



IN THE DISTRICT COURT OF TULSA COUNTY
STATE OF OKLAHOMA

DISTRICT COURT
FILED

(1) GEORGE W. BARNETT III,

Plaintiff,

JAN 13 2016

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

v.

Case No. **CJ-2016-00139**

(2) THE UNIVERSITY OF TULSA,

Defendant.

DAMAN CANTRELL

PETITION

Plaintiff, George W. Barnett III (“Barnett”), for his Petition against the University of Tulsa (“TU”), states as follows:

PARTIES, JURISDICTION, AND VENUE

1. Barnett is a resident of Tulsa County, Oklahoma.
2. Barnett is a former student at TU.
3. Defendant TU is an educational institution with its primary campus in Tulsa, Oklahoma.
4. Venue and jurisdiction is proper because the acts alleged herein occurred in Tulsa County, Oklahoma.

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SALLY HOWE SMITH
COURT CLERK

GENERAL ALLEGATIONS

5. At the time of the events and allegations complained of herein, Barnett was classified as a senior at TU and was only a few credit hours away from completing his degree.

6. Beginning on or about September 24, 2014, Plaintiff's then-fiancé, Christopher Mangum ("Mangum"), made multiple posts to the social media site Facebook which were critical of a student and faculty member at TU. Mangum is not a student at TU and was not associated with the university other than having a significant other attending TU.

7. The Mangum postings on Facebook were on Plaintiff's page or "wall" but were not placed there by Plaintiff and were instead authored by Mangum. The profile associated with these postings indicated that Mangum was the author. Mangum made the postings on his own Facebook account and "tagged" Plaintiff in the post which is how it appeared on Barnett's Facebook page.

8. On or about September 29, 2014, TU Professor and Theatre Department Chair Susan Barrett ("Barrett"), who was a subject of Mangum's posts, had a verbal conversation with TU Senior Vice Provost Winona Tanaka ("Tanaka") regarding the Mangum postings. At this meeting, Tanaka met with Barrett, Professor Kimberly Powers, Professor Machele Dill and student Tara Moses to discuss complaints against Barnett based on the Mangum postings.

9. On September 30, 2014, Tanaka met with Barnett and immediately suspended him from certain classes and activities. She also imposed a number of other

prohibitions and sanctions for alleged violations of TU's Harassment Policy. Tanaka further informed Barnett that he was not to retaliate, and that he was under the requirement of confidentiality pursuant to TU's Harassment Policy. This included not speaking with anyone regarding the complaint, which had not yet been made formally.

10. On October 3, 2014, Barrett submitted a written and signed formal complaint to TU and Tanaka. In her formal complaint, Barrett repeatedly acknowledged that Mangum was the author of the social media postings, but maintained that Plaintiff was responsible for Mangum's conduct.

11. Barrett's written complaint to TU also accused Barnett of posting a comment using the name "John" to a local news station website critical of an off-campus project Barnett and other theater department students were involved in. Barrett concludes that Barnett is the "common factor" with all the comments.

12. Prior to the allegations of harassment, Barnett and Barrett were close by all accounts. To the Plaintiff, Barrett represented a trusted faculty member, mentor, and friend. Due to the tight-knit relationships formed during his time in the theater department at TU, Barnett confided in Barrett, who learned of his relationship with Mangum. The close relationship between Barrett and Barnett included his willingness to go above and beyond what was regularly required of theater students. Barnett was quick to volunteer and assist Barrett and others in the theater department. Barrett would often request extra time or additional hours from Barnett, and Barnett willingly provided that support and assistance.

13. Prior to Barrett's verbal or written complaint, Barnett (with Mangum accompanying him) went to Ireland to participate in a theater event involving several faculty and students. While there, issues and complaints arose between several participating students. Barnett emailed Barret about these issues and informed her that he found out his fiancé Mangum had complained to TU administrators regarding Mangum's dissatisfaction with the way the trip was handled. Barnett's email informed Barrett that he wanted her to hear it from him regarding Mangum's conduct.

14. Barrett had knowledge of Mangum's outspoken demeanor and conduct. She even told Barnett before filing her harassment complaint that she thought Mangum was causing problems. Barnett explained to Barrett during this conversation that he understood what she was saying, but that he was not able to control what Mangum thinks or communicates. Barrett knew the situation with Mangum voicing his concerns and objections to certain students, faculty and about the inner-workings of the theater department at TU well before accusing Barnett of harassment.

15. Upon information and belief, Barrett knew that any postings which could be construed as offensive were authored by Mangum but nevertheless accused Barnett of the harassment. Upon information and belief, since she had no recourse against non-student Mangum and his comments about how she ran the theater department, Barrett decided to punish Barnett by accusing him of the harassment instead. Barrett's written complaint contained several misrepresentations and false statements which could be easily corroborated or investigated.

16. Barnett provided his written response to the allegations on October 13, 2014. Barnett's response addressed the various allegations levied against him. Barnett denied making the offending social media posts and provided an affidavit from Mangum in which Mangum swears that he alone was the one who authored the postings. Barnett also detailed the inaccuracies and misrepresentations in the written complaint.

17. The next day, Barnett met with Tanaka, Dean Yolanda Taylor and Associate Dean Reed. It was explained at this meeting that Tanaka would conduct an investigation into Barrett's complaint.

18. Tanaka provided her memorandum decision on October 24, 2014. Tanaka rejected the uncontroverted affidavit from Mangum that he was the author of the offending Facebook posts at issue. Tanaka reached this determination by stating in conclusory fashion that Mangum was not credible. Tanaka refused to credit Barnett's plea that he did not author the offending posts, she refused Mangum's affidavit stating that he authored the posts, and she discounted that all the Facebook posts indicate someone other than Barnett authored them.

19. Tanaka also failed to refute Barnett's position that he removed the Facebook posts shortly after becoming aware of them. Tanaka's memorandum includes conclusions without evidentiary support, and very little evidentiary support was provided for the conclusions she did reach. Despite the subject Facebook posts being on a private site with only limited visibility by Barnett's Facebook Friends for a limited time, Tanaka treated the posts as though they were publicly disseminated by Barnett.

20. Tanaka's decision states in conclusory fashion that Barnett was warned in Ireland by Barrett. Barrett's later admission or revision to the complaint (neither of which Barnett received) revealed that her alleged warning to Barnett may not be accurate as originally stated. Once TU learned that the alleged warning had occurred by email instead of by phone, Tanaka had a duty to confirm that claim by reviewing the email correspondence. An investigation of emails might have revealed that, in fact, Barnett sent repeated communications to Barrett letting her know of a crisis going on, that Mangum had been complaining to the TU administration, and that Barnett felt helpless to do anything or prevent Mangum's actions. However, Tanaka failed to investigate any of the representations made by Barnett or Barrett, failed to review any emails, and instead accepted Barrett's account wholesale.

21. TU's Harassment Policy Procedure, Section B(2)(b)(i) provides that, "In no event will a sanction be imposed without the accused having an opportunity to respond, in writing, to a formal complaint."

22. Once Tanaka was faced with the undeniable truth that sanctions were handed down prior to receiving any formal complaint in violation of TU's Harassment Policy, much less an opportunity to even allow Barnett to respond, Tanaka states that "this case presented a reasonable basis for concern regarding ongoing harassment and vulnerability of the [v]ictims." Tanaka then cited to Section C of TU's Harassment Policy which provides, "Administrators and supervisors have the legal responsibility to protect a complainant or victim from continued Prohibited Harassment or retaliation..." Tanaka failed to cite the full text of this language which also states that administrators and

supervisors have the legal responsibility to protect the person accused of harassment from potential damage by false allegations. Tanaka's faltering explanation for her failure to follow TU's Harassment Policy in sanctioning Barnett prior to receiving a written complaint, and the same day he is informed of the verbal complaint, is representative of her willingness to disregard the policy and perform an ends-oriented investigation.

23. The filing of a formal complaint triggering TU's Harassment Policy will almost always involve a victim or victims that allegedly experienced harassing conduct. Having a policy that "*In no event*" will TU impose sanctions without an opportunity to respond does not provide Tanaka the discretion to determine if these supposed victims appear to be more vulnerable than others, whether the students and/or faculty will be in close proximity, or whether Barnett's appearance or alleged actions rise to such a level to disregard the "*In no event*" language.

24. Tanaka's violation of TU's Harassment Policy by failing to abide by the policy's provision that "In no event will a sanction be imposed without the accused having an opportunity to respond" was not investigated by a third party or another TU administrator. Instead, Tanaka investigated her own conduct and, not surprisingly, reached the conclusion that she followed all the appropriate procedures. Tanaka's conclusions regarding her deviation from TU's Harassment Policy is indicative of the approach and atmosphere of her entire investigation.

25. Despite Tanaka's memorandum and finding that Mangum was not credible, an October 9, 2014 letter from TU's Dean of Students Yolanda Taylor to Mangum provided that a complaint was lodged against him for harassment and intimidation and

that, “[y]our alleged behavior leaves little choice but to revoke your privileges of accessing university owned and controlled properties and facilities.” TU acknowledged in writing that Mangum was involved despite Tanaka’s conclusion that Mangum’s affidavit that he authored the Facebook posts was not credible. Tanaka never spoke or even attempted to reach Mangum to discuss his affidavit, Barnett’s response, or to evaluate his credibility. Again, Tanaka fails to provide any support at all for the conclusion that Mangum is not credible.

26. On or about October 24, 2014, TU and Tanaka levied the following sanctions against Barnett: suspension from TU until January 1, 2016 (or until student Tara Moses graduates, whichever is later); barred from TU’s campus during the suspension; permanently excluded from taking any Theatre Department classes or majoring/minoring in Theatre at the University of Tulsa; and required that Barnett’s transcript be marked with “suspended/disciplinary probation-misconduct.” These heavy-handed sanctions/discipline were issued *less than two months* before Plaintiff was set to graduate from TU. TU did not provide Barnett with any sort of hearing prior to imposing the discipline and sanctions and failed to perform any reasonable investigation.

27. On January 9, 2015, the Final Decision on Appeal was reached by Dr. Roger Blais, Provost. Tanaka’s memorandum and decision was reviewed, along with the record and all arguments, and upheld in all respects.

28. TU’s Harassment Policy does not provide notice that students will be subject to discipline based upon their failure to force third parties to conform their conduct to TU’s Harassment Policy.

29. TU's Harassment Policy states that: "Offenders will be disciplined under the appropriate governing code of conduct (See "Who is Covered", First Paragraph, hereinabove)." That reference to "Who is Covered," states that the TU's Harassment Policy "shall be applied and interpreted in conjunction with the following existing documents" which includes TU's Student Code of Conduct.

30. TU's Student Code of Conduct, in addition to detailing its policy on freedom of expression, freedom of association, and off-campus freedom, includes the Articles and Procedures for the University Student Conduct Board ("USCB") to hear complaints regarding student offenses. The Articles and Procedures provides for certain procedural allowances which protect the student's rights and interests including an opportunity to have a hearing and to request an appeal if a sanction levied is grossly disproportionate to the offense committed.

31. Specifically, under Article II, Section E, Section 5, the rights of the accused allows the following: written notice of the complaints against the student and a copy of the conduct code at least five working days prior to the commencement of the proceedings; an opportunity at the proceedings to hear all information against him/her and to question all witnesses against the accused; the opportunity at the proceeding to present relevant information and witnesses on his/her behalf; the right to remain silent if he/she chooses; the right to have a support person from the TU community present to advise the student in the proceedings; and the right not to be proceeded against a second time for the same alleged offense unless there is a reason and information that the student sought to destroy or otherwise suppress information.

32. Barnett was not allowed to have any proceeding or to have a hearing in front of the USCB. Barnett was not allowed an opportunity to hear all the information against him or to question witnesses against him. Barnett was not allowed the opportunity to present information or witnesses to the USCB. Barnett was not allowed an opportunity to have someone in the TU community advise him regarding any proceeding because there was no proceeding at all.

33. The importance of a thorough, fair and reasonable investigation is exponentially heightened in Barnett's situation because of TU's denial of process. While other TU students accused of wrongdoing, from cheating to sexual assault, are provided process in accordance with TU's Student Code of Conduct, Barnett was denied that same process and instead subjected to a sham investigation which caused and continues to cause damages.

FIRST CLAIM FOR RELIEF
NEGLIGENCE

TU Breached its Duty to Perform a Fair and Reasonable Investigation

34. Plaintiff incorporates each and every allegation of the preceding paragraphs as if fully set forth herein.

35. A TU school official who is in charge of investigating potential violations of the student conduct policy and/or TU's Harassment Policy has a duty to conduct a fair and reasonable investigation.

36. TU owed a duty to Barnett to perform an investigation that was fair, reasonable, and adequate to determine the legitimacy of the alleged harassing conduct.

37. TU failed to properly perform an adequate investigation into the allegations that Barnett was harassing faculty and students.

38. TU informed Barnett that he was in violation of the TU's Harassment Policy for contacting Mangum, the person responsible for making the offending posts who was also his fiancée, and later husband.

39. TU refused Barnett an opportunity for a hearing, then prevented him from gathering evidence or witnesses to rebut the spurious allegations, and further found him in violation of the TU's Harassment Policy when he discussed the allegations with his husband. TU prevented Barnett from participating in any meaningful way in the process of this harassment allegation and instead forced Barnett to accept the investigation performed by TU's Vice Provost. Without the ability to discuss the matter with anyone, without the ability to provide evidence or refute testimony or evidence provided, or have a hearing on the matter, TU forced Barnett to be at the mercy of its own investigation.

40. Tanaka failed to perform a fair, reasonable and adequate investigation. Tanaka reaches the conclusion that Mangum is not credible without any support. The person who provided statements under oath that he was responsible for the offending conduct was of such minimal importance to TU and Tanaka that they never spoke to him or interviewed him regarding the allegations or the veracity of his sworn affidavit.

41. At the time of the harassment allegations, Barnett was a senior at TU and was less than two months away from receiving his degree in theater studies. Due to the failure to perform a fair, reasonable, and adequate investigation, Barnett was subjected to discipline which included being suspended from TU for three semesters and a complete

ban to further his studies in theater. TU's sanctions provided a constructive expulsion due to Barnett not being allowed to finish the handful of weeks left in his degree program.

42. Needless to say, Barnett suffered substantial injuries and damages due to the inadequate investigation performed by TU and Tanaka.

SECOND CLAIM FOR RELIEF
DUE PROCESS

TU Breached its Duty in Refusing to Allow Barnett a Hearing

43. Plaintiff incorporates each and every allegation of the preceding paragraphs as if fully set forth herein.

44. While a private university, TU held out and promised to students a certain measure of due process.

45. The relationship between a student and a private university requires the university to provide certain due process protections during disciplinary proceedings.

Fundamental Fairness

46. TU failed to provide a process that ensured fundamental fairness to Barnett. TU prevented Barnett from confronting adverse witnesses and evidence and failed to allow him an opportunity to participate in the process by providing his own evidence and witnesses. TU went so far as to further sanction Barnett when he discussed the matter with his fiancée Mangum, the person responsible for making the offending statements.

47. Despite citing the TU's Harassment Policy in support of its actions, TU sanctioned and disciplined Barnett prior to the filing of any formal complaint in direct conflict of the policy.

Arbitrary and Capricious

48. Barnett received no hearing, no evidence other than Barrett's complaint, and no opportunity to review any witness statements.

49. The vague nature of Barnett's alleged violation is never specified in the code of conduct or student handbook. TU never provided reasonable grounds for expecting, understanding, or appreciating that Barnett's conduct, as alleged, was even prohibited.

50. TU and Tanaka levied the heavy-handed sanctions on Barnett before a formal complaint was ever received in violation of its own Harassment Policy. The explanation for deviating from its own policy was that Barnett was a threat to students. There is no evidentiary support or attempt to explain why deviating from TU's Harassment Policy was necessary to single out Barnett as an exception. This is especially so given the evidence provided directly to TU and Tanaka that a third party was responsible for the harassing conduct.

51. Based upon the actions of TU, it appears clear that the university had an agenda and design for what it wanted to do with Barnett and worked backwards to achieve that result thereby denying Barnett due process or safeguards to protect his interests.

52. TU provided the following sanctions against Barnett: suspension from TU until January 1, 2016 (or until student alleged to have been harassed graduates, whichever is later); barred from campus during the suspension; permanently excluded from taking

any Theater Department classes or majoring/minoring in Theater at TU; and required that Barnett's transcript be marked with "suspended/disciplinary probation-misconduct".

53. The fact that Barnett was disciplined at all is hard to understand. However, the severity of the discipline levied against Barnett shocks the conscious and shows that TU did not follow its own guidelines, policies or procedures for which TU is liable under an arbitrary and capricious standard of enforcement.

