

{¶ 2} The case is now before the court for determination on the issues of liability and damages.² Upon review of the evidence, testimony, and arguments of the parties, the court makes the following determination.

{¶ 3} BGSU hired Mohan as an instructor in the fall of 2000 to teach four courses per semester in the College of Business Administration, Department of Finance. His appointment was for a term of one year. Shortly after his employment began, a number of student complaints were received by BGSU. The complaints were followed by poor student evaluations at the end of the term. Subsequent to a review and recommendation by the finance faculty, the then Dean, Dr. James Sullivan, terminated Mohan's employment effective January 10, 2001. Approximately three months later, BGSU mistakenly overpaid Mohan in the amount of \$4,485.31.

{¶ 4} Mohan contends that BGSU breached his employment contract by terminating his employment without just cause or due process. He maintains that he was well-qualified to teach the subject matter and went to great lengths to accommodate the needs of his students.

He further alleges that Dr. Sullivan inappropriately relied upon the student complaints and evaluations; that he failed to give due consideration to his positive Peer Evaluation; that BGSU's actions were coerced by a student's threatened lawsuit; and that his immediate supervisor, Dr. Sung Bae, was negligent in providing timely and proper feedback about his teaching performance.

{¶ 5} Mohan did not produce at trial a copy of a written employment contract with BGSU. However, other evidence established that he was a non-tenure-track instructor and that, as such, the

²As an ancillary matter, plaintiff's and BGSU's motion to quash Mohan's improperly served subpoenas was granted at the outset of the proceedings.

only "process" to which Mohan was entitled was a written notice of termination of employment and an explanation of the reasons for such action. He did receive such notice (Mohan Exhibit 9); however, he was not entitled to any intra-university appeal from the notice of termination. He had the option to file a grievance, but he did not do so. Mohan testified that within two years of his termination his lawsuit against BGSU was both filed in Wood County and dismissed by that court for lack of jurisdiction. No documentary evidence was offered in support of his testimony.

{¶ 6} Mohan's "counterclaim" in this removed action was filed in June 2003. The state of Ohio and BGSU contend that, assuming Mohan's case were filed and dismissed within the two-year period of limitations, Ohio's savings statute, R.C. 2305.19, would not apply, and his claims would be barred by the two-year statute of limitations set forth in R.C. 2743.16. Upon examination of the evidence and case law, the court finds that the statute of limitations argument is without merit.

{¶ 7} Turning to the merits of Mohan's claims, the court finds that the breach of contract and negligence claims are indistinguishable and shall therefore consider the claims to be a single contract claim. Further, inasmuch as Mohan provided no evidence regarding his claim of damage to his personal credit, that claim fails as moot. The court also finds that Mohan failed to prove his claim of breach of contract by a preponderance of the evidence.

{¶ 8} Taking all of Mohan's contentions into consideration, it appears to the court that he is disputing a "judgment call" that was recommended by his peers and agreed to by Dr. Sullivan. The law is well-settled that trial courts generally defer to the

academic decisions of colleges and universities unless there has been such a substantial departure from the accepted academic norms so as to demonstrate that the committee or person responsible did not actually exercise professional judgment. *Bleicher v. University of Cincinnati College of Medicine* (1992), 78 Ohio App.3d 302, 308. Additionally, trial courts have been cautioned to be diligent not to intrude into faculty employment determinations, and not to substitute their own judgment with respect to the qualifications of faculty members, because determinations on such matters cannot be evaluated solely on the basis of objective factors. See *Gogate v. Ohio State University* (1987), 42 Ohio App.3d 220, 226.

{¶ 9} In this case, the evidence shows that the tenured and probationary faculty in the finance department reviewed information concerning Mohan's teaching performance, which included: students' complaints made to academic advisors at the College of Business Administration, students' complaints made to the department of finance chair, opinions of faculty members who attended Mohan's classes, and student evaluations and comments contained in student evaluation forms. After reviewing that information, the faculty met twice to discuss the matter. Based upon their review, the finance faculty concluded that Mohan's conduct in and out of the classroom was both unprofessional and unprecedented. In their "reference" document to Dr. Sullivan, they stated that "there is no place for such unprofessional attitude in the department or the college. The department faculty are very much concerned about the potential damage done to the reputation of the department and the possibility of not being able to attract students to the specialization." (Mohan Exhibit 6.)

{¶ 10} Thereafter, Dr. Sullivan independently reviewed the matter and concluded that both the volume and nature of student complaints was noteworthy. For example, students criticized Mohan for harassing or insulting them when they asked questions; they stated that he appeared to have no genuine interest in teaching; they related that he was not student-oriented, that he was often unprepared, that he gave incorrect answers to examples that he had written for them on the board, and that he was unable to fully explain how certain answers were derived. Dr. Sullivan stated in his termination letter that he could not justify continued employment of Mohan "given the strong and consistent evidence that [his] teaching performance [was] considerably below what [was] expected." (Mohan Exhibit 9.)

{¶ 11} Upon review of all of the evidence, the court finds that there was no deviation from accepted academic norms in this case, nor any deviation substantial enough to demonstrate that Dr. Sullivan, or the faculty who reported to him, failed to exercise professional judgment. The standard of review is not merely whether the court would have decided the matter differently but, rather, whether the faculty action was arbitrary and capricious. *Bleicher, supra*, at 308, citing *Board of Curators of University of Missouri v. Horowitz* (1978), 435 U.S. 78, 91, 98. Accordingly, Mohan's contract claim fails on the merits.

{¶ 12} With respect to plaintiff's claim against Mohan, the court finds from the evidence that Mohan was, in fact, overpaid in an amount that began as \$4,485.31 and, after the addition of late fees, totaled \$4,524.31 at the time that Mohan was last notified. Shortly after the last notification, Mohan responded to BGSU stating he was filing suit against it for breach of contract and

requesting a "forbearance." It does not appear from that evidence that any further collection attempts were made. Mohan presented no defense to such claim and did not deny that the payment in question had been directly deposited into his account.

{¶ 13} Thus, based upon the evidence before the court, judgment shall be rendered in favor of plaintiff in the amount of \$4,524.31. However, the court finds no statutory or common law basis for imposition of interest on this judgment. In addition, for the reasons set forth above, judgment shall be rendered in favor of third-party defendant on defendant/third-party plaintiff's complaint.

IN THE COURT OF CLAIMS OF OHIO
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THE STATE OF OHIO	:	
Plaintiff	:	CASE NO. 2003-07375-PR
v.	:	Judge Joseph T. Clark
	:	<u>JUDGMENT ENTRY</u>
SANTHOSH B. MOHAN	:	
Defendant/Third-Party	:	Plaintiff
v.	:	
	:	
BOWLING GREEN STATE UNIVERSITY	:	
Third-Party Defendant	:	

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This case was tried to the court on the issues of liability and damages. The court has considered the evidence and, for the

reasons set forth in the decision filed concurrently herewith, judgment is hereby rendered in favor of plaintiff in the amount of \$4,524.31. Judgment is rendered in favor of third-party defendant as to defendant/third-party plaintiff's complaint.

Pursuant to R.C. 2743.03(E)(2), the clerk is directed to return the original papers to the Wood County Court of Common Pleas. Court costs are assessed against defendant/third-party plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

JOSEPH T. CLARK
Judge

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