney