

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

Central Justice Center
700 W. Civic Center Drive
Santa Ana, CA 92702

SHORT TITLE: Kanavou vs. CHAPMAN UNIVERSITY

CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

CASE NUMBER:
30-2016-00840960-CU-CO-CJC

I certify that I am not a party to this cause. I certify that the following document(s), Minute Order dated 03/06/17, have been transmitted electronically by Orange County Superior Court at Santa Ana, CA. The transmission originated from email address on March 6, 2017, at 3:39:56 PM PST. The electronically transmitted document(s) is in accordance with rule 2.251 of the California Rules of Court, addressed as shown above. The list of electronically served recipients are listed below:

BRUCE THOMAS MURRAY
MURRAY@SAGELAW.US

PAUL, PLEVIN, SULLIVAN & CONNAUGHTON
LLP
FPLEVIN@PAULPLEVIN.COM

PAUL, PLEVIN, SULLIVAN & CONNAUGHTON
LLP
JMICALOWSKI@PAULPLEVIN.COM

Clerk of the Court, by: Rebecca Chumpitani, Deputy

CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MINUTE ORDER

DATE: 03/06/2017

TIME: 03:07:00 PM

DEPT: C26

JUDICIAL OFFICER PRESIDING: Gregory H. Lewis

CLERK: Rebecca Z Chumpitazi

REPORTER/ERM:

BAILIFF/COURT ATTENDANT: Linda OConnor

CASE NO: **30-2016-00840960-CU-CO-CJC** CASE INIT.DATE: 03/15/2016

CASE TITLE: **Kanavou vs. CHAPMAN UNIVERSITY**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Contract - Other

EVENT ID/DOCUMENT ID: 72545986

EVENT TYPE: Chambers Work

APPEARANCES

There are no appearances by any party.

The Court, having taken the above-entitled matter under submission on 02/14/17 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

On February 14, 2016, this case came regularly on calendar for a Motion for Summary Judgment and/or Summary Adjudication. Bruce Thomas Murray, Esq. appeared for Plaintiff Kanavou. Fred M. Plevin, Esq. and Jeffrey P. Michalowski, Esq. appeared for Defendant Chapman University. After argument of counsel, the court took the matter under submission.

Upon further review, the court DENIES the Motion for Summary Judgment and/ or Summary Adjudication. Pursuant to *Civ. Proc. Code* § 437c (p) (2), Defendant Chapman failed to meet its burden to show that Plaintiff Kanavou could not establish one of more elements of any of the causes of action or the basis for punitive damages. Plaintiff has met her burden to show that there are multiple triable issues of material fact.

Judicial Nonintervention: The court recognizes that there "is a widely accepted rule of judicial nonintervention into the academic affairs of schools." *Paulsen v. Golden Gate Univ.* (1979) 25 Cal. 3d 803, 808. In this case, the issues do not concern an administrative decision to confer tenure, a degree or grades. Rather, the issues involve violation of FEHA and breach of contract. Chapman presented no authority that doctrine of "judicial nonintervention into the academic affairs of schools" applies to an alleged violation of FEHA and breach of contract. There is "an exception to this rule by permitting limited intervention whenever it is alleged that a university or college has acted arbitrarily or in bad faith." *Ibid*, 808.

The court has analyzed in four categories this motion is four categories. (I.) Disability Discrimination, (II.) Failure to Provide Reasonable Accommodation, (III.) Breach of Contract and (IV.) Punitive Damages.

Category I: First Cause of Action for Disability Discrimination, Fourth Cause of Action for Failure to Prevent Discrimination and Fifth Cause of Action for Wrongful Termination in Violation of Public Policy: (Issues Nos. 1, 2, 3, 12 & 13):

"[A] plaintiff must prove that he or she can perform the essential functions of the job in order to prevail on a claim under the FEHA. "[I]n disability discrimination actions, the plaintiff has not shown the defendant has done anything wrong until the plaintiff can show he or she was able to do the job with or without reasonable accommodation." *Green v. State* (2007) 42 Cal. 4th 254, 265. "A plaintiff may prove his or her discrimination case by direct or circumstantial evidence or both." *Soria v. Univision Radio Los Angeles, Inc.* (2016) 5 Cal. App. 5th 570, 591.

