IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

YVETTE ESSOUNGA, PhD,	:	
	:	C.A. No. K16C-01-027 WLW
Plaintiff,	:	Kent County
	:	
v.	:	
	:	
DELAWARE STATE UNIVERSITY : IRENE C. HAWKINS, MARTIN : NUNLEE, REBECCA FOX-LYKENS: and DONNA COVINGTON,	:	
	:	
Defendants.	:	

Submitted: February 26, 2016
Decided: April 18, 2016

ORDER

Upon Defendants' Motion to Dismiss.
Granted.

Yvette Essounga, PhD, *pro se*

Gerard M. Clodomir, Esquire and James D. Taylor, Esquire of Saul Ewing, LLP, Wilmington, Delaware; attorneys for Defendants.

WITHAM, R.J.

Defendants Delaware State University ("DSU"), Irene C. Hawkins, Martin Nunlee, Rebecca Fox-Lykens, and Donna Covington (collectively, the "Defendants") move this Court to dismiss the complaint filed by Plaintiff Dr. Yvette Essounga ("Dr. Essounga") pursuant to Superior Court Rule 12(b)(6). Dr. Essounga claims the Defendants breached an employment contract with a one year duration, and that the Defendants defamed her by broadcasting false allegations. The Defendants claim Essounga's employment was at-will. The Defendants further claim that the alleged defamatory statements were not published, and that they were protected by an employer's qualified privilege to make statements to those who have a legitimate interest in such information. For the following reasons, the Defendants' motion to dismiss is GRANTED.

FACTUAL AND PROCEDURAL BACKGROUND

In 2015, Dr. Essounga commenced communications with DSU regarding a position as a visiting professor. On August 24, 2015, Dr. Essounga received a conditional offer of employment for the position of Visiting Assistant Professor of Business Administration in the College of Business from DSU. The offer was conditioned upon a criminal background check, verification of degrees, completion of employment documents, and the processing of other required documents. The offer stated Dr. Essounga would be compensated with an annual salary of $70,000.00 plus other benefits such as medical and dental care. Dr. Essounga's start date was to be determined once she had submitted all of her pre-employment documents. Dr. Essounga signed and accepted the offer. The conditional offer of employment is what

is hereinafter referred to as the contract.

Soon after Dr. Essounga began teaching her courses, concerns arose regarding her job performance. On September 30, 2015, Campus Police were called when students became disruptive and refused to leave the classroom. A student filed a formal written complaint regarding the incident. On October 2, 2015, a meeting was held regarding the incident which was attended by Dr. Essounga, the DSU Assistant Provost, the Director of the Center for Teaching and Learning, and the Department Chair. Dr. Essounga was advised that her classes would be audited by DSU, that she should start class on time, and that she should lock the door when class commenced.

On October 9, 2015, Dr. Essounga refused to let a student sign in upon belief that the student was impersonating another student in order to get credit for attendance. The student and a handful of other students became disruptive and refused to leave. Campus Police were once again called to the classroom. Dr. Essounga was later notified that complaints regarding her behavior were filed with the university and that DSU had requested a Title IX investigation into whether Dr. Essounga was a threat to students. On October 12, 2015, Dr. Essounga met with Human Resources and was placed on administrative leave while DSU investigated the complaints. Dr. Essounga was banned from campus and prohibited from communicating with anyone other than Human Resources and police.

On December 9, 2015, Dr. Essounga met with a Human Resources employee to discuss the allegations. Dr. Essounga was told she would be notified after the completion of an investigation. On January 12, 2016, Dr. Essounga was notified that

she would not be reappointed in 2016.

On January 27, 2016, Dr. Essounga filed a complaint alleging breach of contract and defamation. On February 18, 2016, the Defendants filed this motion to dismiss the complaint pursuant to Rule 12(b)(6).

