

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

STEPHANIE BAIYASI,

Plaintiff,

Case No. 11-
Hon.

vs

DELTA COLLEGE and DAVID
BAILEY, in his individual and official
capacity, jointly and severally,

Defendants.

THE MASTROMARCO FIRM
VICTOR J. MASTROMARCO, JR. (P34564)
MANDA L. DANIELESKI (P62597)
Attorneys for Plaintiff
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COMPLAINT AND RELIANCE ON
DEMAND FOR TRIAL BY JURY
DEMAND FOR PRETRIAL CONFERENCE

NOW COMES, the above-entitled Plaintiff, STEPHANIE BAIYASI, by and through her attorneys, THE MASTROMARCO FIRM, and hereby complains against Defendant, DELTA COLLEGE, stating as follows:

COMMON ALLEGATIONS

1.

That at all times material hereto, Plaintiff, STEPHANIE BAIYASI, is a resident of the County of Midland, State of Michigan.

2.

That at all times material hereto, Defendant, DELTA COLLEGE, is a public college doing business in the County of Bay, State of Michigan.

3.

That Defendant David Bailey is upon information and belief a resident of the County of Bay, State of Michigan

4.

That Plaintiff was an Assistant Professor with the Defendant Delta College.

5.

That Plaintiff was a contractual employee. [**Exhibit A, Contract**].

6.

That Plaintiff files this instant cause of action alleging violations of her constitutional rights by virtue of Article II, and the 1st and 14th Amendments to the U.S. Constitution together with claims of violations of constitutional due process rights, based on deprivation of property or liberty, through 42 U.S.C. § 1983 and § 1985, and also claims retaliation and religious discrimination pursuant to the Michigan Elliott Larsen Civil Rights Act.

7.

That the Defendant herein acted under color of state law and the offending conduct described below deprived the Plaintiff of rights secured by federal law.

8.

That Defendant violated Plaintiff's clearly established constitutional rights, when they deprived her of a term, condition or privilege of her employment, and because of her religious beliefs, failed to act on her complaints of religious discrimination, tolerating the environment and maintaining a policy of discrimination based on religion.

9.

That Defendant Delta College is liable for the actions of its agents, members and employees that took on unconstitutional action against the Plaintiff and who implemented, executed the policy, statement and/or decision officially adopted and/or promulgated by Defendant.

10.

That Defendant did in fact violate Plaintiff's constitutional rights and did retaliate against her for her assertion of the constitution right to religious freedom by denying Plaintiff tenure.

11.

That the Plaintiff has a degree in veterinary medicine, and has worked for Delta College as an Assistant Professor in the Science Department most recently.

12.

That during the course of Plaintiff's employment, and at the time of the wrongful acts herein, the Chairperson of the Science Department was one David Bailey, who discriminated against the Plaintiff because of her religious beliefs and would openly discriminate against individuals, including Plaintiff because of her religious beliefs.

13.

That not only has the Defendant David Bailey (hereinafter "Bailey") acted to prevent Plaintiff's tenure but has also taken action not to renew her contract as an Assistant Professor, and he has also retaliated against her for bringing to the colleges attention his religious discrimination.

14.

That furthermore, and as will be set forth more fully below, Plaintiff has also brought Defendant Bailey's discriminatory behavior to the attention of the Defendant's Human Resource Department and to the President of the University, who have done nothing, nor have they investigated, any of Plaintiff's claims of religious discrimination made against Defendant Bailey.

15.

That in fact, Defendant Bailey has been accused of religious discrimination in the past and has engaged in religious discrimination in the past.

16.

That Defendant tolerated Bailey's actions in discriminating against her knowing that said discrimination was based upon her religious beliefs.

17.

That Defendant further allowed Bailey to continue his religious discrimination against the Plaintiff, and further retaliated against the Plaintiff based on her religious beliefs.

18.

That Defendant further failed to review any of Plaintiff's claims as set forth above.

19.

That Defendant violated Plaintiff's constitutional rights (retaliating and making business decisions based upon Plaintiff's religious beliefs) and has also deprived Plaintiff of her liberty (her ability to practice her own religion) and destroy Plaintiff's good name (reputation, honor and integrity) and property (depriving Plaintiff of her right to continued employment) in violation of Plaintiff's constitutional rights referred to above and set forth pursuant to the 1st and 14th Amendments to the United States Constitution.

20.

That this Court has subject matter jurisdiction over the federal questions which have been raised in this complaint including the 14th Amendment and 1st Amendment to the United States Constitution pursuant to 28 U.S.C. § 1332 and supplemental jurisdiction over any of Plaintiff's state claims pursuant to 28 U.S.C. § 1367.