THIRD CLAIM FOR RELIEF
BREACH OF CONTRACT
Promissory Estoppel

54. TU's University Student Conduct Policies and Procedures include:

The rights of free inquiry and free expression, both public and private, are essential to the learning process and must be protected by the responsible and mutually supporting efforts of all segments of the University community. These rights shall not be infringed upon. It is the responsibility of students and student groups to make clear that they speak only for themselves when they are supporting causes, participating in public expressions, and conducting demonstrations.

55. TU is enforcing a TU's Harassment Policy for representations made by a third party on Barnett's Facebook page. Even assuming that Barnett had posted the offending conduct (in fact done by Mangum), TU has represented to its students that the university promises free expression. Based upon TU's representations, students should be able to rely upon that promise if and when they decide to speak.

Implied Contract

56. TU's student handbook forms the basis of an implied contract between a student and the university. Unlike secondary or elementary educational settings where there are compulsory attendance laws that preclude claims for implied contract due to a lack of consideration, students at TU are not compelled to attend the university. The bargained-for aspect of student tuition triggers consideration for promises TU makes in its student handbook.

57. Regardless of disclaimers which may or may not be included in a student handbook, Barnett entered into a contract with TU and anticipated that by paying his tuition, he would be provided and afforded those promises held out by the university.

58. Barnett was bound by the universities' policies and the student handbook without an opportunity to bargain or negotiate those terms. Instead, Barnett and other students are enticed to enroll, attend and pay money based upon the representations and contractual promises the university maintains.

59. TU affirmatively made promises that free expression, public and private, made by its students would be protected. However, TU punished Barnett for postings made on a private social media account which was not published to the public and was not even made by him.

60. Barnett relied upon the representations of TU as supporting free expression and free association. TU breached its implied contract with Barnett by not supporting free expression and free association and by punishing Barnett. Because of TU's breach of its implied contract with Barnett, it is liable for all damages flowing from that breach.

FOURTH CLAIM FOR RELIEF
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

61. TU acted intentionally and recklessly in the manner it handled the charge of harassment against Barnett. The investigation performed by TU was reckless and the conduct following the investigation was nothing short of extreme and outrageous. Examples of the reckless and outrageous conduct include purposefully ignoring credible evidence and testimony of witnesses in the investigation and the lack of any credible evidence tying Barnett to the alleged wrongful conduct. To make matters worse, TU levied such a disproportionately heavy sanction that it could not be considered anything short of shocking given the unsubstantiated allegations, much less the inept investigation which actually transpired.

62. TU understood the gravity of the sanctions it foisted upon Barnett. TU constructively expelled Barnett by refusing to allow him to continue in his major that he was weeks from finishing. To add further insult to injury, TU informed Barnett that it would allow him to return to the university if he wished to start over in another major. This slap in the face not only operates to discourage students from speaking out against the university, its policies and practices, it also provides a financial incentive by forcing students to start over and pay more money to continue their education.

63. By refusing to speak to the one witness (Mangum) that confessed to the offending conduct and then unilaterally asserting that Mangum was not credible is not only disingenuous, but confirms that TU approved the deficient investigation and denial of any meaningful process. The above conduct further confirms that TU was committed

to punishing despite credible evidence demonstrating that Barnett was not responsible for any offending conduct.

64. As detailed above, TU owed a duty of reasonable care to provide procedural safeguards and perform an adequate investigation into the allegations of student misconduct or harassment.

65. As a direct and proximate result of the reckless conduct detailed above, Barnett suffered substantial mental anguish. Barnett is forced to deal with the aftermath of TU's actions on a daily basis. He has been ostracized from his friends and faculty with whom he formed lasting relationships and bonds. Barnett experiences the emotion turmoil of TU's actions on a daily basis and it has caused great anguish and depression. Barnett's dream of finding employment through a theater degree is gone without the possibility of moving forward without a tarnished reputation. The ordeal, pressure, stress and overall despair Barnett experienced has forced him to seek professional help and counseling to deal with the issues created by TU.

WHEREFORE, all premises considered, Plaintiff respectfully requests judgment against Defendant University of Tulsa in an amount in excess of \$75,000.00, along with such other relief as the Court deems just and equitable.

Respectfully submitted,

By:



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**ATTORNEY LIEN CLAIMED
JURY TRIAL DEMANDED**