Chapman failed to show that Plaintiff was not a qualified employee. Defendant only disputed the quantity of Plaintiff's scholarship, not its quality. Plaintiff accident substantially impacted the extent of her publishing. This deficit was as a result of her disability. Triable Issues in dispute Nos. 1, 2, 17, 19, 24, 25 & 31. After her termination, Plaintiff was able to publish five scholarly articles. (Exhibit 39, published 2015-2017). Given more time, there is a triable issue of material fact whether quantity issue could have been satisfied.

"[P]roof that discrimination was a *substantial* factor in an employment decision triggers the deterrent purpose of the FEHA and thus exposes the employer to liability, even if other factors would have led the employer to make the same decision at the time." *Harris v. City of Santa Monica* (2013) 56 Cal. 4th 203, 232. (Emphasis original). Whether Chapman's actions were a substantial factor is question of fact.

Chancellor Struppa made a comment about "victimhood," which could be taken as a negative comment on Plaintiff's conduct that may show animus. This is a triable issue of material fact.

Plaintiff sought further accommodation from Don Will, Patrick Fuery and Ann Gordon. Will and Gordon provided written recommendations. Chancellor Struppa ignored the oral and written requests to accommodate Plaintiff with more time to complete her scholarship. Chapman has not shown that Plaintiff could not establish disability discrimination with circumstantial evidence.

Category II: Second Cause of Action for Failure to Provide Reasonable Accommodation and Third Cause of Action for Failure to Engage in the Interactive Process: Issues Nos. 4, 5, 6, 7, 8, 9, 10 & 11):

"An employee is not required to specifically invoke the protections of FEHA or speak any 'magic words' in order to effectively request an accommodation under the statute." *Soria v. Univision Radio Los Angeles, Inc., supra*, 598.

Chapman formerly granted two previous extensions. Professors Will and Gordon provided written recommendations for further accommodation. It was obvious that Chapman knew Plaintiff desired further accommodation.

"The 'interactive process' required by the FEHA is an informal process with the employee or the employee's representative, to attempt to identify a reasonable accommodation that will enable the employee to perform the job effectively." *Soria v. Univision Radio Los Angeles, Inc., supra*, 600. Although

Chapman provided initial accommodations, there is a triable issue whether additional time to complete the scholarship was appropriate. Triable issues included No. 56, 57, 59, 60, 61 & 66.

Category III: Sixth Cause of Action for Breach of Covenant of Good Faith & Fair Dealing and Seventh Cause of Action for Breach of Employment Contract: Issues Nos. 14, 15, 16 & 17).

Chapman only briefly addressed this category. Chapman failed to provide a factual basis for the court grant summary adjudication. The contract is ambiguous regarding the term of employment. Paragraph 4 of Exhibit 16 provided, "Faulty Member's renewed employment under this agreement . . . shall continue for a six-year term, expiring May 31, 2016." In paragraph 36 of his declaration, Dr. Struppa declared that contract inadvertently erred in stating that there was a six (6) year term. (Issue No. 80). In this motion, the court may not re-draft the term of the agreement.

Category IV: Punitive Damages: (Issue No. 18): On a summary judgment motion, Defendant must show that Plaintiff cannot prove "no reasonable jury could find the plaintiff's evidence to be clear and convincing proof of malice, fraud or oppression." *Hoch v. Allied-Signal, Inc.* (1994) 24 Cal.App.4th 48, 60-61. Defendant Chapman has not shown that Plaintiff is incapable of showing punitive damages.

Defendant's Objections to Evidence:

Nos. 1, 2, 3 & 8: OVERRULED.

Nos. 4, 5, 6, & 7: SUSTAINED.

Clerk to give notice.