21.

That as a result of Defendant's wrongful actions the Plaintiff has suffered and will continue to suffer economic damages in the form of past, present and future income and benefits in an amount in excess of Seventy-Five Thousand (\$75,000.00) Dollars.

22.

That as a result of Defendant's wrongful actions, the Plaintiff has suffered and will continue to suffer non-economic damages in the form of past, present and future emotional distress, mental anguish, humiliation and destruction of Plaintiff's lifestyle in an amount in excess of Seventy-Five Thousand (\$75,000.00) Dollars.

23.

That as a result of Defendant's wrongful actions, the Plaintiff also seeks attorney fees and costs.

24.

That Plaintiff also seeks all damages, including punitive damages, to the extent permitted by law along with all other relief allowed by law or equity.

**COUNT I – VIOLATIONS TO THE 1ST AND 14TH AMENDMENTS TO THE
UNITED STATES CONSTITUTION AGAINST DELTA COLLEGE**

25.

The Plaintiff hereby incorporates, by reference hereto, paragraphs 1 through 24 of her Common Allegations, word for word, and paragraph by paragraph as if restated herein.

26.

That Plaintiff is active in the campus Christian society.

27.

That she has also been involved in campaigning to get "creation science" as part of the curriculum, a fact known to Defendant Bailey.

28.

That Bailey has made it clear that he has "problems" with Christians. He has made statements openly to other Professors about wanting to "crush all Christians" referring to them as "bugs".

29.

That it is believed that Bailey may hold some sort of Scientism beliefs or beliefs against Christianity since he has made statements impugning Christianity and those that would hold such beliefs.

30.

That Defendant Bailey, has been appointed "Chair" of the Science Department by Delta College, and by virtue of his position, he has manipulated the promotion and tenure process on the part of the Plaintiff, so as to crush any reasonable opportunity for Plaintiff to obtain tenure or continue employment at Delta College because of his bias against openly practicing Christians.

31.

That Defendant Bailey has in fact, in the past, been grieved by another Christian Professor for making statements that he would "crush Christians like a bug".

32.

That Plaintiff is known to be a Christian by Defendant Bailey.

33.

Plaintiff, throughout the course of her employment with Delta College, did proceed without incident and worked in a satisfactory manner, accumulating over 800 hours of unused sick time, which reflects her dedication to her duties and responsibilities at Delta College.

34.

That as set forth herein, Defendant Bailey has used his authority as chair of the Science Department to target, undermine and treat unfavorably the Plaintiff, because she has been open about her Christian beliefs.

35.

That Defendant Bailey is also a member of the "council of chairs," and has also used his position and influence on the council to undermine the Plaintiff.

36.

That Defendant Delta College, through its administrators, specifically Karen Wilson, knew that Defendant Bailey had made statements about his wanting to "crush Christians like a bug" and despite his avowed intent to "crush Christians" he was allowed to go on to become the chair of the Science Department and to supervise and manage the hiring, promotion and firing of the Plaintiff.

37.

That when Plaintiff complained to the Dean of Faculty, Karen Wilson, concerning the bias on the part of Defendant Bailey and that Plaintiff did not want to work in a hostile work environment with him, the Plaintiff was assured that Defendant Bailey would be given training and develop the skills necessary to end his discriminatory behavior.

38.

That on May 6, 2009, Plaintiff met again with Dean Karen Wilson to again express her concern that Defendant Bailey had exhibited hostility towards her and that she had concerns that she was being asked to continue to work in a hostile work environment.

39.

That Plaintiff was advised at that time by Dean Karen Wilson to “accept David Bailey as her supervisor and to cooperate with him,” and no formal investigation was ever entered into by the Defendant in violation of their policies and procedures which purport to prohibit religious discrimination and retaliation. [**Exhibit B, Religious Discrimination Policy**].

40.

That on November 3, 2010, Plaintiff sought out and met with Delta College Human Resource Director Tamie Grunow, and at that time made Ms. Grunow aware that Defendant Bailey had conducted her departmental meeting in a process that was irregular and encouraged and allowed people in attendance to make unsubstantiated and untrue

statements regarding the Plaintiff in this meeting, without providing Plaintiff with an opportunity to respond to these statements.

41.

That Bailey claimed Plaintiff was not acting in a “collegial fashion” (it should be noted that said term has religious connotations thus also underscoring his discriminatory bias).

42.

That Tamie Grunow, HR Director although being made aware of the complaint took no action to investigate if harassment, in the form of libel and/or slander or religious discrimination had taken place in the meeting process.

43.

That Plaintiff had specifically indicated to Grunow that she believed that Defendant Bailey was manipulating the meeting process to squeeze out any support for the Plaintiff by filling up time to discuss her readiness for tenure with what appeared to be an orchestrated effort by Defendant Bailey to raise concerns about Plaintiff rather than look at her many positive contributions as set forth by the Plaintiff. No investigation occurred as a result of Plaintiff’s concerns.

44.

That subsequent to that time and on November 16, 2010, Plaintiff called a meeting to discuss and ask for an investigation to determine if Defendant Bailey was harboring a hidden agenda to undermine her ability to receive tenure because of her open Christian beliefs.

45.

That when Bailey was confronted with these statements he did not deny them but instead, agreed to allegedly recuse himself from the role. However, and in further retaliation for this “recusal” Bailey wrote an extremely negative letter to the council of chairs indicating his lack of support for the Plaintiff to become tenured, in an attempt to pursue the council.

46.

That his actions were meant to, and did, “poison the well” so-to-speak and provided an unfavorable reception by the Council of Chairs when Plaintiff’s requested tenure was voted on by the chairs on 1/27/11.

47.

That Defendant Bailey has and does treat the Plaintiff unfavorably because of her religious beliefs and ethical or moral beliefs in violation of the 1st and 14th Amendments to the United States Constitution.

48.

That Defendant Bailey is aware that Plaintiff has led discussions on campus of Delta College where she has asked people to consider “creation science as a viable theory for explaining the origin of life” and has also been involved in open campus inter varsity bible study groups. In response, Defendant Bailey has described Christian Science in disgust as an “unbelievable concept”.

49.

That it is also believed that Defendant Bailey as Chair of the Science Division promoted the presentation of a campus speaker that debunked “creation science” and has also expressed disrespect for the beliefs of Christians like the Plaintiff that “God created the universe”.

50.

That Defendant Bailey which has been tolerated by Defendant College has expressed in word and action that he hates Christians, and acted on that belief in discriminating against the Plaintiff.

51.

That Defendant’s attempts to discredit the Plaintiff is in violation of her constitutional rights guaranteed under the federal constitution of the United States as more fully set forth above.

52.

That Defendant Delta did tolerate, condone and allow Defendant Bailey’s discriminatory animus to permeate the workplace.

53.

That Defendant’s actions herein do constitute religious discrimination in violation of both federal constitution and the Elliott Larsen Civil Rights Act.

54.

That Defendant's actions have caused the Plaintiff to be discriminated against based upon her religious beliefs, and as such, has been denied tenure.

55.

That Defendant Bailey has also indicated that he will not be renewing Plaintiff's contract, and has terminated the renewal of Plaintiff's contract for the 2011-2012 school year.

56.

That as a result of Defendant's wrongful actions the Plaintiff has suffered and will continue to suffer economic damages in the form of past, present and future income and benefits in an amount in excess of Seventy-Five Thousand (\$75,000.00) Dollars.

57.

That as a direct and proximate result of Defendant's actions, and all of them, the Plaintiff has suffered mental anguish, humiliation, embarrassment, disruption of lifestyle in an amount in excess of Seventy-Five Thousand and No/100 (\$75,000.00) Dollars which Plaintiff also seeks.

58.

That Plaintiff also seeks attorney fees, costs and interest along with any and all other damages and relief as allowed under state law or federal law as it would pertain to Plaintiff's religious discrimination claims and violations of the federal constitution.

**COUNT II – VIOLATIONS FO THE MICHIGAN ELLIOT LARSEN CIVIL
RIGHTS ACT AGAINST DEFENDANT DELTA COLLEGE AND DEFENDANT
BAILEY, INDIVIDUALLY**

59.

The Plaintiff hereby incorporates, by reference hereto, paragraphs 1 through 24 of her Common Allegations, and 25 through 58 of Count I, word for word, and paragraph by paragraph as if restated herein.

60.

That Defendants discriminated against Plaintiff on the basis of religion.

61.

That Plaintiff was a member of a protected class by virtue of her religion, Christian, and also because she complained about actions prohibited by the ELCRA.

62.

That Plaintiff was denied tenure and promotional opportunities (adverse employment actions) because of her religion and because of her complaint of religious discrimination.

63.

That Plaintiff was treated less favorably than persons outside of her protected class.

63.

