AUGUSTINE "AUSTIN" OKUARUME	*	**NO. 2017-CA-0897**
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VERSUS		**COURT OF APPEAL**
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SOUTHERN UNIVERSITY OF NEW ORLEANS; THE BOARD OF SUPERVISORS OF SOUTHERN UNIVERSITY; AND DR. ROBERT B. GEX, CHANCELLOR OF SOUTHERN UNIVERSITY OF NEW ORLEANS		**FOURTH CIRCUIT**
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		STATE OF LOUISIANA
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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 1995-06843, DIVISION "F"
Honorable Christopher J. Bruno, Judge
* * * * * *
Judge Tiffany G. Chase
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(Court composed of Judge Roland L. Belsome, Judge Joy Cossich Lobrano, Judge Tiffany G. Chase)

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AFFIRMED
April 25, 2018

The Appellant, Augustine Okuarume (hereinafter "Mr. Okuarume"), appeals the June 12, 2017 trial court judgment granting the motion for summary judgment filed by his former employer, Southern University of New Orleans (hereinafter "SUNO").[1] Accordingly, for the reasons that follow, we affirm the trial court's judgment granting the motion for summary judgment.

Mr. Okuarume was hired as an adjunct instructor by SUNO, in the Spring semester of 1991, to teach evening and weekend business courses. He maintained this position from Spring 1991 to Spring 1994. Mr. Okuarume signed a teaching assignment memorandum (hereinafter "teaching agreements") for Fall 1991, Fall 1992, Spring 1993, Fall 1993 and Spring 1994.[2] The teaching agreements indicated which classes Mr. Okuarume would teach and the projected salary schedule for each class taught.[3] On May 12, 1995 Mr. Okuarume filed a petition for damages for unpaid wages arguing that SUNO added classes to his teaching schedule whereby he was teaching the same amount of classes as a full-time instructor but

[1] The original petition for damages also named the Board of Supervisors of Southern University and Dr. Robert B. Gex, who was the Chancellor of Southern University of New Orleans in 1995 when the original petition for damages was filed.
[2] Mr. Okuarume did not sign the teaching agreements for Spring 1991 and Spring 1992.
[3] All teaching agreements contained boiler plate language, with the specific courses assigned for that specific semester written in on each document.

was not being compensated the same. He further argued that SUNO refused to pay him the additional salary in accordance with La. R.S. 23:631.[4]

On December 1, 2016, SUNO filed a motion for summary judgment arguing that there was no contractual dispute between the parties because Mr. Okuarume was paid the amount he agreed to in his teaching agreement and that the revisions of La. R.S. 23:631 were inapplicable. In support of its motion for summary judgment, SUNO submitted teaching agreements, signed by Mr. Okuarume, for Fall 1991, Fall 1992, Spring 1993, Fall 1993 and Spring 1994; correspondence from Viola D. King, Dean of Evening and Weekend College, regarding Mr. Okuarume's employment; pay stubs for Mr. Okuarume for the relevant semesters; an affidavit from Winston G. DeCuir, Sr. providing excerpts of the rules and policies of SUNO as well as, excerpts from the faculty guide for the evening and weekend college at SUNO; and an affidavit from Dr. Press L. Robinson, former chancellor of SUNO, providing details on the role and responsibilities of an adjunct instructor at SUNO.

In opposition to the motion for summary judgment, Mr. Okuarume maintained that SUNO expanded his duties and failed to comply with the signed teaching agreements because it added additional courses after the teaching agreements were executed and as such, he was entitled to be paid as a full-time instructor. In support of his opposition to the motion, Mr. Okuarume submitted logs which listed other instructors, the courses assigned to each and the salary received; an unsigned position vacancy announcement indicating the position for which Mr. Okuarume was applying for as a "tenure" position; SUNO's evening and weekend college

[4] La. R.S. 23:631. Discharge or resignation of employees; payment after termination of employment.

faculty guide; and an affidavit from Mr. Okuarume detailing the specific work he performed as an instructor.

A hearing on the motion was held on February 3, 2017. The trial court noted that Mr. Okuarume had the burden of establishing that a contract existed and a subsequent breach thereof. The trial court concluded:

> The fact is that he has the burden of establishing an agreement and a breach thereof. He has done nothing other than say, well, other professors were getting more money than me, therefore, I should have gotten the same money because they taught the same course that I taught. There has to be some connection in the facts; an affidavit by him saying that is what they told me or not that other people were getting more money than me. I cannot presume an agreement unless one is set forth in writing or orally… . When you look at the evidence the document that he did sign on those four or five occasions do not limit him to two classes. It says specifically, we reserve the right to modify this assignment if necessary. He says, I accept the above assignment with the understanding that modifications may be necessary or he could have simply said I do not want this assignment. He understands that he may be receiving modifications when he signs this. He gets additional assignments and he gets paid exactly in accordance with this document an additional $1,100.00… . He has just not established a contractual relationship between himself and the university by oral or written form, and he has not shown a breach of an agreement whereby the university promised him X dollars for four-course teaching similar to that of a full-time professor.

Following the hearing, the trial court granted SUNO's motion for summary judgment and dismissed Mr. Okuarume's case. This appeal followed.

An appellate court reviews a trial court's decision to grant a motion for summary judgment *de novo*. In *Chatelain*, this Court set forth the applicable standard of review as follows:

> Appellate courts review the grant or denial of a motion for summary judgment *de novo*, using the same criteria applied by trial courts to determine whether summary judgment is appropriate. This standard of review requires the appellate court to look at the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, to determine if they show that no genuine issue as to a material fact exists, and that the mover is entitled to judgment as a matter of law. A fact is material when its existence or nonexistence may be

> essential to the plaintiff's cause of action under the applicable theory of recovery; a fact is material if it potentially insures or precludes recovery, affects a litigant's ultimate success, or determines the outcome of the legal dispute. A genuine issue is one as to which reasonable persons could disagree; if reasonable persons could reach only one conclusion, no need for trial on that issue exists and summary judgment is appropriate. To affirm a summary judgment, we must find reasonable minds would inevitably conclude that the mover is entitled to judgment as a matter of the applicable law on the facts before the court.[5]

La. C.C.P. art. 966(A)(3) provides that "After an opportunity for adequate discovery, a motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law." The applicable statutory authority provides that the initial burden of proof lies with the party moving for summary judgment. However, the burden to produce factual support sufficient to establish the existence of a genuine issue of material fact rests with the adverse party.[6]

Valid Contract

This Court must first determine whether or not a valid contract exists between Mr. Okuarume and SUNO. SUNO argues to this Court, as it did in its motion for summary judgment, that Mr. Okuarume agreed to work as a temporary adjunct instructor and a contract was formed when he signed the teaching agreements accepting the assignment at the stated rate. Mr. Okuarume disagrees with SUNO's assertion, maintaining that the manner in which he was employed and the teaching agreements failed to establish a contractual agreement and designate his specific scope of employment.

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[5] *Chatelain v. Fluor Daniel Const. Co.*, 2014-1312, p. 3 (La.App. 4 Cir. 11/10/15), 179 So.3d 791, 793 (citations omitted).
[6] La. C.C.P. art. 966(D)(1).

A contract is an agreement by two or more parties whereby obligations are created, modified, or extinguished.[7] "Four elements are required for confection of a valid contract: (1) the capacity to contract; (2) mutual consent; (3) a certain object; and (4) lawful cause." [8] As to the capacity to contract and the lawful cause to contract, those elements are not at issue in this litigation.

We therefore turn to the issue of mutual consent. "[A] contract is formed by the consent of the parties established through offer and acceptance. Unless otherwise prescribed, offer and acceptance may be made orally, in writing, or by action or inaction that under the circumstances is clearly indicative of consent."[9] Mr. Okuarume was offered a position as an adjunct instructor by SUNO. He accepted this position and agreed to be paid a certain rate for each class taught. The teaching agreements indicate that Mr. Okuarume would teach three-hour courses and, as such, would be paid $1,100.00 per three-hour course. Mr. Okuarume signed the teaching agreements prior to the start of each semester and checked where designated to indicate his acceptance of the agreement.[10] Mr. Okuarume checked that he accepted the teaching agreements on all but two of the signed teaching agreements.[11] However, his acceptance of those two teaching agreements is evidenced by his performance of the duties outlined in the teaching agreement. As such, there was mutual consent between the parties regarding the teaching agreements.

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[7] La. Civ.Code art. 1906.
[8] *Fairbanks v. Tulane Univ.*, 98-1228, p. 4 (La.App. 4 Cir. 3/31/99), 731 So.2d 983, 986 citing *Babkow v. Morris Bart, P.L.C.*, 98-0256 (La.App. 4 Cir. 12/16/98), 726 So.2d 423.
[9] La. Civ. Code art. 1927.
[10] Although Mr. Okuarume did not sign teaching agreements for the Spring 1991 and Spring 1992 semesters, in an affidavit he acknowledges that he taught courses during those semesters.
[11] On the teaching agreements for Fall 1993 and Spring 1993, Mr. Okuarume did not check any item but signed and dated the document.

Concerning the issue of the contract object, the numerous teaching agreements constitute contracts between Mr. Okuarume and SUNO. The teaching agreements clearly identify which classes Mr. Okuarume would teach and the projected salary schedule for each class taught. As such, we find all of the elements necessary for a valid contract existed between Mr. Okuarume and SUNO.

Implied contract

Mr. Okuarume suggested to the trial court that the scope of the teaching agreements did not represent the sole basis of his contractual agreement with SUNO. Mr. Okuarume argues that because he was required to hold office hours, as is required by a full-time instructor, an implied contractual agreement of his employment as a full-time instructor was created. Additionally, he contends that he agreed to teach the additional courses assigned with the expectation that he would be paid in the same manner as a full-time instructor. It is from this expectation that he contends that an implied contract was created.

