

THE UNIVERSITY OF MICHIGAN
REGENTS COMMUNICATION
ITEM FOR INFORMATION

Received by the Regents
May 19, 2011

Subject: Litigation

May 2011

NEW CASES

Habitat for Humanity of Huron Valley v Angela Rowlands, The Regents of the University of Michigan and its Housing Bureau for Seniors, and the City of Ann Arbor. Washtenaw County Circuit Court. (Judge Archie C. Brown) (Served April 18, 2011).

Plaintiff alleges that Defendant Rowlands defaulted on a mortgage which was payable to Habitat for Humanity. The Housing Bureau for Seniors holds a second mortgage on the property. Habitat claims that defendants Regents and the City claim an interest in the property but that such interests are subordinate to the mortgage interest of Habitat. Plaintiff Habitat seeks payment of the note and mortgage, plus costs and attorney fees, from defendant Rowlands or, in the alternative, asks the court to allow the mortgage to be foreclosed and the premises sold at public sale with the proceeds paid to Habitat. Habitat also asks the court to determine that the interests held by the Regents and the City are subordinate to Habitat's interests.

Lauren Sisak v Tamara Lin Beach. Washtenaw County Circuit Court. (Judge Donald E. Shelton) (Filed March 2, 2011).

Plaintiff claims that on August 8, 2008, she was crossing the street when she was struck by a vehicle driven by Defendant Beach. The vehicle is owned by the University and Ms. Beach is a University employee. Plaintiff alleges that Beach was grossly negligent and that, as a result of the accident, Plaintiff suffered permanent injuries. She seeks damages in excess of \$25,000, including interest, costs and attorney fees.

RESOLUTIONS

Pino Colone v Patrick Wardell, Hurley Medical Center and University of Michigan. Genesee County Circuit Court. (Judge Richard B. Yuille) (Filed June 14, 2007).

Plaintiff was employed by the University as an emergency room physician working at Hurley Hospital in Flint. He claims that he was a Whistleblower when he reported an incident to the State Nurse Licensing Board that he felt was inappropriate patient care. Plaintiff states that, subsequent to that report, he was retaliated against by both Hurley Hospital and the University when he was reassigned to work at another hospital. He seeks damages in excess of \$25,000, costs and attorney's fees. The University filed a motion for summary disposition as did Hurley Hospital/Patrick Wardell. Judge Yuille dismissed Plaintiff's conspiracy and public policy claims; the judge also dismissed the Whistleblower claim against Hurley Hospital but retained the Whistleblower claim against the University as well as the Elliott-Larsen retaliation claim against the University and

Hurley. Defendants University, Hurley Medical Center and Patrick Wardell filed an application for leave to file an interlocutory appeal of Judge Yuille's ruling to the Michigan Court of Appeals. The Court of Appeals granted leave and also granted Defendants' motion to stay the proceedings in the trial court while the appeal is pending. Oral argument was heard in the Court of Appeals on March 2, 2009. On October 8, 2010, the Court of Appeals found in favor of the University. Plaintiff filed an application for leave to appeal to the Michigan Supreme Court; on April 6, 2011, the Michigan Supreme Court denied Plaintiff's application. This case is concluded.

Nicole R. Scott v Dr. David Lilley and the University of Michigan. Wayne County Circuit Court. (Judge Robert J. Colombo, Jr.) (Served May 17, 2010); Michigan Court of Claims (Judge Joyce Draganchuk) (Served September 14, 2010).

Plaintiff is a student at UM-Dearborn. She claims that she had filed complaints in the Dean's Office in the College of Arts, Sciences and Letters about a grade she had received on a paper from Professor Lilley. Ms. Scott alleges that, after her complaints were filed, Professor Lilley ran a criminal background check and credit report on her and communicated that personal information via email to other faculty and staff at the University. Plaintiff claims that, as a result, her reputation at UM-Dearborn has been ruined. Her allegations include defamation and intentional infliction of emotional distress; she seeks damages, costs and interest. Plaintiff stipulated to the entry of an order of dismissal of this case in circuit court for lack of jurisdiction. Plaintiff's case in Wayne County Circuit Court was dismissed; Ms. Scott re-filed her complaint in the Michigan Court of Claims. On April 13, 2011, Judge Draganchuk dismissed the Court of Claims case and the matter is concluded.

Mohammed Nawwas and Maysa Nawwas v Regents and Steven L. Sinelli. Washtenaw County Circuit Court. (Judge David S. Swartz) (Filed April 2, 2008).

Plaintiff Mohammed Nawwas purchased a piece of equipment from the University's Property Disposition Office. On January 4, 2007, plaintiff claims that an employee of the Property Disposition Office, at the direction of supervisor Steven Sinelli, was operating a hi-lo vehicle in order to load the equipment onto Plaintiff's truck when the equipment fell off the hi-lo vehicle and injured Plaintiff's arm. Plaintiff alleges that Sinelli's conduct was negligent and that, as a result, Plaintiff Mohammed Nawwas was severely injured. Plaintiffs seek damages in excess of \$25,000, as well as attorney's fees, costs and interest. On May 6, 2009, Judge Swartz granted the Defendants' motions for summary disposition, holding that operation of Property Disposition was not a proprietary function and therefore the University had governmental immunity. Judge Swartz also ruled that Defendant Sinelli's actions were not gross negligence. Plaintiffs appealed the case to the Michigan Court of Appeals. On October 26, 2010, the Court of Appeals affirmed the trial court's dismissal of both the claim against the University and the claim against our employee, Steve Sinelli. Plaintiff filed an application to the Michigan Supreme Court for review of the Court of Appeal's decision. The Supreme Court denied plaintiff's application for leave to appeal and the case is concluded.

Grand Blanc Cement Products, Inc. v Humane Society of Huron Valley, Regents of the University of Michigan, and Hartford Accident and Indemnity Co. Washtenaw County Circuit Court. (Judge Melinda Morris) (Filed August 18, 2010).

Plaintiff was a subcontractor to Phoenix Contractors on a construction project for the Humane Society and claims that the University is a co-owner of the property. Grand Blanc Cement alleges that it has not been paid for the materials it provided to the project. Plaintiff seeks \$74,532.62 plus costs, interest and attorney fees. Judge Morris dismissed the University from the case without prejudice, which was converted by stipulation to a dismissal with prejudice. The case is now concluded.

Andrei Borisov v Mark Russell, Valerie Castle, Margaret Gyetko and Jeffery Frumkin. Washtenaw County Circuit Court. (Judge Donald E. Shelton) (Filed August 30, 2009).

Plaintiff was a non-tenured research faculty member in the Medical School from May 1997 to September 2008. Plaintiff claims that, following a meeting with Dr. Castle regarding his employment with the Department, he was escorted to his office by DPS officers, handcuffed and arrested for trespassing, and transported to a jail cell at the Department of Public Safety. Plaintiff was criminally charged with two counts of attempted resisting or obstructing a police officer and one count of disturbing the peace; he was later acquitted on all charges by a jury. He further claims that he was informed by the University that he was no longer eligible for rehire at the University because of his arrest. His allegations include defamation, interference with a contract, and fraud against defendants Russell and Castle; as well as assault and battery, false imprisonment, and malicious prosecution against defendants Castle, Gyetko and Frumkin. Plaintiff filed an amended complaint, adding two new defendants: DPS Officers Jose Dorta and Kevin Lucas. He also added one new count: False Arrest against defendants Dorta and Lucas. Settlement has been reached between the parties and the case is closed.

Robert McGee v Regents of the University of Michigan. Washtenaw County Circuit Court. (Judge Archie C. Brown) (Filed May 16, 2008).

Plaintiff was a graduate student in Nuclear Engineering and Radiological Sciences, with a 25% appointment as a Graduate Student Research Assistant to work in a laboratory in the area of neutron radiography. Plaintiff claims that he observed a number of practices in the lab that did not meet OSEH standards and reported them to the University's Radiation Safety Services office, to OSEH and to the Michigan Department of Environmental Quality. Plaintiff claims that his subsequent termination was retaliation against him for reporting suspected violations of laws. He seeks compensation for his losses, interest, costs and attorneys fees. The University filed a motion for summary disposition, which was denied. Trial began on November 9, 2009. The jury found in favor of the University. Plaintiff filed an appeal to the Michigan Court of Appeals. Following oral argument, the Court of Appeals affirmed the trial court jury's no cause finding in favor of the University.

CASE UPDATES

Keith Yohn v Board of Regents of the University of Michigan, Peter Polverini, Paul Krebsbach and Mark Snyder. Michigan Court of Claims. (Judge Thomas L. Brown) (Filed October 7, 2008).

Professor Yohn's complaint alleges that Paul Krebsbach, Chair of the Biomedical and Materials Science Department in the School of Dentistry, is keeping a secret file on Dr. Yohn to force Plaintiff out of his tenured University appointment. He also alleges that Defendant Snyder committed misconduct by working on his intramural dental patients during work hours, causing Plaintiff to suffer anger and loss of sleep; Plaintiff complained to Dean Polverini and later filed a grievance of Snyder's misconduct. Dr. Yohn also complained that Dr. Krebsbach embarrassed him in front of his fellow faculty members at a faculty meeting, and that later an officer from DPS was sent to his home to ask him about some alleged threats made by Plaintiff at that meeting. Dr. Yohn seeks an order to expunge all evidence of the DPS incident report noted above, jail time for defendants Polverini and Krebsbach, \$3 million for mental anguish and suffering, and exemplary damages. The University's motion for summary disposition was granted by the court on June 24, 2009, thereby dismissing all of Plaintiff's claims with prejudice. Plaintiff contested the proposed order, and a hearing was held on September 2, 2009. The judge granted the University's motion to dismiss the entire case, denied Plaintiff's motion opposing the order of dismissal, denied with prejudice Plaintiff's motion to amend his complaint, and awarded the defendants \$36,000 in costs and fees. Plaintiff filed an appeal with the Michigan Court of Appeals. In addition, Plaintiff filed a motion for an immediate preliminary injunction, asking the Court of Appeals to prohibit defendant Snyder from performing certain of his duties. The Court of Appeals denied the motion for immediate preliminary injunction. Plaintiff filed an Application for Leave to Appeal Prior to Decision by Court of Appeals with the Michigan Supreme Court. On October 26, 2010, the Michigan Supreme Court denied plaintiff's application for leave to appeal. Plaintiff filed a motion in the Court of Appeals for peremptory reversal, which was denied by the court on February 16, 2011. On March 22, 2011, the Court of Appeals ruled unanimously in favor of the University and upheld the lower court's dismissal of Dr. Yohn's lawsuit. Plaintiff filed an application for leave to appeal to the Michigan Supreme Court.

Respectfully submitted,



Suellen Scarnecchia
Vice President and General Counsel

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