That Plaintiff's religion and complaints of religious discrimination were motivating factors in the adverse employment actions set forth above.

64.

That as a result of Defendant's wrongful actions the Plaintiff has suffered and will continue to suffer economic damages in the form of past, present and future income and benefits in an amount in excess of Seventy-Five Thousand (\$75,000.00) Dollars.

65.

That as a direct and proximate result of Defendant's actions, and all of them, the Plaintiff has suffered mental anguish, humiliation, embarrassment, disruption of lifestyle in an amount in excess of Seventy-Five Thousand and No/100 (\$75,000.00) Dollars which Plaintiff also seeks.

66.

That Plaintiff also seeks attorney fees, costs and interest along with any and all other damages and relief as allowed under state law or federal law as it would pertain to Plaintiff's religious discrimination claims and violations of the federal constitution.

WHEREFORE, the Plaintiff, STEPHANIE BAIYASI, hereby requests that this Honorable Court grant her an award of damages in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00) to fully compensate her for her economic and non-economic damages which she has sustained as a direct and proximate result of Defendant's wrongful action in violation of the discrimination laws. Plaintiff likewise seeks recovery for her actual attorney fees, costs, interest on said award and whatever equitable relief that the Court may deem just and appropriate.

COUNT III – VIOLATIONS OF DUE PROCESS AND BREACH OF POLICY

67.

The Plaintiff hereby incorporates, by reference hereto, paragraphs 1 through 24 of her Common Allegations, 25 through 58 of Count I, 59 through 66 of Count II, word for word, and paragraph by paragraph as if restated herein.

68.

That Plaintiff alleges violations of procedural due process, applicable through 42 U.S.C. § 1983.

69.

That Plaintiff has suffered a loss of her property interest in her employment grounded in Defendants' policies and procedures.

70.

That the policies and procedures of the Defendant create a legitimate claim of entitlement to continued employment.

71.

That Plaintiff had a legitimate expectation of continued employment under Michigan law since Plaintiff legitimately relied that these policies would be followed.

72.

That Plaintiff was not afforded the benefits of the Defendant's policies and procedures prior to discharge.

73.

That Defendant violated its religious discrimination policy (**Exhibit B**) which purport to prohibit religious discrimination and retaliation.

74.

That Defendant further violated the grievance procedure set forth in the anti-harassment and complaint procedure attached as Exhibit B.

75.

That Defendant also violated policy 2.005 entitled Equal Opportunity because it discriminated against her on the basis of religion and also because they violated the grievance procedure for Equal Opportunity/Equity Concerns. (**Exhibit C, 2.005 Equal Opportunity**).

76.

That Defendant also violated its policies and procedures as they relate to tenure. (**Exhibit D, 3.010 Standards and Procedures for Tenure**).

77.

That as a result of Defendant's wrongful actions the Plaintiff has suffered and will continue to suffer economic damages in the form of past, present and future income and benefits in an amount in excess of Seventy-Five Thousand (\$75,000.00) Dollars.

78.

That as a result of Defendant's wrongful actions, the Plaintiff has suffered and will continue to suffer non-economic damages in the form of past, present and future emotional distress, mental anguish, humiliation and destruction of Plaintiff's lifestyle in an amount in excess of Seventy-Five Thousand (\$75,000.00) Dollars.

Respectfully submitted,

THE MASTROMARCO FIRM

Dated: July 18, 2011

By: s/Victor J. Mastromarco, Jr.
VICTOR J. MASTROMARCO, JR. (P34564)
Attorneys for Plaintiff
1024 North Michigan Avenue
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(989) 752-1414

DEMAND FOR TRIAL BY JURY

NOW COMES the Plaintiff, STEPHANIE BAIYASI, by and through her attorneys, THE MASTROMARCO FIRM, and hereby demands a trial by jury of all issues in this cause of action unless expressly waived.

Respectfully submitted,

THE MASTROMARCO FIRM

Dated: July 18, 2011

By: s/Victor J. Mastromarco, Jr.
VICTOR J. MASTROMARCO, JR. (P34564)
Attorneys for Plaintiff
1024 North Michigan Avenue
Saginaw, Michigan 48602
(989) 752-1414

DEMAND FOR PRE-TRIAL CONFERENCE

NOW COMES the Plaintiff, by and through her attorneys, THE MASTROMARCO FIRM, and hereby demands a Pre-Trial Conference pursuant to the Michigan Court Rules.

Respectfully submitted,

THE MASTROMARCO FIRM

Dated: July 18, 2011

By: s/Victor J. Mastromarco, Jr.
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