"An implied in fact contract rests upon consent implied from facts and circumstances showing a mutual intention to contract. Consent to an obligation may be implied from action only when circumstances unequivocally indicate an agreement or when the law presumes it."[12] The requirement for Mr. Okuarume to hold office hours created no additional duties since it is specified in the faculty handbook that adjunct instructors must make themselves available by appointment, before or after class, when a student requests a conference. Mr. Okuarume's argument is unsupported by the facts presented to the trial court. We likewise disagree with this assertion.

[12] *Union Texas Petroleum Corp. v. Mid Louisiana Gas Co.*, (La.App. 4 Cir. 2/12/1987) 503 So.2d 159, 165 (internal citations omitted).

We will now consider Mr. Okuarume's argument that teaching additional courses entitled him to full-time pay. Although the teaching agreements list the courses that were assigned to Mr. Okuarume, additional courses were assigned that were not listed on the teaching agreement. Each teaching agreements list two to three courses per semester to be taught by Mr. Okuarume. After the agreements were signed, SUNO added one course to Mr. Okuarume's Spring 1993 semester course load and one additional course to his Spring 1994 semester course load. In total, Mr. Okuarume taught two courses in Spring 1991, two courses in Fall 1991, three courses in Spring 1992, four courses in Fall 1992, three courses in Spring 1993, two courses in Fall 1993 and four courses in Spring 1994. SUNO paid Mr. Okuarume $1,100.00 for each course he taught. The teaching agreements provide that SUNO "reserve[s] the right to modify this assignment, if necessary." The additional courses were modifications of the agreement. Mr. Okuarume was assigned additional courses to teach and was paid accordingly. He presented no evidence to the trial court which would indicate that SUNO intended for him to be hired and paid as a full-time instructor. Furthermore, an implied contract can only be created by mutual intention of the parties and "there can be no implied contract where there is an express contract between the same parties in reference to the same subject matter."[13] As evidenced by the teaching agreements, an actual contractual agreement did exist between Mr. Okuarume and SUNO and as such, no implied contract could have existed.

Breach of contract

We will now consider Mr. Okuarume's breach of contract claim. Based on the

[13] *Id.* citing *Mazureau v. Hennen,* 25 La.Ann. 281 (La.1873).

petition for damages Mr. Okuarume sought additional compensation that SUNO refused to pay. Essentially, Mr. Okuarume maintains that this refusal to pay is tantamount to a breach of the duty to pay him what was owed. He argues that SUNO breached its obligation to pay him in the manner and level of that equivalent to a full-time instructor. This argument is flawed because it is premised on the existence of an implied contract. As discussed above, an implied contract was not formed. Hence, the only inquiry for the trial court was whether a breach of contract occurred based on SUNO's obligation under the teaching agreements.

The trial court noted that the statute Mr. Okuarume filed his petition for damages under, La. R.S. 23:631, requires that a person be paid under the terms of their employment. The trial court reasoned that:

> [W]e know that he was paid in accordance with $1,100.00 for a three hour course he taught when he taught. I do not understand- and the statute you are suing under says, pay the amount due under the terms of the employment. The problem is what are his terms of employment? He has not established that he is a full-time professor entitled to the pay of a full-time professor. His terms of employment from the record are that he was paid per course, per three-hour course.

The terms of employment are outlined in the teaching agreements. There is no dispute that Mr. Okuarume was paid the $1,100.00 per three hour course as required by the teaching agreements. "The essential elements of a breach of contract claim are the existence of a contract, the party's breach thereof, and resulting damages."[14] Mr. Okuarume was paid under the terms of the teaching agreements he accepted. He does not argue that he was not paid correctly, for each class he taught, nor does he establish that he was a full-time instructor who was

[14] *1100 S. Jefferson Davis Parkway, LLC v. Williams*, 2014-1326, p. 5 (La.App. 4 Cir. 5/20/15), 165 So. 3d 1211, 1216, writ denied, 2015-1449 (La. 10/9/15), 178 So.3d 1005 citing *Favrot v. Favrot*, 10-0986, pp. 14-15 (La.App. 4 Cir. 2/9/11), 68 So.3d 1099, 1108-09.

entitled to the salary of a full-time instructor. He was paid according to the terms of the teaching agreements, which was $1,100.00 per three hour course. As such, we find the trial court did not err in concluding that there was no breach of contract between Mr. Okuarume and SUNO.

Conclusion

Mr. Okuarume has not demonstrated that an implied contract was formed. Further, he has not established that SUNO breached the terms of the teaching agreements. Therefore, we find that as a matter of law, Mr. Okuarume has failed to raise any genuine issues of material fact which would preclude the granting of the motion for summary judgment. For the foregoing reasons, we affirm the judgment of the trial court granting SUNO's motion for summary judgment.

AFFIRMED