STANDARD OF REVIEW

"Delaware is a notice pleading jurisdiction. Thus, for a complaint to survive a motion to dismiss, it need only give general notice of the claim asserted."[1] When deciding a motion to dismiss under Superior Court Rule of Civil Procedure 12(b)(6), all well-pleaded allegations in the complaint must be accepted as true.[2] The test for sufficiency is a broad one: the complaint will survive the motion to dismiss so long as "a plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint."[3] However, the Court "will not accept conclusory allegations unsupported by specific facts or [] draw unreasonable inferences in favor of the non-moving party."[4] Stated differently, a complaint will not be dismissed unless it clearly lacks factual or legal merit.[5]

DISCUSSION

Dr. Essounga states two claims in her complaint. The first claim is that DSU

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[1] *Doe v. Cahill*, 884 A.2d 451, 458 (Del. 2005) (internal citations omitted).

[2] *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

[3] *Id.* (citing *Klein v. Sunbeam Corp.*, 94 A.2d 385 (Del. 1952)).

[4] *Price v. E.I. DuPont de Nemours & Co.*, 26 A.3d 162, 166 (Del. 2011) (quoting *Clinton v. Enterprise Rent–A–Car Co.*, 977 A.2d 892, 895 (Del. 2009)).

[5] *Diamond State Tel. Co. v. Univ. of Del.*, 269 A.2d 52, 58 (Del. 1970).

breached a contract for employment. Dr. Essounga claims the contract was for a one academic year term, and that terminating her before she had completed the term was a breach of the contract. The second claim states that the Defendants verbally and in writing broadcasted false allegations against Dr. Essounga. The allegation states that the Defendants broadcasted that Dr. Essounga was a threat to students and displayed inappropriate conduct in the classroom.

DSU Did Not Breach the Employment Contract

"As a general rule, Delaware law creates a 'heavy presumption that a contract for employment, unless otherwise expressly stated, is at-will in nature with duration indefinite.'"[6] However, "every employment contract made under the laws of this State, consonant with general principles of contract law, includes an implied covenant of good faith and fair dealing."[7] There are four situations in which an employer's ability to terminate an employee is limited by this covenant:

> (1) where the employee's termination violates public policy,
> (2) where the employer misrepresents an important fact and the employee relies on it when deciding to accept a new position or to remain at a present one,
> (3) where the employer uses its superior bargaining power to deprive an employee of identifiable compensation related to an employee's past service, and
> (4) where an employer through deceit, fraud, and misrepresentation manipulates the record "to create fictitious grounds to terminate

[6] *Bailey v. City of Wilmington*, 766 A.2d 477, 480 (Del. 2001) (quoting *Merrill v. Crothall–American, Inc.*, 606 A.2d 96, 102 (Del. 1992)).

[7] *Merrill v. Crothall-Am., Inc.*, 606 A.2d 96, 101 (Del. 1992).

employment."[8]

The Supreme Court of Delaware has "examined the scope of the at-will employment doctrine and the application of the implied covenant of good faith and fair dealing, and held that the doctrine of at-will employment is broad and the implied covenant is to be narrowly construed."[9]

In the case *sub judice*, Dr. Essounga makes no claim that DSU violated the covenant of good faith and fair dealing; she merely states that the employment contract was for a one year period. Specifically, Dr. Essounga claims "Defendant's termination of Plaintiff's employment through employees, violates the initial terms of agreement between Plaintiff and Defendant as stipulated in the contract."[10] However, the contract formed when Dr. Essounga signed the conditional offer of employment contained no expressly stated durational term of employment. Dr. Essounga interprets the fact that compensation was stated as an annual salary of $70,000.00 as an express durational term of one year, but this is merely a statement of compensation. Because the conditional offer that was accepted by Dr. Essounga did not contain an expressly stated durational term of employment, her employment must be considered at-will. Because either side may terminate employment with or without cause in an at-will employment situation, Dr. Essounga's claim for breach of contract must fail.

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[8] *Bailey*, 766 A.2d at 480.

[9] *Rizzitiello v. McDonald's Corp.*, 868 A.2d 825, 830-31 (Del. 2005).

[10] Compl. ¶ 162.

Assuming *arguendo* that Dr. Essounga had made a claim that DSU had violated the covenant of good faith and fair dealing, the claim would not be supported by the facts even when viewed in a light most favorable to Dr. Essounga. Under the first situation covered under the covenant, Dr. Essounga's termination did not violate public policy. Under the second situation, there is no claim that DSU misrepresented important facts. Dr. Essounga relies on the conditional offer from DSU as establishing a contract with a one year durational term. Although DSU may have referred to an annual salary and made reference to an academic year, and Dr. Essounga may have subjectively inferred a one year contract from these references, there is no claim that DSU expressly stated that the contract term would be one year. Under the third situation, there is no claim that DSU deprived Dr. Essounga of compensation for past services. In fact, Dr. Essounga stated that she had been paid $17,009.95 for services rendered and makes a claim for what she perceives to be the balance of the contract. Under the fourth situation, there is no claim of deceit , fraud, or misrepresentation from which to create fictitious grounds for termination. To be sure, Dr. Essounga may not agree with DSU's findings, but the facts related to her termination are recited in her complaint. In other words, Dr. Essounga does not claim the allegations were not made by students, she simply refutes the student's allegations and takes exception to DSU's analysis of the issues.

The Defendants Did Not Defame Dr. Essounga

Defamation is "that which tends to injure 'reputation' in the popular sense; to

diminish the esteem, respect, goodwill or confidence in which the plaintiff is held."[11] Simply stated, libel is written defamation and slander is spoken defamation.[12] Slander requires a showing of special damages unless the statement 1) maligns one in a trade, business, or profession; 2) imputes a crime; 3) implies that one has a loathsome disease; or 4) imputes unchastity to a woman.[13] Libel, on the other hand, does not require proof of special damages. "To establish a claim for defamation the plaintiff must plead: '(1) the defamatory character of the communication; (2) publication; (3) that the communication refers to the plaintiff; (4) the third party's understanding of the communication's defamatory character; and (5) injury.'"[14]

Dr. Essounga claims the Defendants verbally and in writing broadcasted that she was a threat to students and displayed inappropriate conduct in the classroom. Thus, her claim is one of slander *per se* as the statement is one that may malign her in her profession, as well as a claim for libel. To establish her claim, Dr. Essounga is required to plead all five elements of defamation. Dr. Essounga references investigations into complaints of "inappropriate conduct in the classroom" and being "a threat to students," and recounts that these statements were made to other departments outside the College of Business such as the Title IX office, the Teaching and Learning Center, and the Campus Police. However, she fails to establish which

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[11] *Spence v. Funk*, 396 A.2d 967, 969 (Del. 1978).

[12] *Id.* at 970.

[13] *Id.* at 967.

[14] *Harrison v. Hodgson Vocational Tech. High Sch.*, 2007 WL 3112479, at *1 (Del. Super. Oct. 3, 2007) (quoting *Read v. Carpenter*, 1995 WL 945544, *2 (Del. Super. June 8, 1995)).

statements were made to which parties. In failing to establish which communications where made to which party, Dr. Essounga fails the publication element. Moreover, in addition to publication, Dr. Essounga must show that the receiving party understood the defamatory character of the communication. At no point does Dr. Essounga attempt to plead the third party's understanding of the communication's defamatory character. Because Dr. Essounga failed to plead publication and understanding, and thus failed to plead all five elements of a defamation claim, her defamation claim must be dismissed.

Assuming *arguendo* that Dr. Essounga had pled all five elements of defamation, the claim would still fail based on DSU's qualified privilege as an employer to "to make communications regarding the character, qualifications, or job performance of an employee or former employee to those who have a legitimate interest in such information."[15] Dr. Essounga states that the student allegations were broadcast outside of the College of Business to other departments such as the Title IX office, the Teaching and Learning Center, and Campus Police. Each of these agencies were involved with the investigation and thus had a legitimate interest in the information contained in the complaints.

[15] *Bloss v. Kershner*, 2000 WL 303342, at *6 (Del. Super. Mar. 9, 2000).

CONCLUSION

For the foregoing reasons, the Defendants' motion to dismiss is **GRANTED**.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh